

1906  
December 5.

*Before Mr. Justice Sir George Knox and Mr. Justice Richards.*

PURAN CHAND (PLAINTIFF) v. SHEODAT RAI (DEFENDANT).\*

*Suit to set aside decree on the ground of fraud—Sole question raised already disposed of in proceedings under section 108 of the Code of Civil Procedure.*

In a suit to set aside a decree upon the ground of fraud, the sole fraud alleged was with respect to service of summons on the defendant. This question had already been gone into and decided by two Courts adversely to the defendant upon application made by him under section 108 of the Code of Civil Procedure. *Held* that the suit was not maintainable. *Radha Raman Shaha v. Pran Nath Roy* (1) and *Khagendra Nath Mahata v. Pran Nath Roy* (2) distinguished.

THE facts out of which this appeal arose are the following. Sheodat Rai obtained an *ex parte* decree against Puran Chand. Puran Chand applied under section 108 of the Code of Civil Procedure to have this decree set aside upon the ground of fraud in respect of the service of summons upon him; but this application was rejected and the order rejecting it was upheld on appeal. Puran Chand then brought a regular suit on substantially the same ground and on that ground only. The Court of first instance (Subordinate Judge of Benares) dismissed the suit upon the ground that the only question of fraud alleged had already been decided against the plaintiff, and this decision was upheld on appeal by the District Judge. The plaintiff appealed to the High Court.

The Hon'ble Pandit *Madan Mohan Malaviya*, Maulvi *Muhammad Ishaq* and *Munshi Kalindi Prasad*, for the appellant.

*Babu Jogindro Nath Chaudhri* and *Babu Satya Chandra Mukerji*, for the respondent.

KNOX and RICHARDS, JJ.—We have heard all that the learned vakil who appears for the appellant could say on behalf of his client, and we find ourselves in accord with what was laid down by the Subordinate Judge. We were referred to the case of *Radha Raman Shaha v. Pran Nath Roy* (1) and also to the case of *Khagendra Nath Mahata v. Pran Nath Roy* (2), but in our opinion the facts of this case are, as the learned Judge

\*Second Appeal No. 988 of 1905, from a decree of G. A. Paterson, Esq., District Judge of Benares, dated the 10th of August 1905, confirming a decree of Rai Mata Prasad, Subordinate Judge of Benares, dated the 23rd of June 1905.

(1) (1901) L. L. R., 28 Calc., 475. (2) (1902) L. L. R., 29 Calc., 395.

also points out, distinct from the facts of those cases. In the Calcutta cases there were specific allegations that the decree had been obtained by fraud and the execution proceedings which followed were similarly tainted with fraud. In the case out of which this appeal has arisen the only real fraud alleged is connected with the non-service of summons. This has already been fully gone into and decided against the appellant in the application which he filed under section 108 of the Code of Civil Procedure. We dismiss the appeal with costs.

*Appeal dismissed.*

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.*

CHHITAR MAL (PLAINTIFF) v. JAGAN NATH PRASAD AND ANOTHER  
(DEPENDANTS).\*

*Guardian and minor—Contract—Specific performance—Specific performance of contract not favourable to minor refused.*

The certificated guardian of a minor, finding that it was necessary that some of the minor's property should be sold, applied for permission to the District Judge, who sanctioned the sale for a price of Rs. 725. Subsequently the guardian discovered that this was an inadequate price, and having received an offer of Rs. 825 for the property, went again to the District Judge for sanction to the second contract, obtained sanction and sold the property for Rs. 825. *Held* that the former contract being to the detriment of the minor could not be specifically enforced.

THE facts out of which this appeal arose are as follows:—

One Musammnat Misri, the certificated guardian of her minor son Sanwalia, found it necessary to sell certain property belonging to the minor. She got an offer of Rs. 725 from Chhitar Mal, and obtained the sanction of the District Judge for the sale of the property to Chhitar Mal at that price. It was afterwards found that this price was inadequate, and on another offer of Rs. 825 being made by one Jagan Nath Prasad, Musammnat Misri again applied to the District Judge for sanction to sell to Jagan Nath. The property was offered to Chhitar Mal at Rs. 825, but he refused to give so much, and the property with the sanction of the District Judge was sold to Jagan Nath. Chhitar Mal then

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\* Second Appeal No. 932 of 1905, from a decree of Babu Khetta Mohan Ghose, Additional District Judge of Aligarh, dated the 29th of July 1905, confirming a decree of Babu Jagat Narayan, Munsif of Koil, dated the 5th of May 1905.