1914
June, 17.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball
DAN DAYAL (PLAINTIFF) *v.* MUNNA LAL AND OTHERS (DEFENDANTS). *

Civil Procedure Code (1908), *section* 20 *(c)—Cause of action—Jurisdiction—Suit to set aside a decree on the ground of fraud—Decree obtained in Calcutta—Suit filed in Mainpuri.*

The plaintiff instituted his suit in the court of the Subordinate Judge of Mainpuri alleging that the defendants had by fraud obtained a decree against him in the High Court at Calcutta and praying that the decree might be set aside and an injunction issued restraining the defendants from executing it.

Held that, as the defendants resided in Calcutta and the fraud (if any) complained of had been practised there, the Mainpuri Court had no jurisdiction to entertain the suit. *Banke Behari Lal* v. *Pokhe Ram* (1) distinguished. *Read* v. *Brown* (2) and *Umrao Singh* v. *Hardeo* (3) referred to.

THIS was a suit, instituted in the court of the Subordinate Judge of Mainpuri, in which the plaintiff claimed (1) that it might be declared that a decree obtained by the defendant No. 1 in the High Court at Calcutta was fraudulent and false and that it might be set aside as against the plaintiff and his father, and (2) an injunction to restrain the said defendant from taking out execution of the decree and directing him to release certain property from attachment. The Subordinate Judge held that the cause of action did not arise in Mainpuri and accordingly returned the plaint for presentation in the proper court. The plaintiff thereupon appealed to the High Court.

The Hon'ble Dr. *Sundar Lal* and Babu *Sarat Chandra Chaudhri*, for the appellant.

Dr. *Satish Chandra Banerji* and Babu *Mangal Prasad Bhargava*, for the respondents.

RICHARDS, C. J.—This appeal arises out of a suit in which the plaintiff claimed that it might be declared that a decree obtained by the defendant No. 1 in the Calcutta High Court was fraudulent and false, and that it might be set aside as against the plaintiff and his father and an injunction to restrain the said defendant from taking out execution of the decree and directing him to release attached property from attachment.

The court below held that the cause of action did not arise in Mainpuri and accordingly returned the plaint for presentation in

* First Appeal No. 43 of 1914, from an order of Lalli Prasad, Subordinate Judge of Mainpuri, dated the 18th of February, 1914.

(1) (1902) I. L. R., 25 All., 48. (2) (1888) 22 Q. B. D., 128.
(3) (1907) I. L. R., 29 All., 418.

the proper court The plaintiff comes here complaining of this order. The foundation of the plaintiff's case is the granting of a decree in Calcutta, which is said to have been obtained by fraud. It appears that the decree was obtained in the year 1903, in the court of first instance and was confirmed by the appellate court in the year 1908. The present suit was not instituted until the year 1911. It is stated that the allegation of the plaintiff is that his father, who was named as one of several defendants, was never served throughout the litigation in Calcutta.

Speaking generally, it seems to me that where a decree has been improperly obtained the proper and most convenient course is for the party aggrieved to go to the court that granted the decree and get it set aside by that court. I do not wish to be taken, when making this remark, as expressing an opinion that a suit to set aside a decree will not lie. Steps to set aside a decree, whatever the procedure, should be taken the moment a party has notice that the decree has been made. The question which we have to decide, however, in the present appeal is the application of section 20 of the Code of Civil Procedure to the facts of the present case. Section 20 provides for the court in which the suit must be instituted. It is as follows :—

"Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

(a) the defendant or each of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain ;

(b) any of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution ; or

(c) the cause of action wholly or in part arises."

The defendant does not reside or carry on business in Mainpuri. Accordingly the present suit cannot be instituted in Mainpuri unless the cause of action wholly or in part arose there.

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The expression "cause of action" is perhaps a little difficult to define. In *Read* v. *Brown* (1), the expression was defined in the following words:—"A plaintiff's cause of action consists of every fact which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgement of the court." Now the fraud alleged in the present case is that a decree was made against him on the false allegation that he had been served, when in truth and in fact he had never been served. This is the fact which it would be necessary for the plaintiff to prove. If he succeeded in proving it, the decree would be set aside, and if the decree were set aside he would get all the relief to which he is entitled. It seems to me that all the plaintiff complains of happened in Calcutta and that therefore the cause of action arose in Calcutta and no place else. The plaintiff relies on the case of *Banke Behari Lal* v. *Pokhe Ram* (2). There the plaintiff brought a suit very like the present. The decree had been obtained in Calcutta, but certain property had been attached in execution of the decree in Cawnpore. A Bench of this High Court decided that part of his cause of action was the attachment of the property and that took place in Cawnpore and that consequently the suit could be maintained in Cawnpore. The learned Judges say, at page 53:—"In so far as the said decree and the compromise on which it was founded are alleged to have infringed the plaintiff's right, the cause of action arose in Calcutta where the decree was made and the compromise was admittedly entered into. The mere fact, however, of the passing of the decree did not materially affect the plaintiff until it was put into execution and the amount awarded by the decree was sought to be realized from the estate of Balmakund, of which the plaintiff claims to be the owner."

I may point out that in this case the plaintiff was no party to the suit in Calcutta. His allegations were that certain persons brought a fraudulent suit and then compromised, with the effect that the property which he claimed to be his was attached in Cawnpore. There is this important distinction between the facts of this case and the case before us.

During the course of the arguments the case of *Umrao Singh* v. *Hardeo* (3) was cited. In that case the suit was brought to set

(1) (1888) 22 Q. B. D., 128. (2) (1902) I. L. R., 25 All., 48.
(3) (1907) I. L. R., 29 All., 418.

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aside a decree of the Small Cause Court at Calcutta on the allegation that it had been obtained against the plaintiff by fraud. This Court held that the suit could not be maintained at Agra.

In my opinion the decision of the court below was correct and ought to be confirmed.

TUDBALL, J.—I fully agree with everything that the learned Chief Justice has said. I would like to add that an attempt was made to distinguish the case which is now before us from the case of *Umrao Singh* v. *Hardeo* (1). It is pointed out that in the present case the plaintiff asked not only to have the decree set aside on the ground of fraud; but also that an injunction might be issued against the defendant restraining him from putting it into execution. I fail to see how the addition of this relief in any way differentiates the two cases. No court which granted the first relief, that is, the setting aside of the decree, would also issue an injunction against the defendant restraining him from executing the decree which it had already set aside. In my opinion the addition of this unnecessary relief does not alter the case at all. The court below had no jurisdiction whatsoever to entertain the suit and its order is perfectly correct.

BY THE COURT.—The order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

FULL BENCH.

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June, 23.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball and Mr. Justice Chamier.

RAJ NATH AND OTHERS (DEFENDANTS) *v.* NARAIN DAS (PLAINTIFF) AND DARSI AND OTHERS (DEFENDANTS)*

Act No. IX of 1908 (*Indian Limitation Act*), *schedule I, articles* 132 *and* 144—*Limitation—Mortgage—Suit for sale on a mortgage impleading defendants alleged to be in adverse possession of the mortgaged property.*

Held that a suit for sale on a mortgage can always be brought under article 132 of the first schedule to the Indian Limitation Act, 1908, against all persons in possession whose possession is subsequent to the date of the mortgage, provided that the suit is brought within twelve years from the time at which

*Second Appeal No. 427 of 1913 from a decree of H. W. Lyle, District Judge of Agra, dated the 28th of January, 1913, confirming a decree of Shekhar Nath Banerji, Second Additional Subordinate Judge of Agra, dated the 12th of March, 1912.

(1) (1907) I. L. R., 29 All., 418.