APPELLATE CIVIL.

1914
December, 14.

Before Mr. Justice Chamier and Mr. Justice Piggott.

JAWAHIR (PLAINTIFF) *v.* NEKI RAM (DEFENDANT).*

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 Bengal—Suit filed in Agra.*

The plaintiff sued in the court of a Munsif in the district of Agra, to set aside on the ground of fraud a decree obtained from a Court at Siliguri in Bengal. It was part of the plaintiff's case that the defendant fraudulently prevented the institution of the suit from becoming known to him, by causing the notice of suit to be served on some other person and an incorrect return to be made to the Court. The plaintiff further alleged that the defendant had in execution of his decree caused certain property belonging to the plaintiff in the district of Agra to be attached.

Held that a material portion of the plaintiff's cause of action arose in the district of Agra and the Munsif had jurisdiction to try the case.

Banke Behari Lal v. *Pokhe Ram* (1), *Nanda Kumar Howladar* v. *Ram Jiban Howladar* (2), *Radha Raman Shaha* v. *Pran Nath Roy* (3), *Khagendra Nath Mahata* v. *Pran Nath Roy* (4), *Thakur Prosad* v. *Punkal Singh* (5), *Abdul Huq Chowdhry* v. *Abdul Hafiz* (6) referred to. *Dan Dayal* v. *Munna Lal* (7) and *Kalian Das* v. *Bakhshi Ram* (8) not followed.

THE facts of this case were as follows:—

The respondent obtained a decree against the appellant in a court at Siliguri in Bengal. The decree was transferred for execution to the court of the Munsif of Fatehabad, in the Agra district; and in execution thereof appellant's property within the jurisdiction of that court was attached. The appellant then brought a suit against the respondent in the court of the said Munsif praying to have the decree set aside on the ground that it had been obtained by fraud and also praying for a permanent injunction restraining the respondent from executing the same. It was alleged by the plaintiff appellant, and found by the Munsif, that the claim upon which the respondent had obtained the decree was entirely baseless and false and that the summons in that

*Second Appeal No. 179 of 1914, from a decree of H. W. Lyle, District Judge of Agra, dated the 24th of November, 1913, reversing a decree of Shamsuddin Khan, Munsif of Fatehabad, dated the 11th of August, 1913.

(1) (1902) I. L. R., 25 All., 48.
(2) (1914) I. L. R., 41 Calc., 990.
(3) (1901) I. L. R., 28 Calc., 475.
(4) (1902) I. L. R., 29 Calc., 395.
(5) (1907) 8 C. L. J., 485.
(6) (1908) 14 C. W. N., 695.
(7) (1914) I. L. R., 36 All., 564.
(8) (1910) F. A. f. O., No. 14 of 1910.

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suit had not been served upon the appellant at all, but that the respondent had fraudulently caused it to be served upon some other person and made it appear that it had been served upon the appellant. The Munsif decreed the suit. On appeal, the District Judge held that the suit was not maintainable and declined to enter into the merits of the claim upon which the respondent had obtained his decree. The suit was accordingly dismissed by the District Judge. The plaintiff appealed to the High Court.

Munshi *Narmadeshwar Prasad* (for Dr. *Surendra Nath Sen*), for the appellant :—

A suit to set aside a decree obtained by fraud and for other consequential reliefs is maintainable; and such a suit can be entertained by a court other than the court which passed the decree which is called in question; *Banke Behari Lal* v. *Pokhe Ram* (1), *Thakur Prosad* v. *Punkal Singh* (2), *Radha Raman Shaha* v. *Pran Nath Roy* (3). The Munsif of Fatehabad had jurisdiction under clause (*c*) of section 20 of the Code of Civil Procedure to entertain the suit. The attachment of the plaintiff's property in execution of the respondent's decree is certainly a part, and a material part, of the plaintiff's cause of action. That attachment having taken place within the jurisdiction of the said Munsif's court, the cause of action arose there in part at any rate. The execution of the decree and the attachment of the plaintiff's property are acts which infringe his rights and afford him his principal cause of action; *Banke Behari Lal* v. *Pokhe Ram* (1). The plaintiff's cause of action includes the effect of the decree upon his property. Injury thereto has resulted from the operation of the decree, and the decree has become operative within the jurisdiction of the Fatehabad court. That court, therefore, can entertain the suit; *Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub* (4). The ruling in *Umrao Singh* v. *Hardeo* (5) is distinguishable. In that case the sole relief claimed was to have the decree set aside; no consequential relief whatsoever was asked for. The case of *Dan Dayal* v. *Munna Lal* (6) is also distinguishable.

(1) (1902) I. L. R., 25 All., 48.
(2) (1907) 8 C. L. J., 485.
(3) (1901) I. L. R., 28 Calc., 475.
(4) (1874) 13 B. L. R., 91 (98).
(5) (1907) I. L. R., 29 All., 418.
(6) (1914) I. L. R., 36 All., 564.

Munshi *Gulzari Lal*, for the respondent :—

The ruling in *Dan Dayal* v. *Munna Lal* (1) is in my favour and exactly applies to the present case. There too, the plaintiff's property was, in execution of the impugned decree, attached within the jurisdiction of the court in which the suit to have the decree set aside on the ground of fraud was brought; and it was held that that court had no jurisdiction to entertain the suit. Another decision in my favour is that in *Kalian Das* v. *Bakhshi Ram* (2), decided on the 29th of July, 1910, (unreported). It was there held that a court within whose jurisdiction the plaintiff had been arrested in execution of the impugned decree would not by reason of that fact have jurisdiction to try a suit of this kind. I am further supported by the case of *Umrao Singh* v. *Hardeo* (3). The ground upon which the decree is sought to be set aside is fraud. That fraud (if there was any fraud) was perpetrated at Siliguri in Bengal. The cause of action for that relief arose there and not within the jurisdiction of the Fatehabad court. The addition of a prayer for an injunction to restrain the decree-holder from executing the decree is merely superfluous and does not alter the case. This was pointed out in the case of *Dan Dayal* v. *Munna Lal* (1) cited above. The ruling in *Banke Behari Lal* v. *Pokhe Ram* (4), relied upon by the appellant, was distinguished in I. L. R., 36 All., at p. 566.

CHAMIER and PIGGOTT JJ.—This was a suit by the appellant praying that a decree for money obtained against him by the respondent in Siliguri might be set aside on the ground that it had been obtained by fraud, and that an injunction might be issued restraining the respondent from executing the same. The appellant alleged that the claim on which the decree rested was totally without foundation, that the respondent had taken steps to prevent the institution of the suit from becoming known to him, and that he knew nothing of it till the 8th of October, 1911, when the respondent caused some of his property to be attached within the jurisdiction of the Munsif of Fatehabad in the Agra district. The appellant alleged that a cause of action accrued to him on the 11th of October, at the place where the attachment was effected.

(1) (1914) I. L. R., 36 All., 564.
(2) (1910) F. A. f. O., No. 14 of 1910.
(3) (1907) I. L. R., 29 All., 418.
(4) (1902) I. L. R., 25 All., 46.

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The Munsif decreed the claim; but on appeal the District Judge held that the suit was not maintainable at all. He seems to have thought that the whole of the appellant's case was, that the summons in the suit had not been served on him, and he declined to consider whether there was any foundation for the respondent's suit. The learned Judge has, we think, misunderstood the case. A plaintiff in a case of this kind cannot succeed merely on proving that the summons was not served on him; but if he proves that the former suit had no foundation in fact, but was the outcome of previous enmity, that the summons was not served on him, and that the person who is said to have been present at the service was not there at all, and if he proves other facts also which tend to show that the defendant was anxious to avoid a fair trial of the issue between the parties, it is certainly open to the court to find that the decree was obtained by fraud. The Munsif found that the appellant had proved all this, and he held that the decree had been obtained by fraud. It seems to us that in a case of this kind the court can and must go into the whole matter before it can decide the case with any satisfaction to itself or anyone else. That was the view taken in *Lakshmi Charan Saha* v. *Nur Ali* (1) and it is supported by ample authority. As was said by LORD ROBERTSON in *Khagendra Nath Mahata* v. *Pran Nath Roy* (2), which was a suit of this kind, "the appellant's allegation is an attack, not on the sufficiency of the service of notice but on the whole suit as a fraud from beginning to end." So far as the merits of the case are concerned, we have no hesitation in saying that the proceedings in the lower appellate court were not satisfactory.

It is, however, contended, on the authority of the decision in *Dan Dayal* v. *Munna Lal* (3) that such a suit as this does not lie at all, except possibly in the court or district in which the decree impugned was passed.

That such a suit will lie is beyond doubt, see the remarks of JENKINS, C. J., in *Nanda Kumar Howladar* v. *Ram Jiban Howladar* (4) and the decisions of the Privy Council in *Radha Raman Shaha* v. *Pran Nath Roy* (5) (affirming the decision of

(1) (1911) I. L. R., 38 Calc., 936. (3) (1914) I. L. R., 36 All., 564.
(2) (1902) I. L. R., 29 Calc., 895. (4) (1914) I. L. R., 41 Calc., 990.
(5) (1901) I. L. R., 28 Calc., 475.

the High Court reported in I. L. R., 24 Calc., 546) and *Khagendra Nath Mahata* v. *Pran Nath Roy* (1). Other recent instances of such suits are *Thakur Prosad* v. *Punkal Singh* (2) and *Abdul Huq Chowdhry* v. *Abdul Hafiz* (3). Incidentally these cases show also that a suit to set aside a decree on the ground of fraud may be brought in a court other than that by which the impugned decree was passed, and we may observe that if it were otherwise no suit could be brought to set aside a decree obtained by fraud in a Court of Small Causes, however gross the fraud might be.

But in this Court there seems to be a conflict of opinion on the question whether a suit will lie in these provinces against a resident of another province to have a decree obtained by him in that province set aside on the ground of fraud, even when property of the plaintiff in these provinces has been attached in execution of the decree impugned. In *Banke Behari Lal* v. *Pokhe Ram* (4) it was held that a suit would lie in Cawnpore against a resident of Calcutta to have a decree obtained by him in the Calcutta High Court set aside on the ground of fraud, when property of the plaintiff in Cawnpore had been attached in execution of the decree impugned. But in *Kalian Das* v. *Bakhshi Ram* (5) KNOX and GRIFFIN, JJ., held that a suit to set aside, on the ground of fraud, a decree obtained in Kachar by a resident of that place would not lie in Agra, even though the plaintiff had been arrested in Agra in execution of that decree, and in *Dan Dayal* v. *Munna Lal* (6) RICHARDS, C. J., and TUDBALL, J., held that a suit did not lie in Mainpuri against a resident of Calcutta to set aside, on the ground of fraud, a decree obtained by him in Calcutta in execution of which the plaintiff's property in Mainpuri had been attached. In the course of the principal judgement it is said that "all that the plaintiff complains of happened in Calcutta and therefore the cause of action arose in Calcutta and no where else." As at present advised we are not prepared to take this view. In the plaint in that case the plaintiff complained specifically of the attachment of his property in the

(1) (1902) I. L. R., 29 Calc., 395.
(2) (1907) 8 O. L. J., 485.
(3) (1908) 14 C. W. N., 695.
(4) (1902) I. L. R., 25 All., 48.
(5) (1910) F. A. f. O. No. 14 of 1910.
(6) (1914) I. L. R., 36 All., 564.

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Mainpuri district, and he prayed for an injunction directing the defendant to release the property from attachment. It seems to us that the attachment of the property was an important part of his cause of action and that it gave the plaintiff the right to sue in Mainpuri. We agree with the observation made in the case of *Banke Behari Lal* v. *Pokhe Ram* (1) by BANERJI, J., that "the execution of the decree and the application for the realization of the amount of it are acts of the defendant which infringe the rights of the plaintiff and afford him his principal cause of action."

In view of the conflict between the decisions in I. L. R., 36 All., 564 and F. A. f. O. No. 14 of 1910 on the one hand and in I. L. R., 25 All., 48, on the other, we have considered the propriety of referring this case to a larger bench; but we have come to the conclusion that such a course is unnecessary. It is part of the plaintiff's case that the defendant fraudulently prevented the institution of the suit from becoming known to him by causing the notice of suit to be served on some other person and an incorrect return to be made to the court. This is part and parcel of the fraud alleged, and if the allegation is found to be true, part of the fraud was committed in the Agra district and there can be no doubt that the cause of action arose in part at least in the Agra district, even if the attachment of the plaintiff's property is not part of the cause of action.

We therefore direct that the record be returned to the lower appellate court in order that a finding may be recorded upon the second issue. Further evidence will not be admitted except for good cause shown. On return of the finding ten days will be allowed for objections.

Issue remitted.

(1) (1902) I. L. R., 25 All., 48.