1917

RAGHUBIR RAI v. MADHO.

was that the Revenue Court had no jurisdiction. The court of first instance accepted that plea. The plaintiffs appealed. The appellate court held that the Revenue Court had jurisdiction, but it dismissed the plaintiffs' suit on the ground that they had failed to prove that they were entitled to recover the rent which they claimed. Neither side proceeded to the court of the District Judge. The plaintiffs have now come to the Civil Court and are seeking to recover the same rent from the defendants on account of the same years. The courts below have dismissed the suit on the wrong ground that it is barred by the principle of *res judicata* under section 11 of the Code of Civil Procedure. It is quite clear that the suit is one which might and ought to have been tried in a Revenue Court in view of the terms of section 167 of the Tenancy Act. The defendants first party are clearly tenants and the sum sued for is the share of the value of the fruits of a grove and, if payable at all, is payable on account of the grove. The suit ought to have been dismissed on this ground alone by the court of first instance. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

1917
May, 26.

KHUSHALI RAM (DEFENDANT) *v.* GOKUL CHAND (PLAINTIFF).*

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

It is competent to a Court in the United Provinces to grant a declaration that a decree passed by a court in another province is fraudulent and null and void as against the plaintiff, and to grant a perpetual injunction restraining the decree-holder from executing it, provided that some part of the plaintiff's cause of action has arisen within the jurisdiction of the court in which the suit is brought. *Banke Behari Lal* v. *Pokhe Ram* (1) and *Jawahir* v. *Neki Ram* (2) followed. *Umrao Singh* v. *Hardeo* (3) and *Dau Dayal* v. *Munna Lal* (4) distinguished.

THIS was a suit brought in the court of the Munsif of Fatehabad in the Agra district to set aside a decree obtained against the

* Second Appeal No. 1349 of 1915, from a decree of D. R. Lyle, District Judge of Agra, dated the 10th of April, 1915, confirming a decree of Gobind Sarup Mathur, Munsif of Fatehabad, dated the 6th of February, 1915.

(1) (1902) I. L. R., 25 All., 48.
(2) (1914) I. L. R., 37 All., 189.
(3) (1907) I. L. R., 29 All., 418.
(4) (1914) I. L. R., 36 All., 564.

1917

KHUSHALI RAM v. GOKUL CHAND.

plaintiff in the court of the second Munsif of Sirajganj, in the district of Pabna in Bengal. The plaintiff's case was that the defendant No. 1 had obtained a decree against him by fraud upon the basis of a forged promissory note; that the plaintiff had no knowledge of the suit, and that the defendants had procured fraudulent and false service of summons; that the plaintiff had been arrested at Akbarpur, within the jurisdiction of the Agra court, in execution of the decree, which had been transferred to that court for execution; that he had been released on his furnishing security, and that he had suffered, by his arrest, loss of reputation as well as mental and physical pain. The reliefs claimed by him were, (1) a declaration that the decree No. 1445 of 1913 of the second Munsif of Sirajganj, district Pabna, was fraudulent, *ultra vires*, void and inoperative against the plaintiff; (2) a perpetual injunction restraining the defendant No. 1 from executing the said decree against the person of the plaintiff, or against any property situate within the jurisdiction of the Agra court, and the discharge of the security aforementioned; and (3) Rs. 200 damages for the loss of reputation and for mental and physical pain. The defence was that the Agra court had no jurisdiction to entertain the suit, and that the decree had been obtained properly, without any fraud or forgery. The court of first instance, Munsif of Fatehabad at Agra, found that the promissory note was a forgery and that the service of summons was false and very probably fraudulent. It further held that as the fraudulent service had been effected within the jurisdiction of that court the case was distinguishable from that *Dau Dayal* v. *Munna Lal* (1) and was cognizable by that court. A decree was granted for reliefs (1) and (2) and for Rs. 100 damages against the defendant No. 1. On appeal the District Judge upheld the findings of the Munsif and dismissed the appeal; the question of jurisdiction was not specifically raised before him. The defendant No. 1 filed a second appeal to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru* (with him Mr. *J. M. Banerji* and Munshi *Bhagwati Shankar*) for the appellant:—

The foundation of the plaintiff's claim is that a decree was fraudulently obtained against him in the Sirajganj court. No doubt, consequent on the passing of that decree certain other

(1) (1914) I. L. R., 36 All., 564.

incidents have happened, but the root of the whole matter, the prime cause, is that decree. So, the plaintiff's cause of action is the procuration by fraud of the decree from the Sirajganj court; and as that happened in Sirajganj the cause of action arose there. Under clause (*c*), section 20 of the Code of Civil Procedure the suit to set aside the fraudulent decree should have been brought in Sirajganj. The court of the Munsif of Agra has no jurisdiction whatever to set aside a decree passed by the Sirajganj court; *Umrao Singh* v. *Hardeo* (1), *Mewa Lall Thakur* v. *Bhujhun Jha* (2), *Dau Dial* v. *Munna Lal* (3). The anomaly that would arise if a decree passed by one court were allowed to be set aside on the ground of fraud in a suit instituted for that purpose in another court in a different district or province was pointed out by STANLEY, C. J., in I. L. R., 29 All., 418, at p. 422. The proper course for the party aggrieved is to go to the court which passed the decree and to get it set aside by that court. The fact that the decree complained of has been followed by something done in another district in execution thereof does not make any essential difference, in principle, and does not change the venue. The fact that the decree was put in execution at Agra does not confer jurisdiction upon the Agra court to set aside the decree itself, which is the main and primary relief sought by the plaintiff. In the cases in I. L. R, 29 All., 418 and 36 All., 564, already cited, the decree had been transferred for execution from the Calcutta court to a court in the United Provinces, and in the latter case property was attached in execution within the local limits of the jurisdiction of the court to which the decree had been transferred; yet it was held that the suit did not lie in the United Provinces court. Further, the mere addition of a relief for injunction does not make any real distinction; this was pointed out by TUDBALL, J., in *Dau Dayal* v. *Munna Lal* (3). No doubt the case of *Jawahir* v. *Neki Ram* (4) may be quoted as an authority against the appellant; as was there mentioned, at pp. 194 and 195, there is a conflict of opinion in this Court on the point. The Agra court has jurisdiction to entertain the suit so far as the prayer for damages is concerned; but, so far

(1) (1907) I. L. R., 29 All., 418.
(2) (1874) 13 B. L. R., App., 11.
(3) (1914) I. L. R., 36 All., 564.
(4) (1914) I. L. R., 37 All., 189.

1917

KHUSHALI RAM v. GOKUL CHAND.

as setting aside the decree is concerned, the only court that can do so is the Sirajganj court. It may be that in trying the issue whether the plaintiff is entitled to any damages the Agra court may very well have to determine incidentally the question of the nature and the circumstances of the decree; but it is a different thing to set the decree aside. The obtaining of a decree by fraud and the putting of the decree in execution furnish two separate and distinct causes of action, being two distinct wrongs. If, for example, the decree-holder had transferred the decree to a third person and the transferee had taken out execution in Agra the causes of action against the two persons would obviously be distinct and separate.

Pandit *Uma Shankar Bajpai* (for Pandit *Shiam Krishna Dhar*), for the respondent, was not called upon.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—This is a defendant's appeal. The facts found by the court below are that the defendant fraudulently obtained a decree in suit No. 1445 of 1913, in the court of the second munsif of Sirajganj, district Pabna, in Lower Bengal; that he had the decree transferred for execution to the district of Agra in these Provinces, and that he there put it into execution and caused the plaintiff to be arrested. The plaintiff on these facts asked for the following reliefs—first, that it might be declared that the decree No. 1445 of 1913 passed by the court of the second munsif of Sirajganj, district Pabna, is fraudulent and null and void and has been given without jurisdiction and power and that it is ineffectual as against the plaintiff; secondly, that a perpetual injunction may be issued prohibiting and restraining the defendant from taking out execution of the said decree as against the person of the plaintiff and his property situate within the jurisdiction of this Court, and that the security which the plaintiff was required to furnish at the time of his arrest in execution of the said decree, should be cancelled; thirdly, that the sum of Rs. 200 as damages on account of loss of reputation and physical and mental pain, together with future interest may be awarded against the defendant.

The court below has decreed the plaintiff's claim and has awarded the sum of Rs. 100 as damages against the present appellant. The plea taken before us is that the courts below had

no jurisdiction to entertain the suit. Reliance has been placed on two decisions of this Court, one in *Umrao Singh* v. *Hardeo* (1) and the other in *Dau Dayal* v. *Munna Lal* (2). Both these cases are easily distinguishable from the present case. In neither of these cases did the defendant go further than to obtain a fraudulent decree in Calcutta. In the case of *Dau Dayal* v. *Munna Lal* (2), to which judgement one of us was a party, the facts were clearly held to be distinguishable from those of the case of *Banke Behari Lal* v. *Pokhe Ram* (3). In this latter case it was pointed out that not only had the decree been obtained fraudulently, but that further steps had been taken and property had been attached in execution of the decree in Cawnpore. This was also the case in *Jawahir* v. *Neki Ram* (4). In both these two latter cases it was held that the court in these Provinces had jurisdiction to entertain the suit, and in the present case it is quite clear that a material portion of the plaintiff's cause of action accrued to him in these Provinces. It is here that the decree was executed and he was arrested. Quoting from the decision in *Dau Dayal* v. *Munna Lal* (2):—"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." One of the material facts the plaintiff in the present case would have had to prove, if it had been denied, was the execution of the decree and his arrest thereafter within the jurisdiction of the court. We have no hesitation whatsoever in holding that the facts and the circumstances of the present case clearly go to show that part of the plaintiff's cause of action arose in these Provinces and that the courts below had jurisdiction to entertain the suit. They had jurisdiction to declare that the decree was fraudulent and null and void as against the plaintiff. They had jurisdiction to grant a perpetual injunction which he demanded and to decree the damages which they found he had suffered. In our opinion there is no force in this appeal. We therefore dismiss it with costs.

Appeal dismissed.

(1) (1907) I. L. R., 29 All., 418.
(2) (1914) I. L. R., 36 All., 564.
(3) (1902) I. L. R., 25 All., 48.
(4) (1914) I. L. R., 37 All., 189.