

value in the work of the Small Cause Court it is that speedy justice is done and the parties get an early decision on the matter in dispute between them. The present case is a very good instance of the way in which petty litigation is prolonged and carried to an undue extent. I set aside the decision of the lower appellate court as a decision passed without jurisdiction and restore that of the court of first instance with costs in all courts.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Walsh and Mr. Justice Sundar Lal.

RAM CHANDAR (PLAINTIFF) v. GANGA SARAN (DEPENDANT).*

Act No. I of 1877 (Specific Relief Act), sections 39, 40 and 42—Suit for a declaration that an endorsement on a document was fraudulently obtained—Consequential relief not asked for.

Held that a suit for the cancellation of an endorsement fraudulently obtained on a mortgage-deed is maintainable, inasmuch as it is a suit of the nature indicated by section 39 of the Specific Relief Act. The endorsement fraudulently obtained is by itself a document and is similar to the several parts of a document indicated in section 40 of the said Act. To such a suit section 42 of the Act does not apply.

THIS was a suit for a declaration that an endorsement of payment of a part of the principal and interest on a mortgage-deed was a forgery. It was alleged that the defendant had obtained the document by a trick for a pretended lawful purpose, and having drugged the plaintiff, had fraudulently endorsed upon it a receipt for payment of Rs. 1,200. The court of first instance decreed the suit. The lower appellate court reversed the decree on the ground that section 42 of the Specific Relief Act barred the suit. The plaintiff appealed to the High Court.

Mr. Nihal Chand (Mr. B. E. O'Connor with him), for the appellant:—

Under section 39 of the Specific Relief Act, the plaintiff is entitled to have the endorsement cancelled. An endorsement on

Second Appeal No. 1096 of 1915, from a decree of B. C. Forbes, Second Additional Judge of Aligarh, dated the 11th of June, 1915, reversing a decree of Banke Bihari Lal, Subordinate Judge of Aligarh, dated the 13th of January, 1915.

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an instrument has been held to be an instrument itself. A cloud has certainly been thrown on the plaintiff's title to recover the full amount of the mortgage-deed. Section 40 of the Act itself clearly shows that a suit for the cancellation of a part of a document is maintainable. The illustration shows that an endorsement, for the purposes of section 40, is a part of a document.

Babu *Piari Lal Banerji*, for the respondent :—

The suit as framed by the appellant is not one under section 40 or section 39. It is a suit for a declaration, and a suit for a declaration is governed by section 42 of the Specific Relief Act. The proviso to section 42 bars the suit. The money secured by the hypothecation bond having become due, the plaintiff is entitled to institute a suit on the bond itself, and in that suit the question whether the endorsement is proper or not can be tried. The present suit for a declaration has therefore been rightly dismissed. It will be bad law to hold that in every case on a bond where the plaintiff apprehends to be met with a plea of part payment he can bring a suit for a declaration that nothing has been paid to him. This will certainly entail the institution of two suits in place of one and the plaintiff will incur a lot of court fees. Section 40 relied upon by the appellants does not apply, inasmuch as this document and this endorsement do not create different rights and different obligations. An endorsement on a bill of exchange creates different rights and different obligations, inasmuch as each endorser has certain rights and incurs certain liabilities. That is not the case here. The plaintiff appellant cannot be entitled to amend the plaint at this stage of the proceedings; *Lekhranj v. Abdul Ghafur Khan* (1).

Mr. *Nihal Chand*, in reply :—

We have claimed a declaration to the effect that no payment was made, and we have claimed a further relief that the endorsement be cancelled. The plaintiff does not want a declaration that he is a mortgagee for Rs. 1,500 and not for Rs. 300. It is not denied that he is a mortgagee for Rs. 1,500. He wants that under section 40 the endorsement may be cancelled.

Time was granted to amend the plaint.

(1) Weekly Notes, 1894, p. 204.

After the plaint had been amended the following judgements were delivered.

SUNDAR LAL, J.—This is a suit by the plaintiff who is the mortgagee under a document, dated the 17th of February, 1913. The mortgage was for a term of ten years. The plaintiff's case is that under the circumstances mentioned in the plaint the defendant got hold of the original document from the plaintiff's custody and fraudulently endorsed the following note on the document :—

“Received Rs. 1,200, the 17th of February, 1913, up to the 19th of June, 1913. Principal, Rs. 1,144. Interest, Rs. 56-4.”

The endorsement purports to bear the signature of Ram Chandar plaintiff, by the pen of Afzal Khan, and his thumb impression. The court of first instance tried the case and held that the endorsement was a forgery, and that no payment had been made in fact, and decreed the suit. The plea under section 42 of the Specific Relief Act was raised in the court of first instance, which that court overruled for the reasons given in its judgement. The defendant appealed to the learned Judge, who, without going into the merits of the case, has held that the suit is barred by section 42 of the Specific Relief Act, as the plaintiff could have brought a suit for the recovery of the amount due on the mortgage, in which the question of payment and the genuineness of the endorsement could have been tried. The plaintiff appealed to this Court, and, after hearing both the parties, Mr. *Nihal Chand* who appeared for the plaintiff appellant, was granted leave to apply for the amendment of the plaint. Mr. *Nihal Chand* has applied for the amendment of the plaint. It is now after the amendment really a suit for cancellation of the endorsement fraudulently put upon the mortgage-deed by the defendant. The suit is of the nature indicated in section 39 of the Specific Relief Act. The endorsement by itself is a document and it is similar to the several parts of a document indicated in section 40 of the Act. In any case the provisions of the Specific Relief Act under which a plaintiff may sue for the cancellation of the document are not exhaustive. I think that section 42 of the Specific Relief Act is not applicable to this case. I would set aside the decree of the court below and remand the

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case to that court with directions to restore the appeal to the file of pending cases and to hear and dispose of the same according to law under order XLI, rule 23, of the Civil Procedure Code. Costs here and hitherto will abide the result.

WALSH, J.—I agree. I am glad that we have been able to come to the conclusion that section 42 of the Specific Relief Act does not apply, because the second sub-section, if it had applied, undoubtedly created a difficulty. And it seems to me that the law would be in an unsatisfactory state if a person could commit such a gross trespass as is alleged in this case, and then force the victim of it to a remedy which he was not otherwise disposed to adopt. Inasmuch as the appellant has taken a reasonable course and amended what undoubtedly was an unsatisfactory plaint, it is not necessary for us to decide anything beyond the circumstances of this particular case. But for my own part I am not prepared to hold that, although such a claim is unusual and possibly unparalleled in any reported case, a man who has suffered an injury like the endorsement is alleged to be in this case as a result of a tort, could not get it removed through the machinery of a declaration, with the addition of a consequential relief for its cancellation. There are many instances to be found in the recognized books of pleading where the main cause of action is a tort like forgery, and the prayer for relief is wound up by a claim for the delivery up of the document or its destruction. However, it is not necessary to decide this, and it may be that it is desirable before giving a final opinion upon it to hear further argument. I agree with my learned brother.

BY THE COURT.—The order of the Court is that the appeal is allowed, the decree of the court below is set aside, and the case is remanded to the court below under order XLI, rule 23, of the Civil Procedure Code with directions to restore the appeal to the file of pending cases and to hear and dispose of the same according to law. Costs here and hitherto will abide the result.

Appeal decreed and cause remanded.