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acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but, in my judgement, nothing short of this will do."

Applying these principles to the case now before us, no case has been made out by either of the courts below for refusing the plaintiffs demolition of the construction. It has been argued that the defendant appellant was under a mistaken belief that the land in dispute belonged to him. Even assuming that, the defendant would still not be entitled to succeed in this appeal, for it would be necessary for him to establish the other matters referred to in the judgement of FRY, J. From the judgement of the courts below, however, it does not appear to us that the defendant appellant could have entertained any *bonâ fide* belief that he was the owner of the land in question.

We are of opinion that the appeal fails and we dismiss it accordingly with costs.

Appeal dismissed.

[N.B.—It may be noted that "fraud," as used by an Equity Judge, means "against good conscience" rather than fraud in the criminal, or colloquial, sense.—ED.]

REVISIONAL CIVIL.

1926
January, 19.

Before Mr. Justice Dalal and Mr. Justice Boys.

HARNAND LAL (PLAINTIFF) *v.* CHATURBHUJ (DEFENDANT).*

Civil Procedure Code, sections 115, 151; *order XXXII, rule* 15 *—Order refusing to stay proceedings—Revision—"Inherent powers of court"—Avoidance of multiplicity of proceedings.*

During the pendency, in the court of a Subordinate Judge, of a suit for specific performance, the defendant's

* Civil Revision No. 125 of 1925.

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counsel informed the court that proceedings in lunacy were going on in the court of the District Judge with reference to the defendant. The plaintiff applied to the Subordinate Judge to stay proceedings until the question of the defendant's mental condition had been determined by the District Judge, but the application was refused.

Held, on application by the plaintiff to the High Court, that, although no revision lay, the case was a fit one for the exercise of the inherent powers of the Court, and a stay was granted. *Buddhu Lal* v. *Mewa Ram* (1) and *Joti Shib Prakash* v. *Jhinguria* (2), referred to.

THE facts of this case were as follows:—

There was a suit for specific performance pending in the court of the Second Subordinate Judge of Cawnpore. The defendant's son-in-law (referred to in the judgement as "Chaturbhuj junior") applied to the Subordinate Judge under order XXXII, rule 15, of the Code of Civil Procedure, praying that a guardian *ad litem* might be appointed for the defendant upon the ground that he was of weak mind. Some evidence was taken, when, on the 4th of September, 1925, the vakil for the defendant informed the court that lunacy proceedings were going on in the court of the District Judge of Mainpuri with reference to the mental condition of the defendant.

A week later the plaintiff asked the Subordinate Judge to adjourn the proceedings in his court until a decision in the lunacy proceedings had been arrived at. This application was refused. Subsequently to this refusal the plaintiff successfully applied to the District Judge of Mainpuri to be made a party to the lunacy proceedings. The plaintiff then applied to the High Court asking that the Subordinate Judge's order might be set aside and the proceedings in his court stayed.

(1) (1921) I.L.R., 43 All., 564. (2) (1923) I.L.R., 46 All., 144.

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On this application—

Babu *Piari Lal Banerji*, for the applicant.

Dr. *Surendra Nath Sen*, for the opposite party.

The judgement of the Court (DALAL and BOYS, JJ.), after stating the facts as above, thus continued :—

It is of course obvious that if the District Judge finds Chaturbhuj defendant to be of sound mind for the purposes of the proceedings before him, the learned Subordinate Judge will have in that case to proceed with and finally determine the question of the mental fitness of the defendant within the meaning of order XXXII, rule 15. It is equally obvious that if the District Judge finds the defendant to be a lunatic, that finding will conclude the question at present pending before the Subordinate Judge. Counsel for Chaturbhuj junior before us is unable to suggest any prejudice whatever that his client or Chaturbhuj defendant will suffer by a stay of the proceedings in the court of the Subordinate Judge, even if eventually the lunacy of the defendant be not established in the court of the District Judge. There should at the most be a very brief delay while the District Judge completes the inquiry necessary for the proceedings before him. On the other hand it is manifest that to continue the proceedings before the Subordinate Judge, when the result of the proceedings before the District Judge may show them to have been already unnecessary, is most undesirable. Such a course would manifestly infringe the principle that this Court and every other court should avoid as far as possible multiplicity of proceedings in the same matter. It is further pertinently urged on behalf of the plaintiff before us that the evidence

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which he will require to produce before the Subordinate Judge and before the District Judge is practically the same and that it is impossible for him to be taking his witnesses backwards and forwards to two different courts in the same matter. We think that these facts only require to be stated to indicate forcibly that it is desirable that the proceedings in the court of the Subordinate Judge should be stayed.

The only question that it has been possible for counsel for the opposite party here to urge seriously is that this Court has no power to stay the proceedings. The plaintiff, applicant here, did not justify his right to apply to this Court by a reference to any enactment in the title of his application. It has since been entitled an application under section 115 of the Code of Civil Procedure, in response, as we are informed by counsel for the applicant, to a suggestion from the learned Judge before whom this case first came. For the opposite party it is contended that the case is not one in which this Court can interfere on the revisional side under section 115 and he relies on the decision of the Full Bench in *Buddhu Lal* v. *Mewa Ram* (1). We think that this contention, in the particular circumstances in which this order of refusal to stay was passed, must be accepted. Counsel for the plaintiff applicant then fell back on the provisions of section 151 of the Code of Civil Procedure and of section 107 of the Government of India Act. In the view that we take it will be unnecessary for us to consider the latter section.

It is a common practice to speak of "the power given to the court by section 151 to make orders, etc." It is clear, however, that section 151 gives no powers whatever. It merely saves such inherent

(1) (1921) I.L.R., 43 All., 564.

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power, as the court may already have, from being limited or otherwise affected by the Code. When, therefore, a court interferes in response to a prayer such as that now in its present form before us, it exercises the inherent power already possessed by it and does not in any sense exercise a power conferred by section 151. This is no mere verbal distinction, for it means that section 151 gives no power whatever to the court to pass an order which it may deem to be necessary for the ends of justice or to prevent abuse of the process of the court. Any power that this Court may have must be sought for elsewhere than in section 151.

It has been urged by the opposite party that "the power given by section 151 of correcting an order is limited to a court correcting its own orders." Section 151 confers no powers whatever. Even if it did so, it would be impossible to accept the argument that a subordinate court could exercise inherent powers in reference to an order of its own, but that a superior court could not, in the event of the subordinate court refusing to do so, give the necessary redress. In the majority of cases in which it has been held that there was inherent power in the court to redress an injustice, the injury has been done by an order of a subordinate court and the inherent power to redress it exercised by a superior court. The duty of a subordinate court and the duty of a superior court to do justice is one and indivisible and the courts cannot be divorced from each other: *Alexander Rodger* v. *The Comptoir D'Escompte De Paris* (1). See also *Debi Bakhsh Singh* v. *Habib Shah* (2), where the Privy Council referred to an order of the lower appellate court in India as an abuse of process committed by that court and gave

(1) (1871) L.R., 3 P.C., 465. (2) (1913) I.L.R., 35 All., 331.

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redress in the exercise of inherent powers. On this point it is unnecessary to quote further authority.

As to the extent of the inherent power existing in "the court," section 151 only indicates that there is a power "to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the court." The principles controlling the exercise of this inherent power have been the subject of many judicial decisions. Contention, such as there has been, has chiefly revolved round the question how far there is inherent power in the court to override an express statutory declaration in circumstances indicating the desirability of such a course in the interests of justice. With that question we are not concerned in this case. An order staying the proceedings in the court of the Subordinate Judge cannot be said to be in conflict with any statutory provision. We are merely asked to control, in the interests of justice and in order to prevent an abuse of the process of the court, the procedure of the subordinate court in circumstances for which the legislature has made no provision. In this we may agree with the remark of STUART, J., in *Joshi Shib Prakash* v. *Jhinguria* (1), that "the enactment of this section (section 151) declared the existence of an inherent jurisdiction in all courts to go beyond the law of procedure in the ends of justice," without its being necessary for us to express concurrence in or dissent from the further observations of the learned Judge in that case. In *Balgobind* v. *Sheo Kumar* (2), WALSH and RYVES, JJ., held at page 876 that "an abuse of the process of the court" includes "the idle multiplicity of proceedings," and of this we think there can be no doubt. We, therefore, hold that we have power to interfere in the exercise of

(1) (1923) I.L.R., 46 All., 144. (2) (1924) I.L.R., 46 All., 864.

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this Court's inherent powers, and we think, further, that the circumstances of the case indicate beyond any doubt that it is a suitable case for the exercise of those inherent powers. It is clear that they are powers that must be sparingly exercised; but in a suitable case it is the duty of the court to exercise them. We therefore accede to the application made to us and direct that the proceedings in the court of the Subordinate Judge under order XXXII, rule 15, of the Code of Civil Procedure be stayed until such time as the proceedings in lunacy in the court of the District Judge of Mainpuri have been determined.

Application allowed.

APPELLATE CIVIL.

1926
January, 25.

Before Mr. Justice Sulaiman and Mr. Justice Mukerji.

DAULAT SINGH (JUDGEMENT-DEBTOR) *v.* MAHARAJ RAJA RAMJI (DECREE-HOLDER).*

Civil Procedure Code, section 47(2)—Decree passed against a minor not properly represented in the suit—Objection taken in execution proceedings to validity of decree—Procedure.

A defendant who at the date of the filing of a suit against him was in fact a minor was treated throughout the suit as of full age and a decree was passed against him. When the decree came to be executed, he took objection that he was throughout the suit and at the date of the decree a minor, and therefore the decree against him was a nullity.

Held (1) that the defendant judgement debtor might have filed a separate suit for a declaration that the decree was not binding on him, and (2) that the court below both could

* Second Appeal No. 1642 of 1924, from a decree of D. C. Hunter, District Judge of Allahabad, dated the 31st of May, 1924, reversing a decree of Gauri Shankar Tewari, Subordinate Judge of Mirzapur, dated the 14th of May, 1923.