

1927

GAURI  
SHANKAR,  
LALAJI  
v.  
NIZAM-  
UDDIN  
KHAN.

case of *Chandi Singh v. Syed Arjumand Ali* (1). It was held in that case that the ejection of a tenant from his holding extinguished his right in the trees which had been planted in it during the continuance of the tenancy. The question has been exhaustively dealt with by Mr. SPANKIE, A.J.C., in that judgment, and I am in entire agreement with the view of law taken by him in that case. I, therefore, hold that the mortgages executed by Nohri and his brothers ceased to have any effect in law after the ejection of Nohri from the plots in suit; and the plaintiff has no right to retain the possession over the trees after the ejection of the surviving mortgagor.

I, therefore, dismiss this appeal with costs.

*Appeal dismissed.*

#### APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and  
Mr. Justice Muhammad Raza.*

1927  
November,  
1.

FIRM DANAJI JASRAJ (DEFENDANT-APPELLANT) v. FIRM PURAN LAL GOBIND PRASAD (PLAINTIFF-RESPONDENT).\*

*Jurisdiction—Fraud upon a court—Ex parte decree obtained by fraud in an outside court—Execution of decree in Oudh Court—Declaratory suit in Oudh Court that decree was null and void—Suit, whether entertainable by Oudh Court.*

Where the defendants filed a suit in a court outside Oudh and in the plaint there was a wilful misstatement and suppression of material facts by the defendants and they deliberately misdescribed the plaintiffs in order to prevent their being in a position to defend the case, and thus obtain an *ex parte* decree, and an attempt was made to execute that

\*Second Civil Appeal No. 194 of 1927, against the decree of Fateh Bahadur Verma, District Judge of Hardoi, dated the 3rd of March, 1927, dismissing the appellant's appeal.

(1) (1899) 2 O.C., 281.

decree within the jurisdiction of the local Court in Oudh, held, that the local court had jurisdiction to entertain a suit for a declaration that the decree passed by the court outside Oudh was null and void because it had been obtained by fraud. *Jawahir v. Neki Ram* (1), relied upon.

Mr. *Ishri Prasad*, for the appellant.

Messrs. *A. P. Sen and Sunder Lal Gupta*, for the respondent.

STUART, C.J. and RAZA, J. :—There is little to be said on this appeal. The case was tried with great care and great intelligence by the trial court, and the appeal before the learned District Judge was decided as well as the original case was decided. There is a ground of appeal which has not been pressed to the effect that the Hardoi Court had no jurisdiction. The facts of this case are simple. The plaintiffs are members of a firm carrying on business as grain dealers in Hardoi. Both the courts have arrived on the facts at the same conclusions. The defendants, who are a firm carrying on grain business in Poona, ordered 151 bags of *bajra* from the plaintiffs at Hardoi, and remitted a sum of Rs. 1,000 in part payment of the consignment. The plaintiffs obtained the grain and on the defendants' instructions caused the consignment to be booked to Poona, and remitted the railway receipt with a *hundi* for the balance due to the defendants' agents in Bombay. The defendant's agent honoured the *hundi* and lost the railway receipt, and owing to this latter fact the consignment was taken possession of by a firm of Poona other than the defendant's firm. The defendant firm received full information as to how the mistake arose. Nevertheless they filed a suit in the Small Cause Court at Poona against the plaintiffs in which they made absolutely false allegations to the effect that after they had remitted to the plaintiff firm a sum of Rs. 1,000

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and honoured the *hundi* the plaintiffs' firm had sent no consignment to them. The allegations in this plaint were untrue, and untrue to the defendants' knowledge. This is a finding of both the courts, and it is difficult to see how any other finding could have been arrived at upon the evidence. The defendants' firm then proceeded to misdescribe the plaintiffs in the summons issued, and as a result of this misdescription two summonses were sent to the plaintiffs and returned unserved. Finally, substituted service was effected upon the plaintiffs, the same misdescription continuing, and an *ex parte* decree was passed by the Poona Small Cause Court in favour of the defendants against the plaintiffs which was based upon an affidavit sworn on behalf of the defendants. The suit with which we are concerned was a suit for a declaration that the decree so passed was null and void on the ground that it had been obtained by fraud.

It was suggested in the grounds of appeal that such a suit as this, in which a Court in Oudh is asked for a declaration that a decree passed by a court outside Oudh is null and void, because it has been obtained by fraud, was a suit which no Oudh Court has jurisdiction to try. We consider it sufficient in repelling this contention to refer to a decision of a Bench of the Allahabad High Court in *Jawahir v. Neki Ram* (1) in which it was laid down that when, as here, an attempt has been made to execute such a decree within the jurisdiction of the local court, the local court has jurisdiction to hear the case. The question has been discussed very elaborately by the learned Judges who decided that appeal, and we have nothing to add to their remarks. The learned Counsel, who has appeared before us, has argued that on the facts there was no fraud committed upon the Poona Court. Upon the facts we find that a very grave fraud was committed upon the

Poona Court. We find that there was wilful misstatement and wilful suppression of material facts in the plaint put in before the Poona Court, and that the defendants deliberately misdescribed the plaintiffs in order to prevent their being in a position to defend the case. We, therefore, dismiss this appeal with costs.

*Appeal dismissed.*

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## MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge.*

MUSAMMAT BRIJ RANI (PLAINTIFF-APPELLANT) v. SIB-TA DIN AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

1927  
November,  
7.

*Oudh Courts Act (IV of 1925), sections 11 and 12(2)—Limitation:—Application for a declaration by a single Judge of the Chief Court that the case is a fit one for appeal to a Bench of two Judges—Rules framed by the Chief Court of Oudh, binding effect of.*

*Held*, that an application for a declaration by a single Judge of the Oudh Chief Court that an appellate decree made by him is a fit one for appeal to a Bench consisting of two other Judges is, unless good cause is shown, time-barred, if presented more than thirty days from the date of the judgment, under rule 7, chapter XII of the rules framed by the Oudh Chief Court.

A rule framed by the Chief Court of Oudh in exercise of its powers under section 11 (Act IV of 1925), read with section 122 of the Code of Civil Procedure (Act V of 1908), after it has been approved by the Local Government and published in the local official Gazette, and has thus received all the sanction that it could possibly be expected to receive, has the same authority as a rule contained in the First Schedule of the Code of Civil Procedure.

Mr. *Ishri Prasad*, for the applicant.

STUART, C.J. :—This is an application for a declaration that an appellate decree made by the Hon'ble

\*Miscellaneous Application No. 640 of 1927, against the decree of Mr. Justice Muhammad Raza, dated the 8th of August, 1927.