APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Jai Lal.

MUNICIPAL COMMITTEE, AMRITSAR, (PLAINTIFF) Appellant

versus

HARNAM DAS (DEFENDANT) Respondent.

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May 25.

Civil Appeal No. 2444 of 1923.

Jurisdiction (Civil)—Suit to set aside a decree on the ground of mistake and not fraud—whether competent.

Held, that a decree once obtained can only be set aside on the ground of fraud and a suit to set aside a decree on the ground of mistake is incompetent.

Kusodhaj Bhukta v. *Braja Mohan Bhukta* (1), followed.

First appeal from the decree of Khwaja *Abdus Samad, Senior Subordinate Judge, Amritsar, dated the 23rd June 1923, awarding the plaintiff possession of the strip of land, etc.*

FAKIR CHAND and SHAM DAS, for Appellant.

BADRI DAS, J. L. KAPUR and KIDAR NATH, for Respondent.

The judgment of the Court was delivered by:

HARRISON J.—The history of the litigation between the parties is that in the year 1919 the defendant, who is the *mahant* of a temple in Amritsar, brought a suit against the Municipal Committee, which resulted in his obtaining a decree for ejectment and also for rent, that decree being upheld by the appellate Court in 1920. The case was tried by a first class Munsif.

In 1921, the Municipal Committee instituted the present suit in the Court of the Senior Subordinate Judge, for possession of the area

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which formed the subject matter of the previous litigation and also for a certain additional plot. So far as the additional portion is concerned a decree has been given and no appeal has been presented. So far as the original portion is concerned the suit has been dismissed by the Senior Subordimate Judge, who relying on *Toponidhee Dhiraj* v. *Sreeputhy Sahanee* (1), has held that the question of title is *res judicata*, and, therefore, the plaintiff's suit cannot succeed.

On appeal it has been contended before us on the strength of *Shibo Raut* v. *Baban Raut* (2) and other authorities that the matter is not *res judicata* inasmuch as the Munsif was not competent to try the present suit even if its valuation be reduced to whatever it was in the year 1919, and the additional portion be deducted. On the other side reliance has been placed upon Mussammat *Sahibzadi Begam* v. *Muhammad Umar* (3) and it is contended that this lays down precisely the same law as the Privy Council rulings *Hook* v. *Administrator-General of Benaal* (4) and *Ramachandra Rao* v. *Ramachandra Rao* (5). It is unnecessary for us to give any finding on this somewhat difficult point as, in our opinion, the appeal must fail on the alternative contention of the respondent. This is that the suit is nothing more nor less than a suit to circumvent and set aside a decree and that this is patent on the face of the record and is recited in so many words in the plaint. It is well established law that if this is so the suit cannot proceed and it is not necessary to quote any further authority than *Kusodhaj Bhukta* v. *Braja Mohan*

(1) (1880) I. L. R. 5 Cal. 832. (3) (1926) I. L. R. 8 Lah. 15.
(2) (1908) I. L. R. 35 Cal. 353. (4) (1921) I.L.R. 48 Cal. 490 (P.C.).
(5) (1922) I. L. R. 45 Mad. 320 (P.C.).

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Bhukta (1). A decree once obtained can only be set aside on the ground of fraud. No such fraud has been pleaded in this case. It is only necessary to read the plaint to come to a decision, for in para. 5 the following passage occurs :—" The defendant on the basis of wrong facts obtained a decree for ejectment against the Committee on the 31st July, 1919, and he afterwards ejected the plaintiff," and in para. 6 :—" After the passing of the decree the defendant ejected the plaintiff and now without the permission of the plaintiff—(no reason being shown why he should get the permission of his dispossessed tenant) " has unlawfully begun to construct a building on the site in dispute, etc.". Counsel contends that this fact of building altered the position and necessitated the case and urges that had it not been for the building the Committee might possibly have refrained from bringing this suit. This is neither here nor there. In our opinion, the suit is plainly one to set aside a decree on the ground of mistake. The mistake was not the mistake of the plaintiff nor of the defendant but the mistake of the Munsif who tried the suit and of the Judge who dismissed the appeal. *Kusodhaj Bhukta* v. *Braja Mohan Bhukta* (1), makes it absolutely clear that this cannot be done. We, therefore, find, without going into the question of *res judicata*, that the plaintiff's suit regarding this portion must fail and has rightly been dismissed.

We dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

(1) (1915) I. L. R. 43 Cal. 217.