

1934

BUTA RAM
v.
SAYYAD
MOHAMMAD.
BHIDE J.

On the above findings I would dismiss this appeal with costs.

DIN MOHAMMAD J.—I agree.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Bhide and Din Mohammad JJ.

MUSSAMMAT PURAN DEVI (PLAINTIFF)

Appellant

versus

DILA RAM AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 524 of 1931.

Fraud—Suit for setting aside a decree passed on the basis of an award—on the ground that the decree had been obtained by fraud—whether competent.

Held, that a suit to set aside a decree passed on the basis of an award, on the ground that the award and decree had been obtained by fraud, is competent.

Mehta Kashi Ram v. Dadabhoy (1), Skinner v. Badri Kishen (2), and Teja Singh v. Janmeja Singh (3), distinguished.

Khagendra Nath Mahata v. Pran Nath Roy (4), and Nistarini Dassi v. Nundo Lall Bose (5), relied upon.

First Appeal from the decree of Mirza Abdul Rab, Senior Subordinate Judge, Ludhiana, dated the 3rd December, 1930, dismissing the plaintiff's suit

BADRI DAS and VISHNU DATTA, for Appellant.

J. N. AGGARWAL and J. L. KAPUR, for Respondents.

(1) 124 P. R. 1880.

(3) (1920) 57 I. C. 195.

(2) 98 P. R. 1915.

(4) (1902) I. L. R. 29 Cal. 395 (P. C.).

(5) (1899) I. L. R. 26 Cal. 891.

BHIDE J.—The facts of the case giving rise to this appeal are briefly as follows:—

On the 31st May, 1929, one Atma Ram died leaving a widow named *Mussammat* Puran Devi. On the 18th June, 1929, *Mussammat* Puran Devi and her brother-in-law Dila Ram entered into an agreement to refer their dispute as regards succession to the property left by Atma Ram to the arbitration of Dr. Naurata Ram, defendant No.3. Dr. Naurata Ram gave his award on the same day. On the 25th June, 1929, Dila Ram applied for the award being made a rule of the Court under para. 20, Schedule II, of the Civil Procedure Code. *Mussammat* Puran Devi raised no objection to the award and the Court accordingly passed a decree in accordance with it on the 22nd July, 1929. Ten months later, *Mussammat* Puran Devi instituted the suit, which has given rise to the present appeal, praying for a declaration that the decree on the basis of the award passed on the 22nd July, 1929, was obtained by fraud and was, therefore, liable to be set aside. A preliminary objection was raised on behalf of the defendant that the suit was not maintainable, and this objection was upheld by the trial Court and the suit was dismissed. From this decision *Mussammat* Puran Devi has preferred the present appeal.

The sole point for decision in the appeal is, whether the learned Judge of the trial Court was right in holding that no suit lies to set aside a decree passed on the basis of an award, on the ground that the decree had been obtained by fraud. The learned Judge has relied on *Teja Singh v. Janmeja Singh* (1) a Division Bench judgment of this Court, in which

1934

MUSSAMMAT
PURAN DEVI

v.

DILA RAM.

—
BHIDE J.

1934

MUSSAMMAT
PURAN DEVI

v.
DILA RAM.

—
BHIDE J.

two previous decisions of the Punjab Chief Court, *Mehta Kashi Ram v. Dadabhoy* (1) and *Skinner v. Badri Kishen* (2), were followed. In *Mehta Kashi Ram v. Dadabhoy* (1) it was held that the proper remedy of a person who wishes to have a decree passed in accordance with an award to be set aside is to apply for a review to the Court which passed the decree and that no separate suit to have the decree set aside was maintainable. Barkley J., in the course of his judgment, however, remarked that, possibly a suit might lie to set aside such a decree if it could be shown that the judgment was a nullity. But he did not see on what grounds it could be held that a judgment passed by consent, after an arbitration award, and in accordance with that award, could be held to be a nullity, unless the award was vitiated by some defect apparent upon the face of it. This judgment was followed in *Skinner v. Badri Kishen* (2), but in that case also the learned Judges remarked, at the end of their judgment, that it was not necessary for them to decide that in no circumstances imaginable could a decree on an award be set aside by a separate suit. In a suit, *e.g.*, where one party had been personated and had received no notice of the proceedings, such a suit might be maintainable. In *Teja Singh v. Janmeja Singh* (3) the previous decisions are followed but without any further discussion of the point.

The learned counsel for the appellant has urged that the above authorities do not really definitely lay down that a suit to set aside a decree based on an award is not maintainable at all and that, in circumstances like those in the present case, in which the plaintiff has alleged that she was led to believe that by appearing before an arbitrator she was being de-

(1) 124 P. R. 1880.

(2) 98 P. R. 1915.

(3) (1920) 57 I. C. 195.

clared the owner of the property of her husband and was thus deceived, there is no reason why the suit should not be maintainable. According to the plaintiff, the fraud came to her knowledge only after the decree had been passed. As the plaintiff was not aware of the fraud before the passing of the decree it was impossible for her to raise any objections in respect of the fraud under para. 15, Schedule II, of the Civil Procedure Code.

The learned counsel for the respondents concedes that, ordinarily a suit is maintainable to set aside a decree on the ground of fraud, but he urges that an exception must be made in the case of decrees based on awards, as the policy of the law is to give finality to decrees passed on awards. It was pointed out that the scope of objections to such awards is very limited and after the objections, if any, are disposed of, no appeal is allowed by law. This may be so. But if, as a matter of fact, the consent of a party to arbitration-proceedings is obtained by fraud and if he is kept ignorant of the real nature of those proceedings, as alleged in the present case, I do not see why any distinction should be made between decrees based on awards and ordinary decrees. In either case, the fraud goes to the root of the proceedings on which the decree is founded and this, I understand, to be the reason why a suit to set aside a decree on the ground of fraud is allowed. In *Khagendra Nath Mahata v. Pran Nath Roy* (1), it was held by their Lordships of the Privy Council that a suit was maintainable to set aside an *ex parte* decree and sale in pursuance thereof on the ground that the whole suit in which the *ex parte* decree was obtained was a fraud from beginning to end. In the present case also the allegations of the

1934

MUSAMMAT
PURAN DEVIv.
DILA RAM—
BHAIDE J.

1934

MUSSAMMAT
PURAN DEVI

v.
DILA RAM.

—
BHIDE J.

plaintiff are to the same effect. In *Nistarini Dassi v. Nundo Lall Bose* (1), the facts were somewhat similar to those of the present case. The plaintiff alleged that certain joint property belonging to her late husband and the defendant was partitioned by the arbitrators under an agreement to which her consent was fraudulently obtained and a decree was subsequently passed on the award. She prayed for a declaration that the award and the decree had been obtained by fraud and that the decree was, therefore, void. The suit was held to be maintainable.

I have already pointed out that even in *Mehta Kashi Ram v. Dadabhoy* (2) and *Skinner v. Badri Kishen* (3), the possibility of a suit to set aside a decree based on an award being maintainable in certain circumstances was recognised. In *Teju Singh v. Janmeja Singh* (4), these two rulings were followed, without any further discussion of the point. On the other hand, the two rulings cited by the learned counsel for the appellant referred to above clearly support his contention that, on the allegations made in the plaint, the present suit is maintainable. I need hardly say that, I express no opinion on the merits of these allegations which have yet to be gone into. But assuming the allegations to be correct—as they must be assumed to be for the purposes of the preliminary point under discussion—I see no good reason either in principle or on authority, to hold that the present suit is not maintainable.

I would accordingly accept this appeal and setting aside the decree of the learned Subordinate Judge remand the case under Order 41, rule 23, Civil

(1) (1899) I. L. R. 26 Cal. 891.

(3) 98 P. R. 1915.

(2) 124 P. R. 1880.

(4) (1920) 57 I. C. 195.

Procedure Code, for redecision on merits. Stamp on appeal to be refunded. Costs to follow final decision.

DIN MOHAMMAD J.—I agree.

A. N. C.

Appeal allowed.

1934

MUSSAMMAT
PURAN DEVI

v.
DILA RAM.

BHIDE J.

APPELLATE CRIMINAL.

Before Young C. J. and Sale J.

HANS RAJ (CONVICT) Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 606 of 1934.

1934

June 6.

Criminal Procedure Code, Act V of 1898, sections 162, 164: Confession—to whom should be forwarded after being recorded by a Magistrate—Evidence embodied in Inquest Report—whether admissible to defence—Indian Penal Code, Act XLV of 1860, sections 34, 302, 307: Concerted murderous attack by several persons—whether all guilty of murder—Criminal trial—Procedure.

Where a Magistrate, after completing the statement recorded by him under section 164, Criminal Procedure Code, hands it over to the Police Officer who had brought the accused to him, but the statement in due course reaches the Magistrate by whom the case was enquired into, and there is no suggestion that it was tampered with in transit—

Held, that there had been a substantial compliance with the provisions of section 164, though ordinarily a Magistrate who records a confession under that section should avoid handing over the document, after completion, to the Police in charge of the prisoner, but should forward it, as required by sub-section (2) of the section, direct to the Magistrate by whom the case is to be enquired into or tried.

Held also, that in a concerted murderous attack by more than one person on a Police party, it is wholly unnecessary to establish which of the appellants attacked which of the