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apply to the Court for a review with due diligence and without loss of time as soon as reasonably may be after the discovery of the fraud. In saying this, we do not in the least desire to question the right of every Court to disregard, or rather to consider of no force, decrees of other Courts which may be shown to its satisfaction to have been obtained by fraud.

The principle which governs Courts in cases of this kind may be found expressed by Lord Brougham in the case of *Lord Bandon* v. *Becher* (1). It is always a rule of the English Courts that while no Court but a Court of Appeal can interfere with the decree of a Court of competent jurisdiction, yet if the decree has been obtained by fraud, it shall avail nothing for or against the parties affected by it even in another Court.

So here if the plaintiff had been the person attacked and had no choice of a course for obtaining his remedy, he might have asked the Court, upon such evidence as he could put before, it to disregard the *exparte* decree which the other side was using against him, and to treat it as a worthless decree, on the ground that it had been obtained by fraud. But he is not in this suit the person attacked; he comes into Court of his own free-will, asking for a declaration of title, and the proceeding which he ought to have adopted for the purpose of obtaining the relief he needs was to apply to the Court which passed the decree and to get that Court to rectify the decree, or to set it aside or to alter it in such a way as right and justice required.

We dismiss the appeal with costs.

Before Mr. Justice Markby and Mr. Justice Birch.

1874
January 8.

PRAN BANDHU CHATTERJEE AND OTHERS (DEFENDANTS) *v.* MADHU SUDAN PATRA AND OTHERS (PLAINTIFFS)*

Cause of Action—Plaint—Objection allowed on Appeal—Costs.

THE plaintiffs in this case filed a plaint against the defendants, alleging that a *thakbust* map which was made in the year 1863 was erroneous. This was the sole ground of complaint alleged in the plaint. The Munsif and the lower Appellate Court treated the suit as if it were one to have the *thakbust* measurement set aside, and to have the plaintiffs' right in certain *chuk* land, declared and confirmed and issues were fixed accordingly, the issue of fact being "Whether it is true that the disputed Chuk Akarrah appertains to the plaintiffs' Mauza Rungpore, or is it a fact that the same is a separate mauza; and which of the litigant parties is in possession of the same?" On

* Special Appeal, No. 510 of 1873, against the decree of the Deputy Commissioner of Zilla Manbhoom, dated the 18th September 1872, reversing the decree of the Munsif of Rathnathpore, dated the 30th September 1872.

(1) 3 Cl. & F., 479.

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the trial before the Munsif, the defendants called witnesses to prove that they were in possession of the disputed land through their ryots, but the Munsif dismissed the suit as being barred by limitation. The plaintiffs appealed to the Deputy Commissioner, who overruled the defendants' plea of limitation, and declared that the plaintiffs were entitled to the land in dispute, with the exception of a certain lac garden. The learned Judge in his judgment stated that the defendants to prove their possession had not brought forward a single witness who asserted he was in possession of the lands as a cultivator.

The defendants appealed to the High Court.

Baboo *Opender Chunder Bose* for the appellants.—The lower Appellate Court is clearly in error in saying the defendants called no witnesses to prove their possession by cultivation. However that may be, the suit ought never to have been entertained, as the plaint discloses no cause of action. The *thakbust* map may be erroneous, but the plaint does not allege nor show that such an error has given the plaintiffs a cause of action against the defendants. A suit will not lie for a mere declaration of title.

Baboo *Hurry Mohun Chuckerbutty.*— The two last contentions raised on behalf of the appellant were not raised in the Court below, and it is too late to raise them now. The case was virtually one for possession and for a declaration of title, and the issue of fact was raised on that contention.

Baboo *Opender Chunder Bose* in reply.

The judgment of the Court was delivered by.

MARKBY, J.— In this case if the only objection had been that the suit would not lie for a declaration of title and confirmation of possession, we should not have entertained it at this stage of the proceedings, it not having been taken in the Court below. But it appears that there is another objection taken in special appeal, independently of this, to the judgment of the Deputy Commissioner. He states in his judgment that not a single person has been brought forward who asserts that he ever was in possession of the land as cultivator, that is, in possession on behalf of the defendant; but it is pointed out to us that two witnesses at least were examined, who distinctly stated that they did hold the land from the defendant and cultivate it. Therefore that observation of the Deputy Commissioner to appears to founded upon misconception of the evidence. The result of that would be that we should remand the case to the lower Appellate Court for a fresh decision.

But then comes the question whether we can allow this litigation to proceed further, if in fact the suit is one which would not lie. For though we might not choose to interfere where the litigation is at an end, it is a different thing when we are asked to remand a case for further inquiry. Now we think, looking to the plaint, that the suit is not one which would lie to the Civil

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Court. The only complaint is that the *thakbust* map, which was made in the year 1863, is erroneous. It is nowhere alleged that any injury has accrued to the plaintiff in consequence of that error, and therefore we think that there is no cause of action disclosed by the plaint. That being so, we think we are bound to entertain the objection, and not to allow this litigation to proceed further.

Under these circumstances we set aside the decree of the lower Appellate Court, and dismiss the plaintiffs' suit upon the ground that the plaint discloses no cause of action. But inasmuch as this objection was not taken in the Court below, we make no order as to costs.

Before Mr. Justice Phear and *Mr. Justice Morris.*

SYUD MAHOMED ABDUL HYE (PLAINTIFF) v. LUNJEET SING AND ANOTHER (DEFENDANTS).

1874
June. 10

Court of Wards—Suit on Behalf of a deceased Lunatic's Estate by a Manager appointed by the Court of Wards

Baboo *Unnoda Persad Banerjee* for the appellant.

Baboo *Mohesh Chunder Chowdhry* for the respondents.

THE judgment of the Court was delivered by.

PHEAR, J.—It appears to us that there is no ground whatever upon which this suit can be supported.

The plaintiff is described as Syud Mahomed Abdul Hye, manager under the Court of Wards of the estate of Baboo Bindesharee Prosad Singh, deceased; and in this suit he sues two defendants Lunjeet Singh and his brother Sheochurn Lall. The case of the plaintiff is that Lunjeet Singh, in December 1867, entered into a security bond by which he undertook to be answerable to the Court of Wards for any default in the payment of rent and otherwise which a person of the name of Seosahoy might make, in performing the stipulation of a certain contract of lease which Lunjeet Singh, as was recited in his security bond, had himself perused, and had satisfied himself with regard to. It was described in the recitals as a lease of 8 annas of Muaza Salampore at rent of Rs. 243, and of 8 annas of another muaza at a rent of Rs. 170 to Seosahoy: and it is plain that it was the terms of this lease and of no other which Lunjeet Singh guaranteed the due performance of.

* Special Appeal, No. 1964 of 1873, against the decree of the Judge of Zilla Shahabad, dated the 3rd June 1873 affirming the decree of the Munsif of Arrah, dated the 18th January 1873.