

Before Mr. Justice Phear and Mr. Justice Morris.

MEWA LALL THAKUR (PLAINTIFF *v.* BHUJHUN JHA
AND ANOTHER (DEFENDANTS))*

1874
June 16.

Special Appeal—Suit to set aside a Decree on the Ground of Fraud and Collusion—Review.

Baboo *Kally Mohun Dass* and *Budh Sen Sing* for the appellant.

Baboo *Hurechur Nath* for the respondent *Bhujhun Jha*.

The other respondent did not appear.

The judgment of the Court was delivered by

PHEAR, J.—We think that no ground of special appeal has been made out in this case.

The plaintiff in substance sues to set aside a decree which has been passed against him by a competent Court, and also to set aside the execution-proceedings and the sale which followed thereon.

The Judge has come to the conclusion upon the evidence that the decree was duly passed, and that all the proceedings in the suit were regular and proper, and that there was no ground for setting aside the decree or subsequent proceedings. And we find no reason for disturbing this conclusion on special appeal. The lower Appellate Court has given excellent grounds for the view which it has taken of the evidence.

We may perhaps add that it seems to us that this suit has been to a considerable extent misdirected. It has already been mentioned that the immediate aim of the plaintiff is to get a decree which was formerly passed against him by a competent Court, set aside, on the ground that it was obtained by fraud and collusion. But the proper course for obtaining such an object as that is to go to the Court which passed the decree, either within the time specified in s. 119 of the Civil Procedure Code, if the circumstances are such as would justify action under that section, or at any time (so that it be done with due diligence) if the ground upon which the decree is sought to be set aside be a good ground for reviewing and altering the judgment upon which the decree was passed. And if the case of the plaintiff be as it is in the present instance that the decree was obtained by fraud, no better ground for review could be alleged; though, of course, it need hardly be added that even in such a case as that supposed, it is necessary for the person aggrieved to

* Special Appeal, No. 1917 of 1873, against the decree of the Judge of Zilla Tirhoot, dated the 30th May 1873, reversing the decree of the Munsif of Tajpore, dated the 19th September 1872.

1874 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.

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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. FRAN 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 Akarra* 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 Manbhoon, dated the 18th September 1872, reversing the decree of the Munsif of Rathmathpore, dated the 30th September 1872.