(1915) 05 AHC CK 0021

Allahabad High Court

Case No: None

Janki Kuar		APPELLANT
	Vs	
Lachmi Narain and Others		RESPONDENT

Date of Decision: May 28, 1915

Citation: (1915) ILR (All) 535 : 30 Ind. Cas. 789

Hon'ble Judges: Rafique, J; Pramada Charan Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pramada Charan Banerji and Rafique, JJ.

This appeal arises out of a suit brought by the plaintiff appellant for possession of two shops and the rooms on the upper storey of these shops and for a declaration that a decree, dated the 4th of June, 1907, of the court of the Additional Judge of Cawnpore is null and void and ineffectual. The property in question along with other property originally belonged to one Balak Ram. He made an endowment of portions of his property and left the remainder to his two widows. The survivor of them made a gift in favour of one Bindeshri Prasad in 1903. The plaintiff is the successor-in-title of Bindeshri Prasad In the year 1907 the defendants, the trustees of the endowment, brought a suit against Bindeshri Prasad to set aside the gift on the ground that the property comprised in it was part of the endowed property and that the donor power to make the gift. That suit related to a residential house and apparently to two shops. situated in front of the house together with the loft or bala khana on the shops. There was a dispute also in that suit in that passage leading to the residential house. On the 4th of June, 1907, the Additional Judge of Cawnpore made a decree in favour of the loft on the top of them, and dismissed the remainder of the claim. Subsequently to this the present plaintiff obtained an assignment from the son of Bindeshri Prasad and thus acquired title. He brought the suit out of which this appeal has arisen on two grounds. First, that the court acted ultra vires in the former suit in deciding the question relating to the two shops as there was no dispute in that suit

in respect to them, and, secondly, that the decree in the former suit was procured by fraud. The affirmed by the lower appellate court. The plaint has preferred this appeal and the contentions raised in the plaint have been reiterated in the appeal before us. The case has been argued ably on both sides and a large number of rulings, English and Indian, have been cited.

2. As regards the first ground stated above, we are of opinion that the plaintiff, who stands in the shoes of Bindeshri Prasad who was a defendant to the former suit, cannot set up a higher right than Bindeshre himself could have done. There can be no doubt that Bindeshri himself could have done. There can be no doubt that Bindeshri could not have maintained a separate suit to set aside the gound that the decree passed was in contravention of the pleading and was therefore erroneous. His remedy was an appeal and no appeal and no appeal having been preferred, the decree, whether right or wrong, has become final between the parties and a fresh suit to set it aside on the ground that it was erroneously passed, offends against the well-known rules of res judicata. As regards the second ground, Section 44 of the Evidence Act provides that a decree abtained by fraud is not binding. It may also be taken as settled by authority that a separate suit may be brought to set aside a decree on the ground of fraud. The question is what is the nature of the fraud which the plaintiff must allege and establish in order to obtain relief. It is contended on behalf of the plaintiff appellant, that a plaintiff can maintain "his-suit on the ground that the decree in the former suit was obtained, by producing fabricated evidence, and in support of this contention the ruling in the case of Venkatappa Nait v. Subba Naik ILR (1905) Mad. 179 was mainly relied upon. Other rulings also were cited. In the case mentioned above the head-note runs thus : "A suit will lie to set aside a Judgment on the ground that it was obtained by fraud committed by the defendant upon the court by committing deliberate perjury and by suppressing evidence. The law on this point is the same in India as in England." The facts of that case are not fully stated in the judgment, but reliance is placed by the learned Judges on two English cases, namely, Abouloff v. Oppenheimer & Co. (1882) L.R. 10 Q.B.D. 295 and Vadala v. Lawes (1890) L.R. 25 Q.B.D. 310. We may mention that those were cases in which a suit was brought either to enforce or to set aside a forego judgment, and in both instances the ground upon which the Judgment was sought to be set aside was the ground of fraud. As pointed out by Jenkins, C.J., in Nanda Kumar Howaldar v. Ram Jiban Howaldar ILR (1914) Cal. 990 Sir. Johin Rolt in Patch v. Ward L.R. Ch. App. 203, discussing what is meant by fraud when it is said that a decree may be impeached for fraud, said, "the fraud must be actual positive fraud, or meditated and intentional contrivance to keep the parties and the court in ignorance of the real facts of the case and obtaining that decree by that contrivance." Following these observations the learned Chief Justice remarked as follows : "There is, however, no suggestion that the decree in the previous suit was fictitious or that the plaintiffs in this suit were prevented by contrivance from placing before the court in the former suit any material relevant to the issue, nor has there been any subsequent discovery of evidence that goes to show fraud, or that the court was misled in the former suit." He held that an error of fact or an error of law committed in the previous suit would

not entitle a party to have the decree in that suit set aside on that ground. The same view was taken by the same court in Munshi Mosuful Huq v. Surendra Nath Ray (1912) 16 C.W.N. 1002. In that case the learned Judges differed from the decision of the Madras Court to which we have referred above, and held that a decree in a suit can not be set aside in a subsequent action brought for that purpose on mere proof that the previous decree was obtained by perjured evidence. The learned Judges followed the case of Baker v. Wadsworth (1893) 67 L.J.Q.B.D. 301. We think that the weight of authority is in support of the view taken by the Calcutta High Court in the two cases mentioned above, and we are of the same opinion. The reasoning of the learned Judges in both these cases commends itself to us. In the present suit the only fraud alleged is that stated in paragraph 3 of the plaint, namely, that the defendants made alterations in the eleven shops and the stable appertaining to the Thakurdwara, in such a way that they converted two shops into one shop, and one shop into a staircase room, and that owing to this circumstance and to the false evidence which was adduced to prove it, the court was misled into holding that the two shops now in dispute were part of the endowed property. The present suit, therefore, is a suit based on the ground that a decree in the previous suit had been obtained by perjured and false evidence. That in our opinion is not a sufficient ground which would justify a party, who or whose predecessor-in-title was a party to the previous suit, to bring a subsequent suit with the object of setting aside the decree in the Former suit. It was open to the defendants to prove by evidence that the allegations made and the evidence adduced on behalf of the plaintiffs were untrue. Agreeing, as we do, with the view taken by the Calcutta High Court in the cases mentioned above we do not feel ourselves justified in following the decision of the Madras High Court referred to above and we deem it unnecessary to refer to the various other rulings cited at the hearing. The learned vakil for the appellant has very properly drawn our attention to the recent decision of the same court in L, Chinnayya v. Ramanna ILR (1915) Mad. 203 in which the view taken in that case does not appear to have been approved. It is true that in the present case the plaintiff was not allowed to adduce evidence in regard to what was alleged by him to be fraud, but this is immaterial, as in our opinion the allegations in the plaint as to the nature of the alleged fraud would not justify a court in setting aside a decree passed between the parties in a previous suit, even if the allegations were established. We agree with the conclusion of the court below and dismiss the appeal with costs.