(1866) 02 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 1678 of 1865

Nilmani Burnick		APPELLANT
	Vs	
Puddo Lochan Chuckerbutty and Others		RESPONDENT

Date of Decision: Feb. 5, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

The case of Ruttunmani Dasi v. Kalikissen Chuckerbutty W.R., Sp. No., p. 147 decided on 16th March 1864 does not govern this case. In that case no fraud or other misconduct of the parties to the suit was alleged. The decision was merely that a suit would not lie in the Civil Court to annul the decision of a Revenue Court under s. 151, Act X of 1859, or to set aside a sale of a tenure by order of a Collector in execution of a decree for arrears of rent. I concur entirely in that decision. The suits before a Collector under Act X of 1859 are not summary suits, but are, in most cases, suits in Courts having exclusive jurisdiction. There is no general power in the Civil Court to set aside a decree of another Court of competent jurisdiction upon the ground of an error or mistake on the part of the Court making the decree, but when a decree of one Court, or an execution of a decree, is obtained by fraud, the fraud gives a right of action to the party injured by it against the party guilty of the fraud. The Revenue Courts have no jurisdiction to try a suit to enforce that right of action, but the suit is cognizable only by the ordinary Civil Courts of Judicature within whose jurisdiction the cause of action accrues, or within whose jurisdiction the defendant resides as a fixed inhabitant. Possibly the Revenue Courts under Act X of 1859 may have the power to prevent parties from abusing the process of their Courts; but admitting that they have that power, it does not oust the jurisdiction of the ordinary Civil Courts of Judicature; otherwise the parties might collude and by fraud obtain a decree against a putnidar for a small arrear of rent, and, before the putnidar has notice of the decree, sell his tenure however valuable. It may be worth 10,000 or 20,000 rupees, and if the incidental power of the Collector''s Courts to deal with abuses of its own decrees would oust the jurisdiction of the Civil Courts, the decision of the Revenue

Courts, under Act X of 1859, s. 151, would be final and dispose of property of such a value that, if a decree of the High Court in respect of it were obtained, it would be appealable to the Privy Council. It is a cause of suit in the Civil Courts, which have jurisdiction to administer the rules of equity, justice, and good conscience, to set aside decrees obtained by fraud, and to restrain the parties to the fraud from reaping the fruits of it by enforcing such decrees. In this case the Revenue Court, upon the review, set aside the judgment under which the tenure was sold, and passed a fresh judgment for a different amount. When that judgment was set aside there was no judgment to support the sale which had taken place under it. It is unnecessary to say what would have been the effect of setting aside the decree under which the sale took place, if the purchaser at the sale had been a bond fide purchaser. It is sufficient to state that a decree set aside for fraud would not support a sale to a purchaser in collusion with the parties to the fraud, and acting as benami for one of them. This is the charge in the present case, and, if the fraud alleged be made out, the plaintiff is entitled to relief. The decrees of the Lower Court are reversed and the case is remanded to the Court of first instance to be tried upon the merits.

Bayley, Norman, and Pundit, JJ.

concurred.

Campbell, J.

2. I concur in thinking that the Civil Court has jurisdiction in this case. But I should like to be understood as confining myself to the very case before us, viz., that of a suit against the fraudulent purchaser of a property for recovery of the properly. I would not commit myself to any thing which might seem to lay down that any decree passed between certain parties can be set aside by a fresh suit between the same parties. I think that any suit which could be brought in a Civil Court to set aside, or render inoperative, the decree or execution of the same or of another Civil Court, can be brought to deal similarly with the proceedings of a Revenue Court when, as in this case, the ground of the action being fraud, it is such that the Revenue Court has no jurisdiction to entertain such a suit. But I would hesitate before in any degree touching on the principles broadly laid down by s. 2, Act VIII of 1859, which seems to render every suit final between the parties to the suit, and allows no fresh suit to try the same subject-matter.

3. A fresh suit can no doubt be brought by or against a third person injured by, or improperly profiting by, the decree. But between the same parties respecting the same subject-matter, I doubt whether a fresh suit can in any shape be brought. We know nothing of any distinctions between law and equity; and I would not admit the possibility of bringing a suit in equity to render ineffectual a legal decree. I should rather think that the remedy under our procedure is, in case of a decree fraudulently obtained ex parte, an application for a rehearing, and in every other case an application for review, as provided by the Code of Procedure. In this case, however, it appears that under the decree of a

competent Court the property has been sold, and the sale is so far final. The present suit is of the nature of a suit to force the purchaser to recovery the property, on the ground that the purchaser (who was no party to the original suit) fraudulently brought about the sale of the property, and fraudulently bought it. I think that such a suit will lie, and so far I concur in the judgment of my learned colleagues.

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(1) As to the repeal of Act X of 1859, and Bengal Act VI of 1862, see Bengal Act VIII of 1869, s. 107.

See Sheikh Afzul Ali v. Lala Gour Narain, post, p. 519; Meah Jan Munshi v. Kurrunamayi Debi, 8 B.L.R., 1. See also Ramsundar Poramanick v. Prasanna Kumar Bose, post, p. 382.