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(1912) 06 CAL CK 0058

Calcutta High Court

Case No: None

Munshi Moruful Huq		APPELLANT
	Vs	
Surendra Nath Roy and Others		RESPONDENT

Date of Decision: June 25, 1912

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 109

Citation: 15 Ind. Cas. 893

Hon'ble Judges: Chapman, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is a second appeal against the decision of the District Judge of the 24-Pargannas, affirming that of the Subordinate Judge and dismissing the appellant''s suit for the setting aside of a decree on the ground of fraud.

2. In 1906, the appellant was sued on ejectment by the respondent, and a decree was obtained against him ex parte. An application for the discharge of that decree and the re-hearing of the suit was made u/s 109 of the CPC of 1882; but it was refused, and the refusal was affirmed on appeal. A regular appeal against the ex parte decree was next preferred; but it was dismissed by the first Appellate Court, and a second appeal to the High Court, was equally unsuccessful. The suit, out of which the present second appeal arises, was then instituted; and the only-fraud complained of in it is that the description in the plaint of the subject-matter of the respondent''s suit of 1906, and the evidence on which the respondent obtained the ex parte decree against the appellant, were alike false. Both the Courts below have held that this suit was not maintainable, and the short point raised before us is as to whether an action will lie for the setting aside of a decree merely on the ground that it was based upon perjured evidence.

3. In Mahomed Golab v. Mahomed Sullman 21 C. 612 at p. 619 Petheram, C.J., laid it down that, where a decree has been obtained by a fraud practised on another

whereby that other has been prevented from placing his case before the tribunal, which was called upon to adjudicate upon it, in the way most to his advantage, the decree is not binding upon him and may be set aside in a separate suit; but that" it is not the law that, because a person against whom a decree has been passed, alleges that it is wrong and that it was obtained by perjury committed by, or at the instance of, the other party, which is, of course, fraud of the worst kind, he can obtain a re hearing of the questions in dispute in a fresh action by merely changing the form in which he places it before the Court, and alleging in his plaint that the first decree was obtained by the perjury of the person in whose favour it, was given." "To so hold would," the learned Chief Justice continued, " be to allow defeated litigants to avoid the operation, not only of the law which regulates appeals, but also of that which relates to res judicata as well;" and reference was made to the reasons why this could not be given by James, L.J., on behalf of himself and Thesiger. L.J., in Flower v. Lloyd 10 Ch. D. 327 : 39 L.T. 613 : 27 W.R. 496: "Where," Lord Justice James inquired, "is litigation to end, if a judgment obtained in an action fought out adversely between two litigants sui juris and at arm''s length, could be set aside by a fresh action on the ground that perjury had been committed in the first actions * * * *? There are hundreds of actions tried every year in which the evidence is irreconcilably conflicting, and must be on one side or other wilfully and corruptly perjured. In this case, if the plaintiffs had sustained on this appeal the judgment in their favour, the present defendants, in their turn, might bring a fresh action to set that judgment; aside on the ground of perjury of the principal witness and subornation of perjury; and so the parties might go on alternately ad infinitum * * * Perjuries, falsehoods, frauds, when detected, must be punished and punished severely; but, in their desire to prevent parties litigant from obtaining any benefit from such foul means, the Court must not forget the evils which may arise from opening such new sources of litigation, amongst such evils not the least being that it would be certain to multiply infinitely the mass of those very perjuries, falsehoods and frauds."

4. It is true that the observations of Sir Comer Petheram in Mahomed Golab''s case 21 C. 612 at p. 619 are not binding upon us because the actual decision in it reduced them to the level of obiter dicta. But the view his Lordship expressed was cited and acted upon by a Division Bench of this Court in Abdul Haque v. Abdul Hafiz 14 C.W.N. 695 : 5 Ind. Cas. 648 : 11 C.L.J. 686 and, as that decision is precisely in point, it is an authority which we must, under Rule 1 in Chapter V of the Appellate Side Rules, follow or make the subject of a reference to a Full Bench. Another Division Bench, it appears, has recently, in the case of Lakshmi Charan Shaha v. Nur Ali 88 C. 936 : 11 Ind. Cas. 626 : 15 C.W.N. 1010, refused to be so bound, because, the learned Judges (D. Chatterjee and N.R. Chatterjea, JJ.) said, "the authority on which the judgment of Sir Comer Petheram,C.J., was based, has never been recognised as an authority in England," and, therefore, neither it nor any case based upon it was, in their opinion, binding upon them. We are not disposed to adopt this reasoning, and, in any case,

having the two opposing rulings before us, we prefer to follow Abdul Huqe v. Abdul Hafiz 14 C.W.N. 695 : 5 Ind. Cas. 648 : 11 C.L.J. 686. We find that a Division Bench of the Madras High Court has, in Venkatappa Naick v. Subba Naick 29 M. l79 : 16 M.L.J. 59, taken the contrary view and ruled that a suit will lie to set aside a judgment on the ground that the defendant had obtained it by fraud in that he had committed deliberate perjury and suppressed evidence. The learned Judges (Boddam and Moore, JJ.) there declare that the law in England has been authoritatively and finally laid down in Abouloff v. Oppenheimer and Co. (1832) 10 Q.B.D. 295 : 52 L.J.Q.B. 1 : 47 L.T. 325 : 31 W.R. 57 and Vadala v. Lawes (1890) 25 Q.B.D. 310 : 63 L.T. 128 : 38 W.R. 594 and that it is the same in India. With all deference, be it said, we doubt the completeness and finality even in Egland of these two cases. They are, of course, very high authorities; but in each of them, the judgment impeached was a foreign judgment, and foreign judgments unquestionably stand on a footing of their own. Priest nan v. Thomas (1883) 9 P.D. 2l0 : 53 L.J.P. 109 : 51 L.T. 843 : 32 W.R. 842 and Cole v. Lingford (1898) L.R. 2 Q.B 36 : 67 L.J.Q.B. 698 : 14 T.L.R. 427 are the only English cases we know of which at all support the appellant in respect of the judgments of our own Courts, and neither of these seems to us to be a very clear or vary decided authority on the point now before us. In the former, there was an alleged collusive compromise followed by an order for Probate, and the case is relevant only in so far as it shows that Probate may be revoked on the ground that it was the result of a fraudulent compromise. Such a fraud would probably be within the meaning of the word as explained by Chief Justice Petheran in Mahomed Golab''s case 21 C. 612 at p. 619 and, moreover, the revocation of Probate is governed by a law of its own. And the judgment of Ridley and Philltmore, JJ. in. Cole v. Langford (1898) L.R. 2 Q.B 36 : 67 L.J.Q.B. 698 : 14 T.L.R. 427 is a very bare pronouncement following Priestman v. Thomas (1883) 9 P.D. 2l0 : 53 L.J.P. 109 : 51 L.T. 843 : 32 W.R. 842.

5. On the other hand, the case of Patch v. Ward (1867) L.R. 3 Ch. 203 : 18 L.T. 134 : 16 W.R. 441, which relates to an English judgment and was referred to and relied upon in Mahomed Golab''s case 21 C. 612 at p. 619, tends in the same direction as Flower v. Lloyd 10 Ch. D. 327 : 39 L.T. 613 : 27 W.R. 496; while in Baker v. Wadsworth (1898) 67 L.J.Q.B. 301 Wright and Darling, JJ., were guided by the remarks of James and Thesiger L.JJ.in Flower v. Lloyd 10 Ch. D. 327 : 39 L.T. 613 : 27 W.R. 496 and held that a judgment in an action would not be set aside on a subsequent action brought for that purpose on mere proof that the judgment was obtained by perjury or the fraud of the plaintiff in the former action.

6. Our conclusion is that the maxim interest republicx at sit finis litium should prevail, and that the view taken by both the Courts below is sound and should be affirmed. If evidence not originally available comes to the knowledge of a litigant and he can show thereby that the evidence on which a decree against him was obtained, was perjured, his remedy lies in seeking a review of judgment but the rule of res judicata prevents him from re-agitating the matter on the same materials or

on materials which might have been laid before the Court in the first instance. We may add that the present suit might apparently have been disposed of without the raising of the general question which we have been discussing; and this was indeed, pressed upon us on behalf of the respondents. For the plaintiff-appellant failed to adduce any evidence on the date fixed for the hearing, his application for an adjournment was refused, and his suit might have been dismissed for want of prosecution u/s 102 of the CPC of 1882. But this course was not taken, and the application for an adjournment was thrown out on the same ground as the suit itself, namely, on the ground that no such suit was maintainable and, on the pleadings, further proceedings would be futile. That being so, we felt it incumbent upon us to deal with the important portion of law raised by the judgments of the Courts below.

7. The result, as we have already foreshadowed, is that this appeal must, in our opinion, fail, and it is dismissed with costs.