

**(1868) 06 CAL CK 0028**

**Calcutta High Court**

**Case No:** None

Lalbehari Dutt

APPELLANT

Vs

Srinath Mookerjee and Others

RESPONDENT

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**Date of Decision:** June 3, 1868

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### **Judgement**

Phear, J.

In this suit the plaintiff avers that he is the assignee of a decree, and that the defendant has seized and sought to sell this decree as being part of the assets of his assignor, and he sues to establish his right to this decree by virtue of his purchase as against the defendant. The defendant appears to admit that the assignor did, as a matter of fact, transfer his decree to the plaintiff, but he alleges that that transfer was fraudulent and fictitious, and made with the intent to defraud him and other creditors. We are not sure whether the statement of the defendant actually took this form in words, but there is no doubt that the defendant did allege that the plaintiff was not entitled to the declaration of his right by reason of the transfer being fraudulent and fictitious; and his counsel has, before us put it in form, which I have just now given to it, and there is do doubt that it must take that form, in order that it may be of any value to the defendant. On this state of things, the lower appellate Court has decided, and decided as we think rightly, that "the onus of proof was clearly on the defendant," which means that the plaintiff was entitled to obtain the declaration he Fought, unless the defendant succeeded in showing the fraud against him which he alleged. The lower appellate Court, at some length, refers to what it considers to be the material evidence in the case, and arrives at the conclusion that this evidence serves to make out the defendant's allegation.

2. I have marked, by figures the different items of proof which he thus refers to. I find that they amount to about seven or eight in number. I do not propose now to discuss them in detail. I think it sufficient to say that, in my opinion no one of them is evidence of fraud against the defendant or of fictitious fabrication of the document, with intent to defraud the defendant or other creditors, among whom he had a right to class himself. The first of those items (for I will mention one or two

merely to show their character) is that "the deed is written upon a 75 rupees stamp, while a 50 rupees stamp would have been sufficient." I am perfectly unable to see how that circumstance, taken by itself, should indicate any intent to defraud the defendant or any other of his creditors. The second is that "the stamp, being purchased as shown, in another district, is still more suspicious." The Judge must rather mean "is still more indicative of a fraudulent intention against the defendant." As in the first instance I have given, so here too I am utterly unable to see that this taken by itself, indicates in the least degree, an intent to defraud the defendant or any other person. I think that these two instances afford a fair example of the materials upon which the Judge relies, and serve to show that he has come to a decision against the plaintiff, upon evidence, which is not legally sufficient to support his decision.

3. It is true that some of these might have a tendency to show that the date on the deed was anterior to the actual date when the deed was made; but as that antedated time, if it was an antedated time, did not carry back the purchase by the plaintiff to a time preceding the title of the defendant, it was of no use for the purpose of defrauding the defendant. It can therefore be no evidence of specific fraud, such as it was necessary for the defendant to establish in this case, although it is possible that it might have served to throw a cloud upon the perfect honesty of the transaction, exhibited in the transfer deed, which would have been valuable as adding force to any evidence of fraud against the defendant, had there been any such evidence given in the case. It might for instance, in such a case, have enabled the Judge to decide, without difficulty, between the evidence of fraud given against the defendant on the one side, and the evidence of bona fides which the plaintiff might have put upon the record on the other. But here there is absolutely no evidence, other than this very evidence in question, of intention on the part of the plaintiff, and his transferor to commit, by the transfer, a fraud on the defendant personally, or on any class of persons among whom he fell. I do not, however, wish to say that I think that these materials have the effect, even taken altogether, of throwing any such cloud as I have suggested on the character of the transfer. The case is here as a Special Appeal, and I do not think that there is any necessity for me to express an opinion upon that point.

4. It follows then that as the evidence upon which the Judge relied is insufficient for the purpose of supporting the defendant's plea of fraud, and it is not suggested that there is any further evidence bearing upon that issue which he has neglected to notice, and as further, the plaintiff was entitled to succeed, unless the defendant did make out his allegation of fraud and dishonesty on the part of the plaintiff against himself, the decision of the Judge must be reversed, and the plaintiff's suit decreed.

5. It is true that the Judge has, in the last part of his judgment, made allusion to the evidence, in support of the bona fides of the consideration alleged to have been paid by the plaintiff, and has apparently expressed his opinion that the bona fide

payment of that consideration is not made out; but with regard to that, I must observe that it was not competent for him, after having started with saying that the onus lay upon the defendant, to turn back again, and go into the plaintiff's case, and say that the plaintiff ought not to succeed, because he had not established it. I think, further, that the comments he has made upon the evidence as to the payment of consideration, really show that he was mainly guided in the conclusion at which he arrived, with regard to that issue more by speculation than by any proper consideration of the intrinsic value of the evidence. But it is not necessary for us to make our decision turn, in any way, upon what the lower Court has done on this point, because the plaintiff is entitled to succeed upon the defendant's failing to prove his plea of fraud and dishonesty. The plaintiff must have his costs in all the Courts.