
(1956) 11 CAL CK 0012
In the Calcutta High Court
Case No : A.F.O.D. No. 42 of 1953

Asgar Ally and Co. and Others

APPELLANT

Vs

Vuppala Satyanarayana and Others

RESPONDENT

Date of Decision : 19-11-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1957 Cal 317 : (1957) 1 CALLT 301

Hon'ble Judges : P.B. Mukharji, J; Bachawat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.B. Mukharji, J.—This is an appeal from the judgment of the learned trial Judge dismissing the suit on a preliminary point of jurisdiction.

2. The two reasons given by the learned Judge for dismissing the suit are: (1) that no part of the fraud alleged in the plaint arose within the jurisdiction of this Court and (2) that the fact that execution of the decree obtained in Suit No. 48 of 1949 of the Subordinate Judge's Court at Vizagapatam by this Court after the same had been transferred to this Court for execution was not sufficient to attract jurisdiction of the Court.

3. The material facts of this case may be briefly stated. The defendants instituted a suit against the plaintiffs being Suit No. 48 of 1949 in the Court of the Subordinate Judge at Vizagapatam for the recovery of Rs. 98,864-1-4 with interest. In fact defendant Vuppala Satyanarayana being the defendant No. 2 in this case sued alleging himself as the head and manager of the joint family property purporting to consist of himself, his sons and grandsons. He obtained an ex parte decree from the Subordinate Judge's Court of Vizagapatam in that suit on the 21st of December, 1949. Thereafter, the decree "was transferred to this Court for execution and in fact applications in execution were made in this Court. Two applications were made. One was for attachment of the sum of Rs. 2,500

payable by Mohammad Osman Bros. to the judgment-debtor firm in Suit No. 3544 of 1950 (Asgar Ally and Co. v. Mohammad Usman Bros.) now lying in the hands of Mr. R. C. Kar, Solicitor of No. 7, Old Post Office Street, Calcutta. The other application in execution was for the oral examination of the judgment-debtors, Asgar Ally and Feroze in Court under Order XXI, Rule 41 of the CPC and for direction on them to attend this Court with books of account of Messrs. Asgar Ally and Co. for the years 1947, 1948, 1949 and 1950. We direct that the two original applications for execution be treated as part of this appeal. The defendant in his pleadings himself refers to the records and proceedings of the said execution case in para. 6 of the written statement in the suit. It is then that the present plaintiffs protested.

4. They instituted the present suit on the 1st of March, 1951, in this Court on the allegation that the decree in Suit No. 48 of 1949 was obtained by defendant Vuppala Satyanarayana from the Vizagapatam Court in conspiracy and collusion with the other defendants, by diverse acts of fraud, suppression and misrepresentation of material facts whose particulars are set out in para. 6 of the plaint in the suit. One of the allegations of fraud is fraudulent suppression of service of summons of the Vizagapatam suit. It is alleged in sub-para. (d) of para. 6 of the plaint in this suit that the substituted service of summons in the Vizagapatam suit was directed to be published in the Statesman of Calcutta, but in fact what was done by the defendant was that instead of giving the correct name a different name called Uppala Satyanarayana was fraudulently and wrongly given. If that is so, then a part of the fraud is taking place in Calcutta. Fraudulent suppression of service or fraudulently giving a wrong name in the service of summons is a part of the fraud on which the decree in the Vizagapatam Court is challenged in the suit which was instituted with leave under Clause 12 of the Letters Patent. We are, therefore, unable to agree with the learned Judge's view that no part of the fraud occurred within the jurisdiction of this Court. That disposes of the first reason for the dismissal of the suit.

5. The second reason was that execution was not a sufficient ground for attracting jurisdiction in this case. As will appear from the facts already stated the decree of the Vizagapatam Court was transferred to this Court. After such transfer the decree-holder made two applications in execution in this Court. The allegations in the plaint are clear on the point. In para 5 the plaint pleads that the said decree in Original Suit No. 48 of 1949 has since been transferred to this Court for execution and is being put into execution in the Execution Case No. 24 of 1950 in this Court in its ordinary original civil jurisdiction to the detriment of the plaintiffs' interest and properties. Then in para. 8 the plaint pleads that the execution of the said fraudulent and invalid decree sought by the defendants in Calcutta within the aforesaid jurisdiction against the plaintiffs was in breach of their obligation to the plaintiffs of not giving any effect to such invalid decree in any Court. It goes on further to plead that in the premises the defendants are invading and/or threaten to invade the plaintiffs' property by execution of an invalid decree as aforesaid and that the plaintiffs state that there exists no

standard for ascertaining the actual damage likely to be caused by such invasion nor is the said invasion such that pecuniary compensation would afford adequate relief. On that pleading the learned Judge's reasoning that ""no damages have been claimed" cannot be sustained. The relief that this plaint seeks is, first a declaration that the ex parte decree is invalid and then a perpetual injunction restraining the defendants from executing that decree in the Original Suit No. 48 of 1949 against all or anyone of the plaintiffs in the Execution Case No. 24 of 1950 or otherwise.

6. We are of the opinion that a suit for a perpetual injunction to restrain the execution of a decree challenged as invalid and void on the ground of fraud is maintainable and can be brought in the Court in the jurisdiction of which the decree is sought to be executed. The Court of the place of execution can entertain such a suit although the decree impugned is the decree of another Court beyond the jurisdiction of the Court of the place of execution. The injury in such a case arises from the enforcement of or the attempt to enforce the decree which constitutes the cause of action. When such enforcement of the decree or an attempt to enforce the decree is the cause of action, then we do not see how this Court cannot have jurisdiction to entertain the suit. It is said in the plaint before us that the plaintiffs want a perpetual injunction as a relief restraining the decree-holder to execute this decree. The whole of the cause of action for this relief of perpetual injunction arises within the jurisdiction of this Court when the decree-holder tried to attach monies within the jurisdiction of this Court in execution of the impugned decree. We are aware of the view taken in some decisions that the proper relief in such a case is not to set aside the decree, but injunction to restrain its execution in the place of execution. We are, however, not concerned here with this particular point because we are not now determining the question whether injunction or setting aside the decree is the proper relief in such cases. We are of opinion that this Court has jurisdiction to entertain a suit in which the relief sought is perpetual injunction to restrain the execution of a decree which is challenged as invalid or bad on the ground of fraud. We therefore hold that this High Court in its original jurisdiction can entertain a suit for perpetual injunction to restrain the execution of the decree of Vizagapatam Court on the ground that such decree was put into execution within the original jurisdiction of this Court and that such decree is challenged as invalid on the ground of fraud.

7. The case of *The Indian Provident Co. Ltd. v. Govinda Chandra Das*, reported in 27 Cal WN 359: (AIR 1923 Cal 425) (A) is an authority on the point. There an ex parte decree was obtained in the Calcutta Small Cause Court which was transferred for execution to a Sylhet Court within the jurisdiction of which the judgment-debtor resided. The judgment-debtor thereupon brought a suit in the Sylhet Court to have the said ex parte decree declared as fraudulent and for an injunction restraining the decree-holder from executing the decree. The Division Bench consisting of Chatterjea and Pearson, JJ., decided that the Sylhet Court had jurisdiction to entertain the suit and that Court was competent to issue an

injunction and in fact they also hold that in order to grant that relief the Sylhet Court had the power to go into the question whether the ex parte decree was obtained by fraud. Being a Division Bench decision we consider it binding on us and certainly it was binding on the learned trial Judge under the present Rules of this Court. The other decisions taking the same view are Banke Behari Lal v. Pokhe Ram, ILR 25 All 48 (B), Kedar Nath Mukherjee v. Prosonna Kumar Chatterjee, reported in 5 Cal WN 559 (C) and a single Judge decision in Madan Theatres Ltd. Vs. Ramkissen Kapoor and Another, .

8. For these reasons we hold that this Court has jurisdiction to entertain the suit and we set aside the order and judgment of the learned trial Judge dismissing the suit. The suit is restored and we direct that it be tried in due course.

9. The respondents must pay the costs of this appeal.

10. The appeal is allowed with costs.

Bachawat, J.

11. I agree.