

(1899) 04 AHC CK 0006
In the Allahabad High Court

Dwarka Prasad

APPELLANT

Vs

Lachhoman Das

RESPONDENT

Date of Decision : 04-04-1899

Acts Referred:

Citation : (1899) ILR (All) 289

Hon'ble Judges : Banerji, J;Aikman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Banerji and Aikman, JJ.—The defendant-appellant obtained an ex parte decree against the plaintiff-respondent on the 27th March 1895. The plaintiff made an application u/s 108 of the CPC to have that decree set aside. That application was dismissed on the ground of limitation. He thereupon brought the present suit for a declaration that the ex parte decree and all the proceedings relating to it were null and void.

2. The ground upon which this suit was brought was that the defendant had fraudulently and collusively fabricated a bond purporting to be a bond executed by the plaintiff; that in furtherance of that fraud he had obtained an ex parte decree without the plaintiff's knowledge, and had secretly and without the knowledge of the plaintiff caused attachment orders to be issued in execution of that decree. The Court of First Instance dismissed the suit, being of opinion that it was not maintainable.

3. The Lower Appellate Court has set aside the decree of the Court of First Instance and remanded the case u/s 562 of the Code of Civil Procedure. From that order of remand this appeal has been brought. The view of the Court below is supported by the ruling in Pran Nath Roy v. Mohesh Chandra Moitra ILR (1897) Cal. 546. The application u/s 108 of the CPC was never heard on the merits, and the ground upon which the present suit has been brought was never considered by the Court.

4. We are of opinion that no sufficient ground has been made out for interfering with the lower Court's order. The appeal is dismissed with costs.