

(1902) 02 AHC CK 0005
In the Allahabad High Court

Lachman Ram and Another

APPELLANT

Vs

Mathura Das

RESPONDENT

Date of Decision : 02-02-1902

Acts Referred:

Citation : (1902) 02 AHC CK 0005

Final Decision : Dismissed

Judgement

John Stanley, C.J. and Burkitt, J.—This is an appeal from an order of the District Judge of Gorakhpur, remanding a case u/s 562 of the CPC to the Officiating Subordinate Judge of Gorakhpur for determination upon the merits. The suit was brought for cancellation of a sale deed executed in favour of the appellant Mathura Das, upon a sale had in execution of a decree obtained by two persons, Baij Nath and Dilsukh, against the present appellant. The allegation of the plaintiffs in the suit is, that the sale was fraudulent, the same having been brought about collusively between the parties after the decree had been satisfied. The learned Officiating Subordinate Judge, in a carefully-considered judgment, held that the suit was not maintainable, having regard to the provisions of Section 244 of the Code of Civil Procedure, and he accordingly dismissed the suit. He also on an application made to him to treat the suit as equivalent to an application u/s 244, refused to do so upon the grounds stated at length in his judgment. There was an appeal from this decree to the District Judge of Gorakhpur, when the learned Judge, after reviewing the authorities, was pleased to overrule the decision of the Officiating Subordinate Judge, and to remand the case under the section to which we have referred. The District Judge appears to have overlooked the later decisions both of the Allahabad High Court, and also of the Calcutta High Court, following upon the judgment of their Lordships of the Privy Council in the case of (1892) L.R. 19 I.A. 166 (Privy Council) In this case their Lordships clearly stated the grounds upon which the Court should act in carrying out the provisions of Section 244, and expressed disapproval of some of the earlier decisions. The recent cases in this High Court are the case of Queen-Empress Vs. Man Mohan Lal and Another, and the case of

Daulat Singh v. Jugal Kishore I.L.R.(1899)All. 108 and there are the more recent cases in the Calcutta High Court of Bhupon Mohun Pal v. Nunda Lal Dey I.L.R. (1899) Calc. 324 and Moti Lal Chakrbutty v. Rusaick Chandra Bairagi I.L.R. (1896) Calc. 326. In these cases effect is given to the principle laid down by their Lordships of the Privy Council, and in the two last mentioned cases it was held that the fact that the purchaser who was no party to the suit was interested in the result of the application, was no bar to the application of Section 244, and that an application to set aside a sale on the ground of fraud would come u/s 244 of the Code of Civil Procedure, notwithstanding that the purchase was made by a person who was a third party. These authorities abundantly show that the Officiating Subordinate Judge was entirely correct in the view which he took, and that the learned District Judge was in error in reversing his decree. We might also observe that in dealing with the authorities of this Court which were cited before him, the District Judge has entirely misconceived and misinterpreted them.

2. Upon the other question as to whether the suit might have been regarded as an application u/s 244, this was entirely a matter in the discretion of the Officiating Subordinate Judge, who gave it his consideration, and came to the conclusion, in the exercise of his discretion, that the suit ought not to be treated as such an application. We see no reason for interfering with the determination at which he arrived. Accordingly we allow this appeal, set aside the decree of the District Judge, and dismiss the appeal by the plaintiff to him and we restore the decree of the Officiating Subordinate Judge directing that the suit do stand dismissed with costs.