
(1924) 09 MAD CK 0031
In the Madras High Court

(Mada Pedda) Subbanna and Others

APPELLANT

Vs

Kurnam Dhandra Bayamma alias Rama Bayamma

RESPONDENT

Date of Decision : 25-09-1924

Acts Referred:

Citation : AIR 1925 Mad 640 : (1925) 21 LW 300

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is a suit by the plaintiffs, for setting aside the decree, in O.S. No. 374 of 1915 on the ground of fraud. The District

Munsif decreed the suit, as regards items 2 and 8 of the plaint on the ground that the decree in the previous suit was vitiated by fraud and that it

was not binding on the plaintiffs. The Subordinate Judge of Kurnool has reversed that decree and has dismissed the plaintiffs' suit. The Second

Appeal related only to items 2 and 3 of the plaint.

2. Mr. C.S. Venkatachariar for the appellants contends that the decree in the previous suit was vitiated by fraud, inasmuch as the plaintiff brought a

suit false to his knowledge, that the 3rd defendant trespassed upon the property belonging to him. It is conceded by him that where a judgment has

been obtained by perjured evidence, a subsequent suit will not lie to set aside that judgment. This point was set at rest by the Full Bench decision

in Kadirvelu Nainar v. Kuppuswamy Naicker (1918) 41 Mad. 743. In that case, the learned Chief Justice, Mr. Justice Sadasiva Ayyar and Mr.

Justice Spencer held that the decision, in Venkatappa Naick v. Subba Natch (1906) 29 Mad. 179 was wrongly decided and that a suit to set

aside a decree in a previous suit, on the ground that it was obtained by false

evidence tendered at the trial, would not lie. Mr. Venkatachariar contends, that though he is precluded by the Rull Bench decision in Kadirvelu Nainar v. Kuppuswamy Naicker (1918) 41 Mad. 743, from contending that the judgment obtained by perjured evidence is liable to be set aside, in a subsequent suit brought for the purpose, yet, is entitled to urge that a judgment obtained by a party by bringing a suit false to his knowledge could be set aside in a subsequent suit, on the ground of fraud. His argument amounts to this. If a Court has both the parties before it and passes judgment on a consideration of the evidence tendered by the parties it would not be open to either of the parties to the suit to impeach the judgment, on the ground of fraud, merely by reason of the fact that perjured evidence was adduced in the case; but if the plaintiff brings a suit, knowing it to be false and adduces evidence in support of it, he obtains a judgment by the perpetration of fraud and therefore such a judgment is liable to be upset, in a subsequent suit brought for the purpose. He further urged that if the defendant is ex parte and does not adduce evidence, the plaintiff who knows he has brought a false claim, knowing it to be false, commits a fraud upon the Court and therefore the judgment obtained in such a suit is vitiated by fraud.

3. A number of oases have been cited before me and I shall briefly notice the more important of them. The authority of Flower v. Lloyd 10 Ch. D.

327 was held by the learned Judges, who decided Venkatappa Naick v. Subba Naick (1906) 29 Mad. 179 to have been considerably weakened

by reason of the decisions in Abouloff v. Oppenheimer (1882) 10 Q.B. 295 and Vadala v. Lawes (1890) 25 Q.B.D. 310. It is not necessary to

discuss the English cases in view of the decisions in Kadirvelu Nainar v. Kuppuswami Naicker (1918) 41 Mad. 743. The earliest decision in

Calcutta is in Mahomed Golab v. Mahomed Stilliman (1894) 21 Cal. 62. In that case Sir Comer Petheram, C.J., after a consideration of the oases

on the point observed.

The principle, upon which these decisions rest, is that where a decree has been obtained by a fraud practised upon the other side, by which he was

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 that the decree may be set aside by a Court of Justice,

in a separate suit and not only by an application made, in the suit in which the decree was passed, to the Court by which it was passed, but I am not aware that it has ever been suggested in any decided case, and in my opinion, 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, that 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 be to allow defeated litigants to avoid the operation, not only of the law, which regulates appeals, but that of that which relates to res judicata as well.

4. This case was followed in *Abdul Huq Chowdhry v. Abdul Hafez* 14 C.W.N. 695. The learned Judges who decided *Lahshmi Charan Saha v.*

Nur Ali (1911) 38 Cal. 936 declined to follow the decision in *Mahomed Golab v. Mahomed Sulliman* (1894) 21 Cal. 612 as according to them,

the authority on which the judgment of Sir Comer Petheram, C.J., was based, has never been recognised in England. In that case, the plaintiff

brought a suit to set aside an ex parte decree, obtained against him, upon a promissory note by the defendant. The learned Judge held that the

defendant had come into Court, with a case which he knew to be false and as he obtained a judgment in his favour by adducing perjured evidence,

such a judgment could be upset in a subsequent case. The next case on the point is *Munshi Mosuful Huq v. Surendra Nath Ray* 16 C.W.N. 1002.

The learned Judges declined to adopt the reasoning in *Lahshmi Charan Saha v. Nur Ali* (1911) 38 Cal. 936 and preferred to follow the decisions

in *Mahomed Golab v. Mahomed Sulliman* (1894) 21 Cal. 621 and *Abdul Huq Chowdhry v. Abdul Hafez* 14 C.W.N. 695. They observed at p.

1005:

Our conclusion is that the maxim "interest republicae ut sit finis litium" should prevail and that the view taken by both the Courts below is sound

and should be affirmed. If the 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 the material which might have been laid before the Court in the first instance.

5. The next case in Calcutta is to be found in *Kedar Nath Das v. Hemanta Kumari Debi* (1914) 41 Cal. 406. In that case, Fletcher, J. and N.R.

Chatterjee, J., relied upon *Abouloff v. Oppenheimer* (1882) 10 Q.B. 295 and *Vadala v. Lawes* (1890) 25 Q.B.D. 310 and hold that if the case

was a fake one, the Court had jurisdiction, in a subsequent suit, to set aside the decree, which was obtained by fraud practised on the Court. At

page 450 Fletcher, J., observes:

As far as I know, nobody ever challenged that the proposition that the mere fact that a decree has been obtained by perjury is not a sufficient

ground for setting it aside. A different consideration arises where a false case is placed before the Court.

6. It is upon this decision that Mr. Venkatachariar relies for his contention that if the case is false to the knowledge of the plaintiff, then a judgment

obtained by such plaintiff is vitiated by fraud. The matter came up again later in the case of *Mohendranath Mitra v. Harimandal* 24 C.W.N. 133.

The learned Judges in that case were Chatterjee, J., who was a party to the judgment reported in *Kedar Nath Das v. Hemanta Kumari Debi*

(1914) 41 Cal. 406 and Duval, J. Both the Judges found that no fraud was made out. Mr. Justice Chatterjee observed at page 136:

The cases of *Abouloff v. Oppenheimer* (1882) 10 Q.B. 295 and *Vadala v. Lawes* (1890) 25 Q.B.D. 310 show that if the case placed before the

Court was a false one, the Court had jurisdiction in a subsequent suit, to set aside the decree, which was obtained by fraud practised on the Court.

7. With great respect to the learned Judges, I may say, I am unable to follow the reasoning. A plaintiff comes into Court, with a case which is either

true or false. If it is based on a transaction, to which he himself is not a party, but his servants or agents, it may be that he does not know whether

the case is true or false. But his knowledge whether it is true or false is immaterial. The question is whether he adduces false evidence to prove his

case. If a person brings a suit on a forged promissory note and goes into the box and proves that the note was executed by the defendant and that

he witnessed the execution and if the Court believed him, it will give a decree on

the strength of the evidence adduced before it. So his knowledge whether the promissory note was fabricated or genuine is immaterial as the Court is guided by the evidence before it. Some distinction was sought to be made between a case where the defendant is *ex parte* and a case where the defendant puts forward his plea and adduces evidence. It was suggested that in the latter case, the Court acts upon the testimony of one side or the other and if the testimony upon which the Court relies is perjured, the unsuccessful party cannot impeach the judgment in that case, by bringing a subsequent suit for a declaration that that judgment was obtained by fraud. But if the defendant is *ex parte* and the plaintiff alone adduces evidence, then it is suggested that the plaintiff obtained a decree by perpetrating a fraud upon the Court. This is a distinction without difference. The real question, in all these cases, is what is the basis for the decision of the Court. If false evidence or false documents are believed by the Court to be true or genuine and a judgment is given in such belief, it is immaterial whether the party, who adduces such false evidence is aware that the case is false. If the defendant comes forward and pleads that the plaintiff's case is false and adduces evidence, the Court will have to judge between two sets of evidence. Where the defendant pleads that the plaintiff's case is false and does not adduce evidence, the Court would no doubt give a decision with some care. But the real question is not with what care or circumspection the Court acts. A Court does not decide a case without evidence unless it be upon confession of judgment. But wherever the Court has to determine any matter it shifts the evidence placed before it and comes to a conclusion; and if the oral evidence is perjured and the documents are spurious or forged, a suit to set aside the judgment, based upon such evidence would not lie.

8. The Allahabad High Court in *Ram Ratan Lal v. Bhuri Begam* (1915) 38 All. 7 declined to follow the decisions in *Lakshmi Charan Saha v. Nur*

Ali (1911) 38 Cal. 936 and in *Kedar Nath Das v. Remanta Kumari Debi* (1914) 41 Cal. 406. They observe, with regard to the former: "This

decision does not appear to have met with the universal approval of the Calcutta High Court.

9. The case in *Chinnayya v. Ramanna* (1913) 38 Mad. 203 is not an authority on the point; but the learned Judges' opinion is entitled to great

weight. They say at p. 208:

The test to be applied is : Is the fraud complained of not something that was included in what has been already adjudged by the Court, but

extraneous to it? If for instance a party be prevented by his opponent, from conducting his case properly by tricks or misrepresentation, that would

amount to fraud. There may also be fraud upon the Court, if in a proceeding in which the party is entitled to get an order, without notice to the

other side, he procures, it by suppressing facts which the law makes it his duty to disclose to the Court.

10. There are proceedings, such as probate proceedings, and other proceedings where the party is bound to place; before the Court, all the facts

necessary for a proper adjudication. But in the case of an ordinary plaintiff, there is no legal duty cast upon him, to come into Court with a true

case and prove it by true evidence. If it be held that in every case, where the plaintiff comes into the Court with a case false to his knowledge and

obtains a judgment in his favour, that judgment could be upset in another suit brought for the purpose, there will be no end to litigation It would be

open to the defendant in the second suit, to prove in a third suit that the plaintiff in the second suit brought a suit false to his knowledge and ask that

the judgment in the second suit should be set aside by the judgment in the third suit.

11. The fraud must be extrinsic to the proceedings before the Judge. It must be in the conduct of the suit, by keeping the defendant out of Court,

by practising a fraud on him, or by not serving a notice upon him, or by a false declaration, inducing the Court to believe that notice has been

served and proceed with the suit ex parte or by some other act by which the defendant is prevented from placing his case before the Court, as fully

as he would do, but for the act of the plaintiff. This point was specially decided by the Patna High Court, in *Kripasindu v. Nandu Charan* (1920) 1

P.L.T. 206. The learned Judge observed at page 607.

It is contended however that the matter is different where a false case has been deliberately placed before the Court, there can be no doubt the

Court has jurisdiction in a subsequent suit to set aside a decree which has been obtained by a fraud upon the Court and it seems clear from *Vadala*

v. Lawes (1890) 25 Q.B.D. 310 and *Abouloff v. Oppenheimer* (1882) 10 Q.B.

295, that if a case which was placed before the Court, was false

it has such jurisdiction. The question is however under what circumstance this jurisdiction should be exercised, whether it should be exercised in

this particular case.

12. The leading case, on the question of fraud upon the Court, is the Duchess of Kingstone's case. In that case, De Gray, C.J., observes at page

782:

Fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of a Court of Justice. Lord Coke says it avoids all judicial acts,

ecclesiastical or temporal.

13. They also quoted with approval the observations of the learned Judges in Chinnayya v. Ramanna (1913) 38 Mad. 203 which I have already

extracted in this judgment and observe:

The whole case is before the Court, which has decided it on the pleadings and on the evidence, whether the case was a false one or not and

whether the evidence adduced is perjured evidence or not, the Court must be held to have adjudicated on both points at once and having

adjudicated once, it cannot be asked to adjudicate again.

14. I may respectfully adopt here the observations of Lord Justice James in Flower v. Lloyd 10 Ch. D. 327

Assuming all the alleged falsehood and fraud to have been substantiated, is such a suit as the present sustainable? That question would require very

grave consideration indeed before it is answered in the affirmative. Where is litigation to end, if a judgment obtained in an action, fought out sui

generis, and at arms length could be set aside, by a fresh action on the ground that perjury had been committed in the first action, that false answers

had been given to interrogatories. There are hundreds of actions tried every year, in which the evidence is irreconcilable, 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, 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 alternatively ad infinitum.

15. In the present case, the 3rd defendant had filed a written statement. On the

data of hearing, he sent his son to apply for adjournment, on the ground that he was ill and that he wanted to apply for a transfer of the case, from the Court of the District Munsif to some other Court. The District Munsif refused to grant the adjournment prayed for and when the pleader who appeared for the 3rd defendant said that he had no instructions, he proceeded to hear the suit ex parte. On appeal, the District Judge held that the 3rd defendant did not show sufficient cause for his absence, on the date of hearing and dismissed his appeal. Therefore, it cannot be said that the Court was not appraised of the contention of the defendants and did not weigh carefully the evidence, that was adduced by the plaintiff in that suit.

16. The next contention urged by Mr. Venkatachariar is that the plaintiffs 1 and 2 were not represented in the former suit, that the suit was based

upon a trespass and that the decree obtained against 3rd defendant alone in the previous suit would not bind the plaintiffs 1 and 2 in this suit. I

consider the contention that the defendants 1 and 2 were not represented in the former suit is not tenable. The 3rd defendant is the father of

defendants 1 and 2 and the suit was contested, on behalf of the family. The plaintiff in the previous suit contended that he was the owner of the

property and that the 3rd defendant had improperly encroached upon it. The 3rd defendant contended that it was the family property and not the

property of the plaintiff. It cannot be said, in these circumstances, that the suit was brought on a trespass pure and simple. No doubt, if there was a

trespass, the decree against one trespasser would not bind the rest. But as pointed out by Mr. Somayya, who appears for the respondent, the

parties knew they were litigating about their title to the plaint property. The first defendant as manager of the joint family did put forward a title to

the plaint-property and it was found against him. The case in Sheo Shankar Bam v. Jaddo Kunwar AIR 1914 P.C. 136 is in point. Their

Lordships observed at p. 386.

There seems to be no doubt upon the Indian decisions (from which their Lordships see no reason to dissent) that there are occasions including

foreclosure actions when the managers of a joint Hindu family, represent all other members of the family so effectively that the family as a whole is

bound.

17. The first plaintiff went to the vakil of his father to instruct him to apply for an

adjournment. Both the plaintiffs were aware of what was going on and they and their father jointly contested the previous suit. The 3rd plaintiff did not appear on the date of hearing and could not show sufficient cause for his absence. That was the reason why the suit was decreed against him. There is nothing in this contention.

18. In the result, the appeal fails and is dismissed with costs.