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**(1920) 04 PAT CK 0012**  
**In the Patna High Court**

Mahanth Krishna Dayal Gir

APPELLANT

Vs

Babu Lakshmi Narain and Others

RESPONDENT

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**Date of Decision :** 08-04-1920

**Acts Referred:**

**Citation :** 56 Ind. Cas. 270

**Hon'ble Judges :** Sultan Ahmed, J

**Bench :** Single Bench

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## **Judgement**

Sultan Ahmed, J.—These eleven appeals arise out of eleven analogous suits filed by the appellant to set aside eleven decrees obtained by one Babu Lakshmi Narain, who is the respondent in these appeals.

2. It appears that Lakshmi Narain is a co sharer of the appellant in the villages concerned in these suits. He brought 11 rent suits against certain tenants, making the appellant a party to those suits.

3. His case was that he, as landlord, was entitled to the rent of his share in the lands from the tenants. The first relief that he claimed from the Court was for the recovery of his rent from them; in the alternative he prayed that if the Court found that the tenants had made payments to the appellant or to the other landlords, he may be held entitled to recover the amount paid for his share by the tenants to them.

4. During the hearing of those suits the tenant defendants and the plaintiff, who is the respondent in this Court, compromised those suits, because he found that he could not get a decree against the tenants on the ground that they had already made payments to the other landlords. He, therefore, on the 9th December 191:, filed a petition, asking the Court to dismiss his claim against the tenants but prayed that ex parte decrees may be passed against the appellant and the other landlords.

5. The trial Court awarded him the decrees against the appellant. Subsequently the appellant applied under Order IX, rule 13, for the setting aside of those

decrees on the ground of fraudulent suppression of summonses and on the ground that the decrees were illegally and fraudulently obtained. The Court, however, decided that there had been no fraudulent suppression of summonses, nor had the decrees been improperly or fraudulently obtained. The appellant thereupon filed these suits for setting aside those ex parte decrees.

6. The defence was that there was no suppression of summonses, fraudulent or otherwise, and that the decrees had not been fraudulently or illegally obtained. Both the Courts found that the evidence did not establish any ground for setting aside the decrees. Both the Courts went elaborately into the evidence adduced by the parties and arrived at the conclusion which I have state, above: that being so, in my opinion this is a case which is absolutely concluded by findings of facts.

7. I, however, proceed to examine the grounds urged by the learned Vakil appearing on behalf of the appellant and see whether he has made out any ground for interference by this Court in second appeal.

8. He firstly contends that both the Courts are in error in holding that the decision on the application under Order IX, rule 13, with respect to the suppression of summonses is res judicata in these suits. Even if this contention of the learned Vakil be sound and tenable, the finding of both the Courts is clear and convincing on the question of suppression of summonses. The Appellate Court observes that "there is practically not a scintilla of evidence worth the name to satisfy me that Lakshmi Narain had practised any act of fraud either upon the appellant or upon the Court in connection with those rent suits. It has been contended on behalf of the appellant that no summonses were served upon him as they had been all fraudulently suppressed. I am not at all satisfied on this point upon the evidence on the record, The plaintiff has entirely failed to prove any act of fraud in the matter of his alleged suppression of the summonses." This being the finding of the lower Appellate Court on this point, it is not at all necessary to consider whether the decision on the previous applications to set aside the ex parte decree was res judicata or not. If there had been no such clear finding as I find it, indeed I would have been constrained to consider this question: but in my opinion on these findings it is not necessary to do so. I should, however, not be understood to mean that the Courts below are wrong in holding that the previous decision on this point was res judicata in the present suits. On the other hand I am inclined to agree with the two Courts below, on the authorities reported as *Puran Chand v. Sheodat Rai* 29 A. 212 : A.W.N. (1907) 31 : 4 A.L.J. 51 and *Khironde Chandra Roy v. Srimati Ashtulla Bee* 35 Ind. Cas. 557 : 20 C.W.N. 845, that the previous decision was res judicata on this point.

9. The second ground urged is that the decree was obtained fraudulently by the respondent who, by filing a petition on the 9th December 1914, misled the Court to give him a decree against his co sharer landlords. The contention in the form in which it has been urged before me does not seem to have been urged before, the lower Appellate Court. But even if it had been, in my opinion, there is no

substance whatsoever in this contention. The plaintiff came to Court to have the ex parte decree set aside on the ground of fraud practised by the respondent. It was, therefore necessary for him to establish that the fraud was actual, positive and intentional and was committed by the respondent, which resulted in the Court giving him an illegal and improper decree. It will not be sufficient to show that the decree was wrong or erroneous. That may be a very good ground on appeal against that decree, but it will not be sufficient for getting those decrees set aside on the ground of fraud. Though there is no doubt that a Civil Court has jurisdiction to get aside such decree on the ground of fraud, yet, in my opinion, this jurisdiction has to be exercised with great care and caution. Both the Courts have found, as I have stated above that there was no fraudulent suppression of summonses. As regards this petition, the first Court clearly found that there was nothing illegal or improper about it. The plaintiff had openly in his plaint claimed a relief in the alternative against the appellant. It is not contended before me that no such relief could be granted to the plaintiff, and, therefore, after the tenant defendants had compromised with him, the plaintiff was perfectly justified in asking the Court to grant him the alternative decree against the appellant and the other co-sharer landlords. I do not find anywhere the slightest trace of any fraud on the part of the respondent. If there was an error, it was an error of the Court which could only be rectified either on review or on appeal, but it could not be corrected in suits to set aside those decrees. As was laid down in the case reported as *Marochin v. Parsuram Maharaj* 10 Ind. Cas. 906, in a suit to set aside a decree on the ground of fraud, the plaintiff must prove that the decree was obtained by some fraud practised upon the Court. The dishonesty of a claim on which a plaintiff obtains a decree, after following strictly and honestly the procedure laid down for the trial of suits, cannot justify the setting aside of the decree in a subsequent suit. Therefore, if the plaintiff cannot prove that a decree was fraudulently obtained, he cannot succeed whether the original claim against him was true or false."

10. Under all these circumstances I am of opinion that the appellant has not made out any case for setting aside the decrees which had been obtained by the respondent. I would, therefore, confirm the decrees of the Subordinate Judge and dismiss these appeals with costs.