

(1922) 11 AHC CK 0035
In the Allahabad High Court

Nur-Ud-Din Ahmad

APPELLANT

Vs

Abdul Ghafur and Others And Karan Singh and Others

RESPONDENT

Date of Decision : 10-11-1922

Acts Referred:

Citation : (1923) ILR (All) 193

Hon'ble Judges : Grimwood Mears, C.J.;Pramada Charan Banerji, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Grimwood Mears, C.J. and Pramada Charan Banerji, J.—This appeal raises an interesting and important point on the question of jurisdiction. One Ahmad Said had married a lady, Roquaiat-un-nissa, whose dower was said to have been fixed at Rs. 60,000. She had a brother named Nur-ud-din Ahmad, and the lady having died on the 29th of August, 1907, and the husband having died on the 10th of December, 1919, Nur-ud-din Ahmad brought a claim against the persons in possession of the estate of the deceased husband for one-half of the dower debt, namely, Rs. 80,000. The marriage took place at Kakori in the Lucknow district; the parties lived at Kakori; and the wife died at Kakori. On the 3rd of August, 1920, the present suit was filed in the court of the Subordinate Judge of Farrukhabad, and, on an examination of the plaint, the defendants noticed that the addresses of Abdul Ghafur and Abdul Samad were, as they contended, intentionally false in order to found jurisdiction in the court of the Subordinate Judge at Farrukhabad; and they further alleged that the plaintiffs had incorporated in the plaint a deliberately false allegation which they knew had no foundation in fact or in law, and this was done for the sole purpose of giving to the court a jurisdiction which otherwise it would not possess. The importance about the point of jurisdiction, according to the defendants, is that if the suit had been instituted, in the proper court, in the Lucknow district, the defendants could have taken advantage of the provisions of the Oudh Laws Act, No. XVIII of 1876; and, whilst admitting the lady's dower originally to have been fixed at Rs.

60,000, they might have secured a substantial reduction of the claim. In a suit instituted in the court at Farrukhabad, the Judge would have no option, if he were of opinion that the claim of the dower was correctly stated by the plaintiff and the case duly proved, but to decree such claim in full. He would have no power to reduce the amount of the dower. Therefore it is important to remember that from first to last the defendants were insisting in the court of the Subordinate Judge of Farrukhabad that the court had no jurisdiction to try the matter and that the court had been inveigled into trying the matter by deliberately false allegations. Mr. O'Connor, of course, agrees that if a plaintiff makes allegations which he knows to be false and untrue, and makes them with the object of thereby inducing a court to entertain the suit and thereby assume to invent itself with jurisdiction, such a thing is an abuse of the process of the court, is a fraud upon the court and could not be permitted. Therefore the question we have got to decide is, what is the complexion of the plaint. Is it a pure mistake that the names and addresses of Abdul Ghafur and Abdul Samad were incorrectly stated, or is the learned Subordinate Judge right when he said in his judgment that there was no doubt left in Ids mind after the plaintiff's examination that he had purposely given the wrong residence of the defendants 1 and 2 to bring the suit within the cognizance of his court? That was a finding of fact extremely adverse to the honesty of the plaintiff, and the Judge came to that conclusion after she plaintiff had been examined about the matter; and no one who reads the record, and who remembers that on the 15th of July, 1920, when the plaintiff applied for a succession certificate, at Lucknow, he gave the correct addresses of the parties, can fail to notice that the plaintiff, on the 3rd of August, 1920, put on record addresses known by him to be false. There is no doubt that the Judge came to the conclusion that the allegation, with which we are going to deal in a few minutes, was false and untrue, and put upon the record with the designed object of giving the court jurisdiction. Paragraph 3 of the plaint sets out that on the 9th of December, 1911, the husband, Ahmad Said, made a will making the (lower: debt chargeable against the entire property mentioned and specified in the relief, and made over the same to his wife, Roquaiat-un-nissa, after making it and completing it. The prayer asked for a declaration that the dower debt claimed is a lien and charge on the property mentioned in the plaint. Three items of this property are within the jurisdiction of the Farrukhabad court. The fourth is within the jurisdiction of the court at Hardoi; that court is in Oudh and the provisions of the Oudh Laws Act, already mentioned, have force in that court, and the plaintiff could, proceeding in the Hardoi court, also have got a charge on the property. The learned Subordinate Judge looked into the text of the will and he came to the conclusion, a conclusion with which we agree, that there was no charge created by that document,--and indeed it cannot reasonably be argued that there was,--and he, in his judgment, said with reference to the Oudh Laws Act, XVIII of 1876, "it is very likely, on this account, that the plaintiff's advisers have thought it advisable to bring this suit in this Court and have very cleverly framed the suit as one for declaration and enforcement of a charge on the property in suit." It does not anywhere seem to have occurred to

the learned Subordinate Judge that it was his duty to see that the court was not imposed upon, and, in our view, when he was on the Question of jurisdiction, he misled himself by regarding this as a bond, fide case in which the proper test of jurisdiction is the statements which are made in the plaint and the "nature of the claim before him. That is, no doubt, the general rule; but when the plaintiff was boldly setting up allegations that he himself knew to be false, for an indirect purpose in abuse of the process of the court, it was the duty of the Judge to consider it from that point of view. We think that, although he did come to that conclusion, the logical effect of that finding never seems to have occurred to him; and he ought not to have proceeded with the hearing of the case upon the merits, but ought to have decided as a matter of fact that the plaint was designedly drafted with known false allegations, inserted with the object of: obtaining a hearing in a court which in truth had no jurisdiction, and that he, having come to that conclusion, should have returned the plaint.

2. We, therefore, allow this appeal, set aside the decree of the lower court and direct the plaint to be returned to the plaintiff for presentation in the proper court. The appellants will have their coats of this appeal in this Court and in the court below.