

(1921) 07 CAL CK 0039
In the Calcutta High Court

The India Provident Company Limited	APPELLANT
Vs	
Gobinda Chandra Das and Another and Ishan Chandra Chakravarty	RESPONDENT

Date of Decision : 06-07-1921

Acts Referred:

Citation : 65 Ind. Cas. 318

Hon'ble Judges : Pearson, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. The defendants who are the appellants before us obtained a decree in the Small Cause Court, Calcutta, for Rs. 1,200 odd on the 1st March 1916. The suit was decreed ex parte. After obtaining the decree, the defendants got it transferred to the Court of the Subordinate Judge of Sylhet within whose jurisdiction the present, plaintiffs resided and applied for execution of the decree against the plaintiffs. The plaintiffs thereupon instituted a suit in the Court of the Subordinate Judge of Sylhet for a declaration that the ex parte decree obtained by the defendant in the Calcutta Small Cause Court was obtained by fraud, was void and not fit to be executed. They also applied for the issue of an in junction against the defendant No. 1 restraining him from executing the said" decree.

2. The plaintiffs alleged that, as a matter of fact, no summons was served upon them in the suit brought in the Small Cause Court, that there was no adjustment of accounts although the suit was brought, on the allegation that the accounts had, been adjusted and that it was not brought to the notice of the Court that the plaintiffs were sureties only for a limited; sum. The case for the plaintiff's was that the summons had been fraudulently suppressed, that the decree was obtained by practising fraud upon the Court, and that, in these circumstances, the decree was not binding upon them.

3. The defendants raised the objection that the Sylhet Court had no jurisdiction to try the suit as the cause of action did not arise in Sylhet, but in Calcutta, where the decree complained of was obtained.

4. The Courts below overruled the objection. They found that the decree was fraudulently obtained and gave a decree to, the plaintiffs.

5. Two contentions have been raised on behalf of the defendants-appellants. The first is, that the Sylhet Court had no jurisdiction to try the suit.

6. The learned Pleader for the respondent has contended that a part of the cause of action arose in the jurisdiction of the Sylhet Court inasmuch as the suppression of process, by reason whereof the ex parte decree was obtained in Calcutta, took place within the jurisdiction of Sylhet and that, therefore, it might be said that a part of the cause of action arose within the jurisdiction of the Sylhet Court. We do not think, however, that the cause of action arose in Sylhet by reason of suppression of processes in that Court, when the decree which gave rise to the cause of action was obtained in Calcutta. However that may be, we think that the Sylhet Court had jurisdiction to try the suit As stated above, the plaintiffs asked for a declaration that the decree was void and not fit to be executed, and also prayed for a permanent injunction restraining the defendant from executing the decree.

7. The question whether a suit, can be instituted in one District for setting aside a decree passed by a Court in another District has been the subject of many decisions and the decisions cannot be said to be uniform. The general principle which may be said to have been established by the cases, however, is that, save under special circumstances, a suit to set aside a decree obtained by fraud in which no other relief whatever is claimed, cannot be maintained in any District outside the District in which the fraud was committed and the fraudulent decree was obtained [see the case of Umrao Singh v. Hardeo 29 A. 418 : A.W.N. (1907) 112 : 4 A.L.J. 392]. and in the case of Dan Dial v. Munna Lal 24 Ind. Cas. 978 : 36 A 564 : 12 A.L.J. 955. (6), 5 C.W.N. 559 it was held that the addition of a prayer for injunction would not give such Court jurisdiction. A contrary view was taken in the case of Kedar Nath Mukerjee v. Prosonna Kumar Chatterjee 24 Ind. Cas. 978 : 36 A 564 : 12 A.L.J. 955. Where, however, the decree is obtained in one District and executed in another, it has been held in some cases that the Court in which execution is taken out is competent to try such a suit. See the cases of Banke Behari Lal v. Pokhe Ram 25 A. 48 : (1902)A.W.N. 179, Jauahir v. Neki Ram 28 Ind. Cas. 502 : 37 A. 189 : 13 A.L.J. 190 and Khushali Ram v. Gokul Chand 41 Ind. Cas. 352 : 39 A. 607 : 15 A.L.J. 638], In these cases the Property of the judgment debtor was attached of he was arrested within the Jurisdiction of the Court where the suit was instituted.

8. In this case it is true that no property of the plaintiffs had been attached within the jurisdiction of the Sylhet Court; but the defendant applied for execution of the decree and it was against the threatened execution that the suit was brought and an injunction was asked for. The Sylhet Court was entitled to issue an injunction and, in order to grant that relief, it had the power to go into the question whether the ex parte decree was obtained by fraud in which case it would be inoperative. (See the case of Kedar Nath Mukerjee v. Prosonna Kumar

Chatterjee 24 Ind. Cas. 978 : 36 A 564 : 12 A.L.J. 955].

9. In these circumstances, we are of opinion that the Sylhet Court had jurisdiction to entertain the suit.

10. The next question is, whether the Court below was right in holding that the decree was obtained by fraud. A number of cases have been cited before us; but we think, having regard to the findings arrived at by the Court of Appeal below, it must be held that the decree was obtained by fraud. The Judge has found that the summons were designedly suppressed and that the real facts were suppressed from Court. Now, if the present plaintiffs, who were, the defendants in the Small Cause Court suit were prevented by the contrivance of the plaintiffs in that suit from placing their case before the Court and the Court was misled into making a decree in favour of the plaintiffs in that suit, we think that the decree was a fraudulent one and that it is not a question of obtaining a decree by perjury.

11. We are accordingly of opinion that the decree of the lower Appellate Court is right, and that this appeal should be dismissed with costs.