

(1930) 12 MAD CK 0023
In the Madras High Court

(Valluru) Basavayya and Another

APPELLANT

Vs

Govindaraju Veerabhadra Rao and Others

RESPONDENT

Date of Decision : 01-12-1930

Acts Referred:

Citation : AIR 1931 Mad 679 : (1931) 34 LW 69

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—Plaintiffs 1 and 2, who are father and son, are the appellants. This second appeal arises out of a suit instituted by them for a declaration that the decree obtained by defendants 1 to 4 against plaintiff 1 in O.S. 44 of 1921 on the file of the Sub-Court, Coca-nada, is not binding on them.

2. The facts are these: One Sitapathi Rao was a divided brother of one Krishna-murti. After his death plaintiff 1 purchased items 7 and 8 of the properties involved in the suit, O.S. No. 44 of 1921. These properties belonged to Sitapathi Rao. The sale deed, Ex. A, was executed by his widow Venkayamma and her adopted son represented by her, and by Mahalakshamma and her minor son, who are defendants 1 to 4 in the present suit, represented by her. After Venkayamma's death these defendants as plaintiffs filed O.S. 44 of 1921 to recover the properties of Sitapathi Rao as reversioners to his estate. By that time defendants 1 and 2 had become majors and defendants 3 and 4 (plaintiffs 3 and 4), who were still minors, were represented by their mother, Mahalakshamma. In that suit the present plaintiff 1 was impleaded as defendant 12 and it was alleged that he was in possession of items 7 and 8 as a tenant. Those items are the present suit properties. Defendants 4, 5 and 12 (the present plaintiffs) were ex parte in that suit. The suit was compromised by the plaintiffs therein and they obtained a decree.

3. The present plaintiffs seek to set aside the decree in O.S. 44 of 1921 on the ground that defendants 1 to 4 played a fraud upon the Subordinate Judge's Court of Cocanada as they abstained from bringing to the notice of that Court the

sale deed, Ex. A, and misrepresented that plaintiff 1 was only a tenant in possession, while as a matter of fact he was holding the properties as a vendee under Ex. A and also on the ground that they fraudulently prevented the service of summons on plaintiff 1 and got him declared ex parte. With respect to the latter ground both the Courts found that plaintiff 1 was not properly served and that the defendants had really nothing to do with the act of the Court in declaring the plaintiff ex parte.

4. The main point for consideration is whether the defendants played a fraud upon the Cocanada Sub-Court in O.S. 44 of 1921 by omitting to mention Ex. A and by saying that plaintiff 1 was a tenant, while as a matter of fact he was a vendee of the properties. On this point the first Court found that a fraud was practised on the Court by the defendants and so the decree was set aside. On appeal the learned Subordinate Judge held that he

cannot believe that the defendants wilfully abstained from informing the Cocanada Court of Ex. A and misled it conscious of the existence of such a sale deed at the time of filing O.S. 44 of 1921.

5. He also held that

even granting that the defendants had knowledge of Ex. A, made false statements and perjured themselves and misled the Court, no separate suit would lie

to set aside that decree.

6. In second appeal it is argued that the opinion of the Subordinate Judge that he "cannot believe that the defendants wilfully abstained from informing the Cocanada Court of Ex. A and misled it conscious of its existence is a pure surmise and is not supported by any evidence and that a separate suit would lie to set aside a decree obtained by wilfully misleading the Court.

7. I shall first deal with the finding of the learned Subordinate Judge that the present defendants did not wilfully mislead the Court in O.S. 44 of 1921.

8. It will be remembered that, when Ex. A was executed, defendants 1 to 4 were minors represented by their guardian Mahalakshamma. By the time the suit was instituted defendants 1 and 2 had become majors and defendants 3 and 4, who were still minors, were represented in the suit by Mahalakshamma. The learned Subordinate Judge says that defendants 1 and 2 were very young men in 1921 and that the verification contained in the plaint does not say that defendants 1 and 2 knew of the allegations therein personally. He also says that, in executing the sale deed, Venkayamma might have taken a prominent part. The latter ground is obviously intended to exculpate Mahalakshamma who, on behalf of defendants 3 and 4, should have brought to the notice of the Court the existence of Ex. A, she having taken part in its execution both on her own behalf and also on behalf of defendants 3 and 4. I must also mention that the Subordinate Judge refers to the fact that plaintiff 1 was enjoying a portion of the

suit lands even before the date of Ex. A. These are the various reasons assigned by the learned Subordinate Judge for coming to the conclusion that defendants 1 to 4 cannot be taken to have misled the Court when they failed to mention about Ex. A in the plaint in O.S. 44 of 1921 and stated that defendant 12 was a tenant in possession. These reasons are mentioned in para. 13 of his judgment. A bare perusal of this paragraph is enough to show that the learned Subordinate Judge is indulging in what I consider to be special pleading on behalf of defendants 1 to 4. The plaint in O.S. 44 of 1921 has been signed by all the four defendants, defendants 1 and 2 signing for themselves and Mahalakshamma, putting her mark on behalf of defendants 3 and 4 who were minors. (Unless there is some evidence to the contrary, it must be presumed that the "plaintiffs are responsible for the statements contained in the plaint. In para. 8 of the plaint it is distinctly stated "...that defendant 1's father and other defendants," which would include plaintiff 1 who was defendant 12, "are the tenants in possession of the suit properties." Then it is stated that

all the allegations in the above paragraphs of this plaint are personally known to the guardian (next friend) of plaintiffs 3 and 4 (they are) true. The allegations in paras. 1 and 2 have been borne out by record and they are true. Signatures and marks have been affixed to this verification etc. etc.

9. Not a word is mentioned in the plaint about Ex. A, the sale deed, or of the fact that defendant 12 is the purchaser of items 7 and 8. Assuming that plaintiffs 1 and 2 did not know anything about the sale deed- for this there is no justification-how can we ignore the fact that Mahalakshamma, who subscribed to the plaint on behalf of defendants 3 and 4, must be taken to have known everything about it as she was herself a party to Ex. A and represented defendants 1 to 4 in the execution of that document? She was in full possession of the true facts and yet in the plaint it is stated that she knows that defendant 12 is a tenant in possession, that this is personally known to her and that the allegations in the plaint including this are borne out by record and that they are true. This is clearly a statement false to her knowledge. The Subordinate Judge excuses Mahalakshamma's conduct by saying that in the execution of Ex.A, Venkayamma, the other widow, might have taken a more prominent part. There is no evidence in support of this statement. This is a surmise indulged in by the Subordinate Judge for the special purpose of ignoring the significance of the conduct of Mahalakshamma. On these which are the only facts which form the basis of the Subordinate Judge's conclusion, I must find that the present defendants 1 to 4 had knowledge of Ex. A, when the plaint in O.S. 44 of 1921 was filed, that the statement made by them that defendant 12 therein (the present plaintiff) was a tenant in possession of items 7 and 8 was false to their knowledge and that they made this false statement and refrained from bringing Ex. A to the knowledge of the Court deliberately for the purpose of getting a decree against him with respect to those items without any difficulty. It will be remembered that defendants 4, 5 and 12 (the present plaintiffs) were ex parte and with the rest of the defendants the suit was compromised.

10. It is obvious that, as a tenant in possession, the present plaintiff, inasmuch as he has in that view no title to the lands in question, will have to surrender them and the Court, when it finds that the title of the plaintiffs is not disputed, will pass a decree for possession; but if it was known to the Court that he was a vendee under Ex. A, then it is clear that the plaintiffs in O.S. 44 of 1921 (that is the present defendants) would not be entitled to get a decree unless the document is set aside for appropriate reasons. The sale deed, Ex. A, is not a void document. It was executed by two widows and the minors represented by their guardians and these were all the persons who had any interest in the property covered by it. Unless the Court was satisfied that the sale deed was executed for a purpose not binding on the minors, it would not set it aside. It would have been *prima facie* a very difficult, if not an impossible thing for the plaintiffs to get Ex. A set aside, and to avoid this difficulty they deliberately suppressed the fact of its existence and misled the Court by describing the plaintiff; as a tenant in possession. I have already stated that, though the present defendants were not responsible for it, there was no proper service of notice on plaintiff 1 and he had throughout remained *ex parte*.

11. The question is whether, when a party obtains a decree in a suit in which the defendant is *ex parte* by putting forward deliberately a false case before the Court and by misleading it by suppressing a fact which it was its duty to put before it, can that decree be set aside on the ground that it was vitiated by fraud? This precise question does not seem to have arisen for decision in this Court before. In *Chinnayya v. Ramanna* [1915] 38 Mad. 203 it was held, after an exhaustive discussion of the English and Indian law, that a judgment in a prior suit is not liable to be set aside on the ground that it was obtained by suppressing certain material evidence in the case. In *Kadirvelu Nainar v. Kuppuswami Naicker* [1918] 41 Mad. 743, it was held by a Full Bench that a suit does not lie to set aside a judgment in a previous suit on the ground that it was obtained by perjured evidence. To the same effect is the judgment of this Court in *Subbanna v. Dhandra Bayamma*. In that case the plaintiff's case was a false one and he sought to support it by perjured evidence. The present case differs from it in this, that here the plaintiffs obtained the decree not by perjured evidence but by wilfully and deliberately misleading the Court by refraining from disclosing a fact which it was their duty to disclose. No such conduct on the part of the plaintiffs was alleged or found in (*Mada Pedda*) *Subbanna and Others Vs. Kurnam Dhandra Bayamma alias Rama Bayamma*, and no question of perjured evidence arises in this case. It has been held in other High Courts that the mere fact that a decree was supported by perjured evidence would not be a ground for setting aside that decree-on the ground of fraud : see *Munshi Mosuful Huq v. Surendra Nath Ray* [1912] 16 C.W.N. 1002, *Kripasindhu v. Nandu Charan* [1920] 56 I.C. 606 and *Jani Kuar v. Lachmi Narain* [1915] 37 All. 535. In *Nanda kumar howladar Vs. Ram jiban howladar*, , it was pointed out that a decree will not be set aside by merely showing that it was based on an erroneous appreciation of the evidence. None of these decisions applies to the present case though they

are helpful as they contain discussions of the leading, decisions bearing on the subject.

12. Two decisions of the Calcutta High Court, *Kedar Nath Das v. Hemanto Kumari Dasi* [1914] 22 I.C. 709 and *Hamida Rahaman and Another Vs. Jamila Khatun and Another*, and one of the Oudh Judicial Commissioner's Court, *Madari Singh v. Ram Ratan* AIR 1914 Oudh 189 may be referred to with advantage in deciding, the present case. In *Kedar Nath Das v. Hemanta Kumari Dasi* [1914] 22 I.C. 709, it was pointed out by Fletcher, J.:

...nobody ever challenged 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. We have got the decisions in *Aboulff v. Oppenheimer* [1833] 10 Q.B.D 295 and *Vadala v. Lawes* [1891] 25 Q.B.D. 310, which show quite clearly that, if the case which was placed before the Court was a false one, the Court has jurisdiction in a subsequent suit To set aside the decree which was obtained by fraud practised on the Court.

13. The learned Judge then stated that

the plaintiff in the previous suit presented a fraudulent case before the Court and that the learned Judge had jurisdiction to set aside that decree.

14. Chatterjea, J., agreed with these observations. In *Rajani Kantu Das v. Purnachandra Kundu*, a Bench of the Calcutta High Court held where plaintiff brings a suit or claim which to his knowledge is false, and obtains an ex-parte decree, the decree is liable to be set aside. The following observations of the learned Judges are very instructive:

The present case is not a case in which it has been found merely that the decree was obtained by perjured evidence. It has been found here that the suit or claim was a false suit or claim and the falsity of the claim was necessarily known to the party putting forward the claim. That being so, it is clear that the decree in question has been properly set aside.

15. In *Madari Singh v. Ram Ratan*, it was held by the Oudh Judicial Commissioner's Court that

if a plaintiff knowing his claim to be baseless, puts a defendant into Court and succeeds in getting an ex parte decree, he cannot, in a subsequent suit brought by the latter for cancellation of the decree on the ground of its being obtained by fraud, plead that he was not guilty of fraudulent conduct. That very knowledge of the plaintiff amounts to fraud.

16. Shortly stated all the cases proceed on the principle, that, if a fraud is practised upon the Court by putting forward a false case, false to the knowledge of the plaintiff, and a decree is obtained then, such a decree is liable to be set aside in a subsequent suit on the ground of fraud. In *ex parte Alice Cockerell*

[1878] 4 C.P.D. 39, it was observed by Lord Coleridge, C. J. that

if it can be shown that the order was obtained by fraud or by the suppression of information which it was essential that the Court should have, the Court will undoubtedly set aside the order.

17. As pointed out by Sundara Ayyar, J. in *Chinnayya v. Ramanna* at p. 212:

this decision cannot be taken to lay down that every party is bound to bring voluntarily before the Court all matters that have a material bearing on the question at issue and that every suppression of information by a litigant would make a decree in his favour liable to be set aside;

but a wilful suppression of information and a deliberate misleading of the Court in circumstances which would show that it was the duty of the party complained against to put the Court in possession of the true state of facts, will, I think, be a sufficient ground for getting the decree set aside on the ground of fraud.

18. Of course it will be difficult to say in what circumstances a fraud can be said to have been practised on the Court by a party. The conclusion in each case will necessarily depend upon the special facts of the case. A false case supported by false evidence stands on a different footing from a false case in which the allegation relating to the falsehood amounts to the practice of a fraud upon the Court. In this connexion attention may be drawn to the observations of Lord Cairns, L. J., in *Patch v. Ward* [1867] 3 Ch. D. 203. Referring to the *Duchess of Kingston's* [1776] 2 Sm. Lc. 731 case his Lordship observes:

the fraud must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the Court in ignorance of the real facts of the case and obtaining that decree by that contrivance.

19. As observed by Jenkins, C. J. in *Nanda Kumar Howladar v. Ram Jiban Howladar* at p. 998:

Lord Selbourne in *Ochsenbein v. Papelier* [1873] 8 Ch. A. 695 quotes as sound law the dictum of Chief Justice De Grey in the *Duchess of Kingston's* case [1776] 2 Sm. Lc. 731, that a judgment "like all other acts of the highest judicial authority is impeachable from without; although it is not permitted to show that the Court was mistaken, it may be shown that they were misled.

20. As pointed out by the same learned Judge no doubt the unquestioned jurisdiction of a Court to set aside a decree on the ground of fraud is to be exercised with care and reserve, for it would be highly detrimental to encourage the idea in litigants that the final judgment in a suit is to be merely a prelude to further litigation. Giving full weight to these observations, I am satisfied that the decree questioned in the present suit should be set aside as the Court was misled and misled deliberately and with fraudulent intent by the present defendants 1 to 4 to the detriment of the present plaintiff 1. I would therefore hold that the decree in O.S. No. 44 of 1921 is not binding on the present plaintiff

I and consequently an injunction will issue in his favour restraining defendants 1 to 4 from executing the said decree against him. In this view, it is not necessary to decide issue 3 in this case.

21. The second appeal is allowed and the lower Court's decree is set aside with costs here and in the Court below.