

Tika Ram Vs. Daulat Ram

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SooperKanoon Citation : sooperkanoon.com/464984

Court : Allahabad

Decided On : Dec-10-1909

Reported in : 4Ind.Cas.596

Judge : John Stanley, C.J. and ;Banerji, J.

Appellant : Tika Ram

Respondent : Daulat Ram

Judgement :

1. This appeal is concluded by the finding of fact of the lower appellate Court. The suit was brought by the plaintiff-respondent to set aside a decree obtained by the defendant-appellant in the Small Cause Court at Agra, the claim in. that suit being to recover the price of a gold ornament and also Rs. 50 which is said to have been deposited with the plaintiff in this suit for payment to the daughter of the appellant. Daulat Ram brought the suit to have the decree set aside on the ground that a fraud was practised on him, namely, that he was not served with any summons and was in fact prevented from placing his case before the Judge of the Small Cause Court by the machinations of the appellant and persons acting in collusion with him. It was represented in the Small Cause Court that there was personal service of the summons upon Daulat Ram and evidence was given to prove the alleged personal service. As a matter of fact neither personal or other service was effected and the defendant, Daulat Ram was wholly ignorant of the proceedings. Both the lower Courts have found that these proceedings on the part of the

appellant were fraudulent. It is contended before us that the mere fact that personal service was not effected would not tender the whole proceedings fraudulent. This, no doubt, is the case. The mere fact that personal service of a summons has not been effected upon a defendant would not render the proceedings against him absolutely abortive but where the non-service was, as has been found here due to the fraudulent conduct of the plaintiff in the suit and others acting with him and a decree was thereby obtained such decree may be set aside as fraudulent. That is what has been found in this case. The learned District Judge points out that not merely was there no personal service but that the endorsement of service of the serving officer was false and falsely procured by the appellant. He further finds that there was not either in his Court or in the lower Court any evidence whatever that the claim of the appellant in the Small Cause Court was a genuine one. The appeal has been ably argued by the learned Vakil who represents the appellant but we are unable to accede to his argument. The principle upon which cases of this kind rest is stated by Petheram, C.J. in the case of Mohammed Golab v. Mahomed Sulliman 21 C. 612 at p. 619. The learned Chief Justice there observes: '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 the decree may be set aside by a Court of Justice in a separate suit.'

2. See also Abdul Mazumndar v. Mahomed Gazi Chowdhry 21 C. 605. We, therefore, dismiss the appeal with costs including fees in this Court on the higher scale.