

Venkatappa Naick Vs. Subba Naick

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Court : Chennai

Decided On : Oct-19-1905

Reported in : (1906)16MLJ59

Appellant : Venkatappa Naick

Respondent : Subba Naick

Judgement :

1. This case has apparently been disposed of upon the preliminary issues as to whether the plaintiff has any cause of action and whether the court has jurisdiction to entertain the suit without giving the plaintiff any opportunity to put in his evidence.

2. The suit is to Set aside a judgment on the ground that it was obtained by fraud and the fraud alleged is perjury by the defendant and the suppression of evidence. The law as to the right to bring such an action is the same in this country as in England, and in England the law is authoritatively and finally laid down in Abouloff v. Oppenheimer & Co. 10 Q.B.D. 297 and Vadala v. Lawes L.R. 25 Q.B. p. 314 where the observations on the law by James, L.J., in Flower v. Lloyd 10 Ch.d. 327 are dealt with and disposed of. Lindley L.J. in his judgment in Vadala v. Lawes L.R. 25 Q.B. p. 314 says that the rule, is perfectly well known and established that a party to an action can impeach the judgment in it for fraud whether the judgment is that of an English Court or of a foreign Court, and that not only where there has been a fraud on the Court by what is called extrinsic circumstances but also where

the plaintiff has obtained judgment by the use of perjured evidence, that is such, fraud as would enable the defendant to impeach the judgment; and at page 319 quoting the judgment of Esher, L.J. in *Abouloff v. Oppenheimer* 10 Q.B.D. 297 he says 'I will assume even that the defendants gave the very same evidence that they propose to adduce in this action ; nevertheless, the defendants will not be debarred at the trial of this action from making the same charge of fraud, and from adducing the same evidence in support of it; and if the High Court of Justice is satisfied that these allegations of the defendants are true, and that the fraud was committed, the defendants will be entitled to succeed in the present action.' It follows from the above that there is nothing to preclude the court from entertaining the plaintiff's action, and if the plaintiff succeeds when he has an opportunity of producing his evidence in satisfying the court that the judgment he seeks to set aside was obtained by a fraud committed by the defendant upon the court by committing deliberate perjury and suppressing evidence, the plaintiff will be entitled to succeed.

3. We, therefore, set aside the decrees of the courts below and remand the suit to the District Munsif's Court for disposal according to law.

4. The costs in this and the lower appellate Court will abide and follow the result.

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