

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

PARANJPE (ORIGINAL DEFENDANT), APPELLANT, *v.* KANADE
(ORIGINAL PLAINTIFF), RESPONDENT.*

1882
January 17.

Decree—Compromise effected by fraud—Execution—Question arising in execution—Separate suit—Civil Procedure Code (X of 1877), Sec. 244—Act XXIII of 1861, Sec. 11—Practice—Power of Court to vacate any judgment or order procured by fraud.

The plaintiff held two decrees against the defendant for Rs. 5,490-1-6, and applied for execution. The defendant, by misrepresentation, induced the plaintiff to receive Rs. 3,900 only in full satisfaction of those decrees, and to withdraw the application. The plaintiff, on discovering the misrepresentation, brought this suit to recover the difference.

Held that the suit was barred by section 11 of Act XXIII of 1861, (which corresponds with section 244 of Act X of 1877,) the question between the parties being a question relating to the execution of a decree.

It is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud; and in the case of orders made in execution, section 11 of Act XXIII of 1861 excludes all other remedy.

THIS was a second appeal from the decision of W. H. Newnham, Judge of Poona, amending the decree of Rao Saheb D. J. Karmarkar, Joint Subordinate Judge of Poona.

The plaintiff in suits Nos. 529 and 530 of 1875 obtained decrees for Rs. 5,490-1-6 against the defendant, which, with slight modification, were confirmed in appeal on the 12th of July, 1877. While execution proceedings were pending, the defendant specially appealed to the High Court, but was unsuccessful in getting the appeals admitted. The defendant informed the plaintiff that he had preferred his appeals to the High Court, but suppressed the fact of their rejection, and induced her to compromise the claims for Rs. 3,900. The plaintiff thereupon stated to the Court that her claims had been satisfied, and prayed that her applications for execution might be considered as disposed of. She also gave a receipt to the defendant on the 21st of August, 1877. Soon afterwards she learned that fraud had been practised upon her, and on the 30th of August, 1877, she made an application to the Court, praying for full execution of her decrees. This application

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was rejected on the 27th February, 1878, and the plaintiff was referred to a separate suit, whereupon the present suit was filed. The defendant contended that no misrepresentation or fraud was practised by him on the plaintiff, and that no separate suit, like the present, lay in an execution matter.

The Subordinate Judge held that there was no objection to the maintenance of the suit. He argued thus: "It is contended that both section 11 of Act XXIII of 1861 and section 244 of Act X of 1877 bar the maintenance of this suit, since the satisfaction or non-satisfaction of a decree is a matter which the Court executing it can alone decide pending the execution proceedings. I am of opinion that the question here is not whether the decrees are satisfied or not, since their adjustment was certified to the Court, and the Court acted upon the same, and held that the decrees were satisfied. The questions of adjustment and satisfaction of the decree are relevant in so far as they would show how the adjustment or compromise was fraudulently brought about, and how much damage was sustained on that account by the plaintiff. The fraud practised upon the plaintiff has created in her favour a substantive cause of action or matter of complaint, and clothed her with the right to claim damages or indemnity for the consequences resulting from it (Leake on Contracts, pp. 390 and 397, ed. of 1878). It is a well-known rule that fraud vitiates every transaction, and hence the defendant cannot be allowed to say that the question of fraud or no fraud should not be opened again." Under this view the Subordinate Judge went into the evidence, and awarded the plaintiff's claim.

The District Judge, holding the same view, upheld that decree, and awarded, in addition, interest at 6 per cent. *per annum* on the amount decreed to the plaintiff from the date of suit to the date of payment.

The defendant appealed to the High Court.

Shantaram Narayan for the appellant.—Section 11 of Act XXIII of 1861 forbade a separate suit like the present. Section 244 of Act X of 1877 is to the same effect. The evidence shows that there was no misrepresentation or fraud. There was no obligation on the defendant to disclose to the plaintiff that his appeals to the High Court had been rejected. The suit having

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been treated as one for damages, no interest should have been awarded.

Mahadev Chimnaji Apte for the respondent.

The judgment of the Court was delivered by

MELVILL, J.—We regret that we cannot concur in the view taken by the Courts below that this suit is maintainable. The question between the parties is a question relating to the execution of a decree, and section 11 of the Civil Procedure Code (Act XXIII of 1861) expressly excluded a separate suit for the determination of such a question. We must, therefore, though with reluctance, reverse the decrees of the Courts below, and reject the claim. But, having regard to the circumstances of the case and the conduct of the defendant, we direct that the parties bear their own costs throughout.

The order made by the Subordinate Judge on the 27th February, 1878, refusing to inquire into the allegations of fraud made by the plaintiff, and referring the plaintiff to a separate suit, on the ground that it was not competent to him to interfere with the order of his predecessor, was erroneous. It is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud; and in the case of orders made in execution, section 11 of Act XXIII of 1861 excludes all other remedy. We do not, however, think that it is now necessary for this Court to exercise its extraordinary jurisdiction, in order to set aside the Subordinate Judge's order of the 27th February, 1878; nor that it is necessary for the Subordinate Judge himself formally to set aside that order. If the plaintiff now applies for execution of her decree in respect of the balance not paid to her (and in making such application it will probably be held that she is entitled to the benefit of section 14 of Act XV of 1877,) it will be competent to the Subordinate Judge, if satisfied that the compromise of the decrees was induced by fraud, to treat the compromise and the order of the 27th February, 1878, as a nullity, and to direct the complete execution of the decrees, as if no such compromise or order had ever been made.

Decrees reversed.