APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward

PURUSHOTTAM DAJI MANDLÍK (ORIGINAL DEFENDANT), APPELLANT, *v.* PANDURANG CHINTAMAN BIWALKAR (ORIGINAL PLAINTIFF), RESPONDENT.*

1914. *September* 11.

Specific Relief Act (I of 1877), section 39—Indian Evidence Act (I of 1872), section 52—Civil Procedure Code (Act V of 1908), section 100, Order VI, Rule 6—Suit to set aside a sale-deed—Specific allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion held probable on other circumstances and doubts—Finding not secundum allegata et probata*—Substantial error in procedure—Ground for setting aside what might otherwise be a conclusion of fact.*

Plaintiff sued the defendant to set aside a sale-deed on the ground of coercion of a particular kind under section 39 of the Specific Relief Act (I of 1877). Both the lower Courts disbelieved the allegations of coercion made in the plaint, but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant's *mandap* (open shed) and there through fear of possible violence made to sign the document.

On second appeal by the defendant,

Held, reversing the decree and dismissing the suit, that a suspicion of some kind or other undefined coercion was not sufficient to support the plea of coercion, the plea being not *secundum allegata et probata.*

Motee Lall Opudhiya v. *Juggurnath Gurg*(1), *Eshenchunder Singh* v. *Shamachurn Bhutto*(2) and *Balaji* v. *Gangadhar*(3), referred to.

Per Hayward J. :—Where fraud or coercion are alleged, detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts.

Where particulars of coercion alleged are wholly rejected and evidence disbelieved, and a vague and different kind of coercion is held to have been probable on other circumstances and doubts, there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law.

* Second Appeal No. 119 of 1913.

(1) (1836) 5 W. R., P. C. 25. (2) (1866) 11 Moo. I. A. 7.

(3) (1908) 32 Bom. 255.

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Per Beaman J. :—A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief.

When a finding is absolutely unsupported by any evidence at all, that is a ground for setting aside what might otherwise be a conclusion of fact.

When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all, proved, and so substituted the latter for the former, there is a substantial error in procedure under section 100 of the Civil Procedure Code (Act V of 1908)

SECOND appeal against the decision of J. D. Dikshit, District Judge of Thana, confirming the decree of V. S. Nerurkar, Subordinate Judge of Murbad.

The plaintiff sued for a declaration that a sale-deed passed by him to the defendant was void for want of consideration and that it was taken from him under coercion by the defendant. The plaint alleged that the defendant, with the object of getting the plaintiff's signature to the sale-deed by force, came to the plaintiff's house at night on the 29th November 1908 and with the assistance of six men forcibly carried away the plaintiff to the defendant's *mandap* (open shed), severely beat him and made him put his signature to the document which was already written, that the plaintiff, thereupon, filed a complaint against the defendant before the First Class Magistrate, Kalyan, on the 1st December 1908, that the first Class Magistrate committed the case to the Sessions Court at Thana which acquitted the defendant, that the defendant also had filed a complaint against the plaintiff to the effect that the plaintiff had, on the 29th November 1908, entered the defendant's house at night for committing a theft of the sale-deed but the plaintiff was acquitted by the First Class Magistrate who heard both the complaints and that the plaintiff's signature to the sale-deed having thus been taken by force and the plaintiff

not having got any consideration for it, the document was null and void against him. Hence the suit.

The defendant answered *inter alia* that the plaintiff voluntarily passed the sale-deed in defendant's favour for Rs. 995, that out of the said sum the plaintiff was paid by the defendant Rs. 400 by way of earnest money, that on the 20th September 1908 the plaintiff was paid Rs. 500 more and he executed the sale-deed, that the plaintiff with the object of swallowing the amount of Rs. 900 paid to him by the defendant, once entered the defendant's house at night and stole away the sale-deed, other papers and articles, that the defendant, therefore, prosecuted the plaintiff before the First Class Magistrate who acquitted him, that the defendant was also prosecuted by the plaintiff who was, however, acquitted by the Sessions Court at Thana, that after the prosecutions had ended, the sale-deed was presented by the defendant to the District Registrar for registration and it was duly registered, that the defendant had already paid Rs. 900 to the plaintiff for the sale-deed and he was ready and willing to pay the balance of Rs. 95 and that the plaintiff's suit was false and should be dismissed.

The Subordinate Judge found that the plaintiff's signature to the sale-deed, Exhibit 12, was taken by the defendant by force and violence, that it was not proved by the defendant that the plaintiff passed the deed in suit for consideration and voluntarily and that the plaintiff was entitled to have the sale-deed cancelled. The following decretal order was, therefore, passed :—

I, therefore, adjudge that Exhibit 12 mentioned in the plaint is void and order it to be delivered up and cancelled, the signature of plaintiff upon it having been taken by defendant under coercion and no money having been paid thereunder to plaintiff.

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I further order that defendant do pay all costs of plaintiff and that a copy of the decree of the Court be sent to the officer in whose office the document Exhibit 12 has been registered.

In his judgment the Subordinate Judge remarked :—

The circumstances referred to above point to the conclusion that plaintiff must have put his signature on Exhibit 12 under coercion. That some sort of violence was used against plaintiff is apparent from the evidence of the Sub-Assistant Surgeon (Exhibit 64), examined in this case. I have already stated that plaintiff has given an exaggerated account of the violence done to him and has failed to prove it. The deposition of Exhibit 64, however, proves that some violence was used against plaintiff and it might have been that plaintiff affixed his signature out of fear of further violence. No stronger proof of the violence can be expected in this case. The circumstances warranted above prove that plaintiff must have made his signatrue to Exhibit 12 under coercion and not voluntarily and that no money was paid to plaintiff by defendant.

Plaintiff is therefore entitled to have the deed (Exhibit 12) set aside. Plaintiff has brought the present suit under section 39 of the Specific Relief Act for having Exhibit 12 adjudged void. Defendant's pleader takes objection to the maintainability of the suit under section 39 of the Specific Relief Act. * * * Defendant's pleader urges that plaintiff has admitted in his deposition before the Court that he has parted with ownership in the plaint property in favour of his purchasers and that no property is left with him at present. The learned pleader cites I. L. R. 13 Madras 549 in support of his contentions and urges that plaintiff having no interest in the property mentioned in exhibit 12 has no "reasonable apprehension that such instrument, if left outstanding, may cause him serious injury." I, however, think that plaintiff has a right to bring the present suit. He has, no doubt, transferred his property in favour of strangers. He, however, says that he has passed sale-deeds in favour of his father-in-law, not for any consideration received by him, but simply to force out Exhibit 12 into publicity as he had suspected that defendant has got it written in his name. It cannot therefore be said that plaintiff has no interest in the property left. His father-in-law does not come and say that plaintiff has sold some property to him for consideration. Then again plaintiff has sold parts of the property to different persons and these persons are likely to sue him if defendant dispossesses them on the strength of Exhibit 12. Plaintiff then has reasonable apprehension that Exhibit 12, if left outstanding, would cause serious loss to him. His case is governed by the ruling reported in I. L. R. 23 Bombay 375 in which the Madras ruling quoted by defendant's learned pleader is referred to and not quite approved of by their Lordships.

On appeal by the defendant the District Judge found that the plaintiff was entitled to the relief by can-

cellation of Exhibit 12 and that the plaintiff was entitled to maintain the suit having regard to the fact that he had no subsisting interest in the property at the time of the institution of the suit. On the said findings the decree was confirmed. The District Judge observed :—

The learned Sub-Judge has entered into a thorough-going and painstaking inquiry and carefully considered all the evidence and the arguments adduced in the case ; and I see no reason to differ from the conclusions to which he has come. It was argued that the Sub-Judge made for the plaintiff a case which he had not set up. I do not see much force in the argument. No doubt the facts may have been a little exaggerated, or the plaintiff may not have been able to substantiate all the allegations made by him, for reasons which it is not possible to explain, but all the facts and circumstances point to but one conclusion, that the plaintiff's signature on the sale-deed must have been obtained by force and against his will. The defendant has been proved to be a bully and he at one time had actually attempted to attack his adopted father. Since his father's death he has nearly disposed of all his property and reduced himself to penury and is now seeking to go behind the solemn document which he and his father executed in plaintiff's favour by trying to set up an oral agreement in derogation of the deed and fabricating on the strength of such an unfounded agreement a document like Exhibit 12.

The defendant preferred a second appeal.

B. G. Kher for the appellant (defendant) :—The plaintiff sued to have the sale-deed in suit set aside on the ground that it was obtained from him by the use of violence and in his pleadings he gave all the material particulars of the violence used. The lower Courts entirely disbelieved the plaintiff's evidence and found that violence could not have been exercised in the manner alleged by the plaintiff and yet they decreed his claim on the ground that the circumstances of the case made it probable that violence must have been used, if not in the manner alleged, in some other unknown manner. This is a substantial error in procedure.

Order VI, Rule 4 of the Civil Procedure Code makes it incumbent on the plaintiff to give particulars in cases

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where undue influence, fraud, &c. are alleged. When the plaintiff gives such particulars he should not be allowed to make out and to succeed on a different and new case not raised in the pleadings. If the Court makes out for a party a case not set up by him and not warranted by the evidence, the High Court can, in such a case, even set aside a finding of fact. *Shivabasava* v. *Sangappa*[1], *Ram Gopal* v. *Shamskhaton*[2], *Mahomed Mira Ravuthar* v. *Savvasi Vijaya Raghunadha Gopalar*[3]. In *Motee Lall Opudhiya* v. *Juggurnath Gurg*[4] the Privy Council have laid down that when duress or fraud is alleged the onus is on the plaintiff to prove his allegations. Mere possibility or even probability that there may have been such an origin of the transaction is not sufficient for setting aside an instrument.

The issues regarding coercion were irregularly framed and were unnecessarily wide and vague. Besides, the onus of proving voluntary execution of the sale-deed and consideration for the same was wrongly thrown on the defendant. This was a material irregularity and it resulted in substantial injustice. The lower Courts merely inferred coercion because defendant failed to prove consideration and voluntary execution of the deed. This is wrong. *Kaleepershad Tewarree* v. *Rajah Sahib Perhlad Sein*[5].

The plaintiff could not maintain this suit under section 39 of the Specific Relief Act. At the time of the suit he had no interest in the property. He had already conveyed the whole of it to others. Such suits are allowed on the principle of *quia timet* where there is no actual injury but only fear of such injury. Such apprehension must, however, be "reasonable". A

(1) (1901) 29 Bom. 1.
(2) (1892) L. R. 19 I. A. 228.
(3) (1899) 23 Mad. 227.
(4) (1836) 5 W. R., P. C. 25.
(5) (1869) 12 Moo. I. A. 282.

person, who seeks to set aside a deed relating to property to which he has absolutely no title, cannot be said to have "reasonable apprehension" that such a deed, if left outstanding, may cause him serious injury: Banerji on Specific Relief, pp. 601 and 607.

A covenant of title and indemnity by the transferor to the transferees is not sufficient to cause "reasonable apprehension": *Jhuna* v. *Beni Ram*[1], *Iyyappa* v. *Ramalakshmamma*[2].

The case of *Kotrabassappaya* v. *Chenvirappaya*[3] is distinguishable. The decision of every case must depend on its own circumstances and facts.

G. S. Rao for the respondent (plaintiff):—Both the lower Courts have found as a fact that the sale-deed in suit was obtained under coercion. The correctness of that finding cannot be impeached in second appeal. There was no substantial error or defect in procedure. Both the lower Courts have considered the evidence and decided that the document could not have been passed voluntarily. The issues raised were quite plain. What has to be looked at is the substance of the pleadings and not every minor detail: *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree*[4], *Amrito Lall Dutt* v. *Surnomoye Dassee*[5]. Surrounding circumstances are valuable as evidence. It has been held by the Privy Council as well as by all the High Courts that except as provided in section 100 of the Civil Procedure Code an appeal will lie to the High Court only on a question of law: *Mussummat Durga Choudhrain* v. *Jawahir Singh Choudhri*[6], *Balkrishna* v. *Govind*[7],

(1) (1887) 9 All. 439.
(2) (1890) 13 Mad. 549.
(3) (1898) 23 Bom. 375.
(4) (1856) 6 Moo. I. A. 393 at p. 410.
(5) (1897) 24 Cal. 589.
(6) (1890) L. R. 17 I. A. 122.
(7) (1902) 26 Bom. 617.

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Pandurang v. *Anant*[1] and *Bal Kishen* v. *Jasoda Kuar*[2]. Besides substantial justice has to be done. The medical evidence in the case, the trembling nature of the signature and the delay in presenting the document for registration clearly point to only one conclusion.

All the documents, namely, the sale-deed and two other documents connected with it, contain indemnity clauses. The plaintiff has "reasonable apprehension" that he may be sued by the defendant for the return of the purchase-money and also for damages for selling him the property already sold to other persons. Further, there is the danger of the vendees suing the plaintiff for the return of their purchase-money. The ruling in *Jhuna* v. *Beni Ram*[3] has no application. The Bombay High Court has held in *Kotrabassappaya* v. *Chenvirappaya*[4] that it is not absolutely necessary for the plaintiff to have some interest in the property so that he may be able to sue under section 39 of the Specific Relief Act. The ruling in *Iyyappa* v. *Ramalakshmamma*[5] was considered there and disapproved.

HAYWARD, J.:—The plaintiff sued the defendant to set aside a sale-deed on the ground of coercion under section 39 of the Specific Relief Act. The plaintiff stated in the plaint that he was able to write his signature, and that the defendant with the object of getting that signature by force came to his house on the night of the 29th November 1908, and with the assistance of six men forcibly carried him away to the defendant's *mandap*, severely beat him and made him sign his name on the document. The plaintiff further alleged in his deposition that on the night of 29th November 1908 he was sitting in his Court-yard after

(1) (1903) 5 Bom. L. R. 956.
(2) (1885) 7 All. 765.
(3) (1887) 9 All. 439.
(4) (1898) 23 Bom. 375.
(5) (1890) 13 Mad. 549.

taking his supper, when the defendant, who was helped by five other men, at once came up to him, gave him a blow, and asked him to sign a document shown him by defendant; that, on his persisting in refusing to sign it, he was picked up bodily by the defendant and his five comrades and taken to the *mandap* in front of the house of the defendant which was near by, and was there kicked and struck with blows so very severely that he nearly lost his consciousness; that his wife, who had witnessed from inside her house the assault committed on her husband, followed him when he was removed by the defendant and his comrades, crying for help all the while; that the wife, who was prevented by the threats of the defendant from entering the *mandap*, finding her husband being mercilessly kicked and struck with blows, cried out from the place where she was standing and advised him to sign the document rather than lose his life on account of the thrashing he was subjected to; that he, thereupon, put his signature to the document.

The defendant's allegation was that on the night in question the plaintiff entered his house with the object of stealing this particular document, and that whilst plaintiff was about to run away with a bundle containing this and other connected papers, he was arrested with the help of the defendant's companions.

The learned Subordinate Judge held that the plaintiff's story was not proved, and in so doing remarked that "his story as it has been unfolded in his deposition and in the depositions of his witnesses is incredible. I, therefore, come to the conclusion that the plaintiff's allegations regarding the violence used towards him and his having been subjected to severe beating are not proved. The facts show that if plaintiff was subjected to any violence by the defendant it would not have been in the manner described by the plaintiff and his

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witnesses." The learned Judge then proceeded to consider certain other circumstances leading up to the document in dispute, and came to the conclusion that some other kind of coercion must have been caused in consequence of which the document was signed, and he relied in coming to this conclusion very largely on his disbelief of the counter story of the theft told by the defendant. He remarked that "the defendant says that plaintiff had entered his house with the object of stealing the document and whilst plaintiff was about to run away with a bundle of papers he was arrested. The defendant's story is that plaintiff and his comardes stole away the sale-deed" but in view of the other circumstances he came to the conclusion that "the defendant's story regarding the theft falls to the ground." The learned Judge accordingly gave a decree for cancellation of the document upon these final grounds :—

The irresistible conclusion, therefore, is that plaintiff must not have voluntarily signed the document. He must have been made to sign it against his will. Of course the evidence of violence is not satisfactory. I think the evidence in the case is bound to be unsatisfactory. The defendant is not expected to be so very stupid as to openly practise violence on plaintiff. It must have been done by him privately in his house by enticing plaintiff to come there. Plaintiff must have gone voluntarily to defendant's house with his turban on, and it was there that the document was ready written, and in the presence of the attesting witnesses and the writer plaintiff's signature was taken on that night, and in accordance with the plan previously laid out, the cry was then raised of theft by the defendant. I have already stated that an exaggerated account of the violence done has been given ; that the Doctor proved that some violence was used against plaintiff, and it might have been that plaintiff affixed his signature out of fear of further violence. No stronger proof of the violence can be expected in this case. The circumstances warranted above prove that plaintiff must have made his signature to the document under coercion.

The learned District Judge on first appeal appears to have taken the same view and confirmed the decision. He did not go into the evidence in detail, but said this :

No doubt the facts may have been a little exaggerated, or the plaintiff may not have been able to substantiate all the allegations made by him, for reasons

which it is not possible to explain, but all the facts and circumstances point to but one conclusion, that the plaintiff's signature on the sale-deed must have been obtained by force and against his will.

He then briefly referred to the other circumstances and recorded his disbelief in the story of the theft set up by the defendant. He also appeared to rely on further unconnected circumstances said to indicate the bad character of the defendant.

On second appeal to this Court, the contention in substance has been that it was contrary to the procedure prescribed by law to reject the evidence adduced in support of the plaintiff's specific allegations of coercion and to hold on a consideration of other circumstances and a disbelief of the story of the defendant that there must have been some other undefined kind of coercion. This contention has, in our opinion, been shown to have been well founded by the detailed extracts just recited from the pleadings and the judgments. They have indicated beyond doubt that the specific allegations were that the plaintiff was carried off openly by force and severely beaten and under violent compulsion made to sign the document. These allegations were all disbelieved and the surprising result was arrived at, on a consideration of other circumstances, that the plaintiff must have been deceitfully decoyed into going quietly and privately through fear of possible violence, and made to sign the document. These other circumstances have not been clearly arranged either in the rambling judgment of the learned Subordinate Judge or in the brief references of the District Judge. But they would appear so far as we have been able to gather as follows:—

The plaintiff originally obtained a sale-deed of the property in dispute for Rs. 900 odd on the 17th of February 1905, but was alleged by defendant to have entered at the same time into an oral agreement for resale, which was alleged to have been reduced sub-

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sequently to writing about June 1905. The allegations as to the resale agreement were held not proved. Earnest money said to have been Rs. 400 was alleged by defendant to have been paid in respect of this agreement of resale on the 24th of April 1908. This allegation also was held not proved. Then plaintiff executed the resale-deed according to his allegation under the coercion of the defendant. The stamp paper for that document was dated the 29th of April 1908, and Rs. 500 balance of purchase-money was alleged to have been paid on execution of the document between the 17th and 21st of September 1908. The plaintiff denied execution as on those dates but he made an application to the Registrar alleging that a false deed had been executed, and would be presented for registration, dated the 29th of October 1908, and he explained that with a view to bringing that false deed to light—whatever he meant by that—he passed two further resale-deeds to his father-in-law for no consideration on the 10th and 17th of November 1908. Then plaintiff received some slight bruises or scratches in the events which have been the main subject of this trial, described by the one side as the forcible execution and on the other as the attempt to steal the resale-deed on the 29th November 1908. Criminal proceedings were instituted on either side but ended eventually in mutual failure and the resale-deed was registered in November 1909. It is not for us to substitute our view of what those circumstances really indicated for the conclusions of those charged with the responsibility of determining the facts but it is clear from a consideration of those circumstances and the observations thereon in the judgments that they were regarded as establishing no more than a suspicion or mere probability that the plaintiff had been deceitfully decoyed into going quietly to the defendant's *mandap* some time on the 29th November 1908, and there privately been made to

sign the document by some kind or other of undefined coercion. Now such a suspicion or mere probability would, in any case, not have been sufficient to support a plea of coercion as pointed out by the Privy Council in the case of *Motee Lall Opudhiya* v. *Juggurnath Gurg*[1] quite apart from the consideration that it was not *secundum allegata et probata*, namely, that it was not the case set up by the plaintiff nor was it supported by the evidence on which he relied but depended on other circumstances coupled with doubts entertained as to the veracity of the defendant by both the learned Subordinate Judge and the District Judge and coupled with aspersions on the character of defendant relied on contrary to the provisions of section 52, Indian Evidence Act, by the learned District Judge. The rule mentioned by the Privy Council in the case of *Motee Lall Opudhiya* v. *Juggurnath Gurg*[1] would, in fact, appear to be the basis of the rule that where fraud or coercion are alleged detailed particulars must be given in the pleadings, a rule now expressly laid down in Order VI, Rule 6 of the Schedule to the Civil Procedure Code. When particulars have been given, the parties should be strictly confined to that state of facts as indicated by the Privy Council in the cases of *Eshenchunder Singh* v. *Shamachurn Bhutto*[2] and *Abdul Hossein Zenall Abadi* v. *Charles Agnew Turner*[3]. The necessity of strict adherence to these rules and of special care in framing an issue on a plea of fraud—the remarks apply equally to a plea of coercion—was insisted on strongly by Chandavarkar J. in the case of *Balaji* v. *Gangadhar*[4]. The present case is, in our opinion, a marked instance of the dangers of departing from those wholesome rules. Particulars of the coercion

(1) (1836) 5 W. R., P. C. 25.
(2) (1866) 11 Moo I. A. 7.
(3) (1887) 11 Bom. 620 at pp. 642-3.
(4) (1908) 32 Bom. 255.

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alleged were here given in the plaint and further elucidated in the plaintiff's deposition and supported by definite witnesses to the effect that there had been open and violent abduction and severe beating to procure signature of the document. These particulars were wholly rejected and the evidence held to be entirely false. Nevertheless a vague and materially different kind of coercion was held to have been probable on other circumstances and doubts as to the veracity and good character of the defendant to the effect that there had been secret seduction and probably some force or threat of violence to procure signature of the document and this was rendered possible by a loose issue as to force and violence framed by the learned Subordinate Judge and a looser issue still as to title to cancellation of the document framed on appeal by the learned District Judge. We are, therefore, of opinion that there was substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law and that we must, therefore, reverse the decrees of the lower Courts.

With regard to the subsidiary contention raised on this second appeal, namely, that the plaintiff was not entitled to sue as he had transferred the property in suit to his father-in-law and others and therefore had no interest in maintaining the suit, it has been urged in reply that he was in danger by reason of the document in suit, on the one hand, of being sued by the defendant for the purchase-money in case the defendant should be ousted from possession, and, on the other hand, of being sued by his father-in-law or other vendees for damages in case the sale to them should be set aside at the instance of defendant. It appears to us that this reply must be allowed as indicating sufficient interest in the document to support the suit. We are fortified in that decision by a consideration of the

remarks in the case of *Kotrabassappaya* v. *Chenvirappaya*[1].

We must, however, for the other reasons already stated, dismiss the suit with costs throughout and reverse the decrees of the lower Courts.

BEAMAN, J. :—I have only come to the same conclusion after the most anxious consideration of all the arguments addressed to us in support of the decree appealed against. No Court has been more jealous, and with rare exceptions, more consistent in the construction it has always put upon section 100 of the Civil Procedure Code, and I should be sorry to think that any decision of mine might be used to let in appeals against what are really decisions upon questions of fact, however gross or inexcusably wrong such decisions might appear in the eyes of this Court. But it certainly does seem to me a strange thing that a plaintiff, who comes into Court alleging fraud or coercion, in respect of which the law, as is well known, requires him to give particulars, should give every particular which must be within his own knowledge, and after being disbelieved upon every material one of them should yet be given relief. It is here that I think this is a very special case and distinguishable from those innumerable cases in which the decision of the Court below is arrived at upon a question of fact and does not fall within the contemplation or the language of section 100, for although in appearance, as Mr. Rao has strenuously contended, the finding of both Courts is a finding of fact, taking this form that the plaintiff was coerced into signing the document which he now seeks to have cancelled, that will be, I believe, found on analysis not to be really a finding of fact which binds or ought to bind this Court, for in all such cases it does

[1] (1898) 23 Bom. 375.

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seem to me that where the fraud or the coercion alleged must by law be supported by particulars, it is only after the due proof and establishment of those particulars that the Courts can find as a fact that the alleged fraud or coercion is proved. I do not think that it is open to a Court to give the go-bye to every material particular alleged, and yet to reach the conclusion which ought only to be reached by those steps. Here, for example, the allegation of the plaintiff is that the coercion was quite open and in view of witnesses. The finding of the Court below is that what coercion there was was done in secret, and that there can be and is no evidence of it. That appears to me then to be a finding absolutely unsupported by any evidence at all. But that again is a sufficient ground for setting aside what might otherwise be a conclusion of fact. It is quite true that the Court has sought to confirm this conclusion by reference to extraneous and surrounding circumstances which my brother Hayward has fully dealt with. I am not now concerned with any criticism of the Court's method there. I desire to found my conclusion on this point that what was essential to be found before there can be any finding of fact binding upon this Court never has been found, namely, the particulars alleged by the plaintiff, and that what was substituted for them, and was absolutely necessary to be substituted for them before any of the surrounding circumstances could be brought in by way of confirmation, is a finding admittedly, I think, not supported by any evidence at all. Therefore, it does appear to me that this is clearly a case in which there has been an error of law notwithstanding the appearance of the finding of the Court below, or, to put it under another head of section 100, there is a substantial error in procedure, inasmuch as the Court has found the case required to be made by the plaintiff not proved, and has found another case unsupported in

its most essential point by any evidence at all, proved, and so substituted the latter for the former. For these reasons I would concur with the judgment and in the order just pronounced and proposed by my learned brother.

Decrees reversed and suit dismissed.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr Justice Hayward.

SITARAM MORAPPA NAWALE (ORIGINAL DEFENDANT), APPELLANT, *v.* SHRI KHANDOBA AND SHRI YEKVIRA DEVI BY THEIR VAHIVATDAR VISHVANATH DNYANOBA BATHANE (ORIGINAL PLAINTIFF), RESPONDENT.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 3 (w), 10 and 53(1)—Suit falling under section 3 (w)—Decision not appealable—Revision by District Judge.

The decision in a suit falling under section 3 (w) of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is not appealable according to the provisions of section 10 of the Act. Under section 53 of the Act, the District Judge alone and not the Subordinate Judge of the First Class is authorized, in such a case, to pass an order in revision.

APPEAL against the order passed by V. N. Rahurkar, First Class Subordinate Judge of Satara with appellate powers, remanding the case to the first Court at Karad for trial of issues.

* Appeal No. 10 of 1914 from order.

(1) Sections 3 (w), 10 and 53 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) are as follows :—

3. The provisions of this Chapter (that is, Chapter II) shall apply to :—

(w) Suits for the recovery of money alleged to be due to the plaintiff—

On account of money lent or advanced to, or paid for, the defendant, or as the price of goods sold, or

On an account stated between the plaintiff and defendant, or

On a written or unwritten engagement for the payment of money not hereinbefore provided for.