

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the appeal of Gunga  
Narain Gupta v. Tiluckram Chowdhry and  
others from the High Court of Judicature  
at Fort William in Bengal; delivered 7th  
February 1888.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[Delivered by LORD WATSON.]

THIS is an action brought by a judgement debtor for the purpose of setting aside a judicial sale; and there are two sets of Defendants, the one being the judgement creditors, and the other the auction purchasers. The ground upon which the action is laid is said to be fraud.

The 50th section of the Civil Procedure Code (Act XIV. of 1882) provides that every plaint must contain a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose. By section 53, sub-section *d*, the judge before whom the plaint depends is authorised, if it does not disclose a sufficient cause of action, to adopt one or other of two courses: he may at or before the first hearing either reject the plaint, or allow an amendment, to be made upon the spot or within a limited time, upon such condition as to payment of costs as he may think proper. When fraud is charged against the Defendants it is an acknowledged rule of pleading that the Plaintiff must set forth the particulars of the fraud which he alleges.

▲ 53250. 125.—3'88. Wt. 328. E. & S.

Lord Selborne said, in *Wallingford v. The Mutual Society*, (5, App. Ca. 697,) :—" With regard to " fraud, if there be any principle which is " perfectly well settled, it is that general allegations, however strong may be the words in " which they are stated, are insufficient even " to amount to an averment of fraud of which " any court ought to take notice." There can be no objection to the use of such general words as " fraud," or " collusion," but they are quite ineffectual to give a fraudulent colour to the particular statements of fact in the plaint, unless these statements, taken by themselves, are such as to imply that a fraud has actually been committed.

In the present case it is unnecessary to criticise the plaint minutely. Strike out the words " fraud," " deceit," " illegal and fraudulent acts," " machinations," and so forth, of which there is great superfluity, and what remains? Nothing, except an allegation of certain facts which might be unattended with any fraudulent or illegal purpose or character. In these circumstances, the Subordinate Judge, being of opinion that no cause of action was stated in the plaint, allowed an examination of the pleader for the Plaintiff. He did so, not with the view of taking evidence, or of ascertaining what was to be the evidence in the case, but with the very proper object of ascertaining whether the pleader was in a position to make, on behalf of the Plaintiff, an amendment of the plaint which would introduce a specific and relevant cause of action. Counsel for the Plaintiff—who is Appellant here—admitted that the effect of the declaration of the pleader was to make matters worse instead of better; and in that observation by the learned counsel their Lordships are quite ready to concur.

Their Lordships are accordingly of opinion that the judgement of the High Court is well

founded, and must be affirmed. They are, however, of opinion that in disposing of this case upon the defects of the plaint as not setting forth a good cause of action, the Subordinate Judge ought not to have taken the course of dismissing the suit. If he did not allow an amendment as authorised by section 53 of the Procedure Code, he ought, in terms of the same section, to have rejected the plaint. That, according to section 56 of the Code, would have enabled the Plaintiff to present a fresh plaint in respect of the same cause of action if he found himself in a position at any future time to make averments which would give relevancy to his action. However, no objection seems to have been taken in the court below to the form of the judgement, which was the same in both courts, dismissing the action. No objection was stated in the Appellant's case, or raised by his counsel; and in these circumstances, and seeing that the time limited for bringing an action to set aside the judgement has already elapsed, their Lordships are of opinion that the ends of justice will be served by permitting the judgement of the court below to stand in its present form.

Their Lordships will, therefore, humbly advise Her Majesty to affirm the judgements appealed from, and to dismiss the appeal. The Appellant must pay to the Respondents, Surjeswari Baruani, Anundmoyi Baruani, and Kanchunpria Baruani, who appeared at their Lordships' bar, the costs of the appeal.

