

[BOVILL, C.J. AND SMITH, J.]

DIMITRI SAVA

Plaintiff,

v.

SAVA HADJI CHRISTODOULO

Defendant.

and

MICHAÏL SAVA

Plaintiff,

v.

SAVA HADJI CHRISTODOULO

Defendant.

Ex parte RAGHIB HAFUZ HASSAN.COLLUSIVE JUDGMENT—FRAUD—APPLICATION TO “SET ASIDE”—
ORDER XVII., RULE 2—THIRD PARTY.

A Court has power to set aside its own judgment, even without the authority of a Rule of Court, where it is proved to the satisfaction of the Court that the judgment has been obtained by collusion or fraud.

APPEAL from an order of the District Court of Nicosia.

The applicant applied to the District Court to set aside the judgments obtained in these two actions on the ground that they were fraudulent and collusive. The District Court were of opinion that under Order XVII., Rule 2, they had not the power to set aside any judgment of theirs but only to amend or rectify it, and without allowing applicant to adduce evidence in support of his allegation dismissed the application.

The applicant appealed.

Diran Augustin for the appellant.—The defendant in these two actions was the lessee of a mill, the property of the applicant, under a contract by which he had to pay rent monthly. At the expiration of the contract, the applicant brought an action against the defendant and obtained judgment against him for £35.7.7. The plaintiffs, who are the two sons of the defendant, had previously obtained judgments on two bonds against their father. and lodged memorandums in the Land Registry Office attaching the whole of his immovable property. The applicant alleges that these bonds were fraudulent, and executed to delay the creditors of the defendant. The applicant, therefore, applied to the District Court to set aside these judgments, but the Court objected to the words “set aside,” and dismissed the application, holding that it should have asked to have the judgments amended or rectified so far as they affected my client’s interests.

BOVILL,
C.J.
&
SMITH, J.
1891
March 14.

BOVILL,
C.J.
&
SMITH, J.

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DIMITRI
SAVA
r.
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CHRISTO-
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AND
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v.
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CHRISTO-
DOULO.
Ex parte
RAGHIB HA-
FUZ HASSAN

October 24.

Pascal Constantinides for the respondents, the several parties to the two actions :

The dates of the bonds sued on are anterior to the leasing of the mill and are not fictitious. The Rule of Court provides for application where the interests of a third party are at stake. This means when the judgment itself affects the interests of the applicant, and for this reason the word "amend" was used. These judgments do not affect the applicant's interests, they condemn the father to pay certain sums to the sons. What amendment should be made in the judgment? The applicant ought to apply for a stay of execution.

Judgment : In these actions, one Raghieb Hafuz applies that the judgments may be set aside on the ground that they are collusive and covinous, and that by them he is hindered from obtaining execution of a judgment he has against the defendant.

The District Court has dismissed this application. There is nothing on the face of the proceedings to show us on what grounds the application is dismissed. It is alleged before us that it is dismissed because the Court considers that Order XVII., Rule 2, does not authorise the Court to set aside its own judgment, and that the Court cannot set aside its judgment except under the authority of a law or Rule of Court. From the fact that the Court had not heard any evidence in support of the applicant's contention, it would appear that this allegation is correct, and we have proceeded on the assumption that it is so.

We are of opinion that the Court should hear any evidence the parties may wish to adduce as to the allegation that the judgments in these actions are collusive; and if the Court should come to the conclusion that they were obtained by collusive means, we are of opinion that, without the authority of a Rule of Court, the Court has power to set aside its own judgment if it considers that it was obtained by collusion.

This application must, therefore, be remitted to the District Court, in order that it may be decided whether the judgments in these actions were obtained by fraud, and if the Court should be of opinion that that is the case, it will, according to our views, have power to set the judgments aside.

Costs of appeal to be allowed to the appellant.

Appeal allowed.