

APPELLATE CIVIL.

Before Mukerji A. C. J. and S. K. Ghose J.

JITENDRANATH BE

v.

NAGENDRANATH DE.*

1934

July 16, 27.

Registration—Award made by arbitrator without intervention of Court—Registration, if compulsory when it affects immovable property valued at more than Rs. 100—Indian Registration Act (XVI of 1908), ss. 17 (1) (b), 49.

When an arbitrator is appointed without intervention of the court and he makes an award affecting immovable property valued at more than rupees one hundred, registration of the award is compulsory under section 17(1)(b) of the Indian Registration Act, as amended by the Transfer of Property (Amendment) Supplementary Act, 1929.

Such award if not registered is inadmissible in evidence under section 49 of the Indian Registration Act.

APPEAL FROM ORIGINAL ORDER by the plaintiffs.

The material facts of the case are set out in the judgment.

Rupendra Coomar Mitter (with him *Apurbadhan Mukherji*) for the appellants. Before amendment by the Transfer of Property (Amendment) Supplementary Act, 1929, section 17 (2) (vi) of the Registration Act excepted "any award" from the category of documents compulsorily registrable, and, the effect of the amendment by removing the exception was not to make the registration of awards made without intervention of the court compulsory, but to place them on the same footing as awards of arbitrators made through court, which are not required to be registered. Both classes of awards belong to the same category of documents.

*Appeal from Original Order, No. 188 of 1933, against the order of S. Mukherji, Second Subordinate Judge of Hooghly, dated Dec. 12, 1932.

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Satkarhipati Ray (with him *Beereshwar Chatterji*) for the respondents. There is a difference between the two classes of awards. While an award made by an arbitrator under orders of court has no force until a decree is passed thereon, a private award, if valid, is operative, although neither party has sought to enforce it by a regular suit: *Muhammed Nawaz Khan v. Alam Khan* (1), *Bhajahari Saha Banikya v. Behary Lal Basak* (2), *Baidyanath Chattopadhyaya v. Panchanani Dasi* (3). A private award, therefore, falls within the category of documents specified in section 17 (1) (b) of the Registration Act.

Cur. adv. vult.

The judgment of the Court was as follows:—

This appeal has been taken by the plaintiffs from an order refusing to file an award. The plaintiffs' case was that there was a reference to arbitrators and an arbitration and award made without the intervention of the court, and they applied to the court that the award be filed in court. The Judge held that the award, not being registered, was not admissible in evidence, in view of section 49 of the Registration Act and dismissed the suit.

The award is a private award. Prior to the amendment of section 17 of the Registration Act by section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, section 17 (2) (vi) contained an exception as regards "any award" and so a private award, though falling within section 17 (1) (b), was excepted from the category of documents compulsorily registrable. The appellants' contention is that the effect of the words "and any award" being deleted by the amendment was not to make the registration of private awards compulsory, but to place private awards on the same footing as awards of arbitrators made through the intervention of courts.

(1) (1891) I. L. R. 18 Cal. 414; (2) (1906) I.L.R. 33 Cal. 881.
L.R. 18 I.A. 73. (3) (1922) 28 C. W. N. 140.

It is said that both classes of awards belong to one and same class of documents, as neither, without a decree passed on it, purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in immoveable property. The answer to this argument is that where as an award made by arbitrators under orders of the court has no force until a decree is passed on it, a private award, if it is valid, is operative even though neither party has sought to enforce it by a regular suit: *Muhammad Nawaz Khan v. Alam Khan* (1), *Bhajahari Saha Banikya v. Behary Lal Basak* (2), *Baidyanath Chattopadhyaya v. Panchanani Dasi* (3). A private award, therefore, falls within the class of documents specified in section 17 (1) (b) of the Registration Act, whereas an award of the other class does not. By the amendment the exception having been removed, the award, in the present case, satisfying, as it does, the requirement as to value, is compulsorily registrable. Section 49 of the Act would rule it out, if it is sought to use it as evidence of a transaction affecting the property, which is the purpose for which it is intended to be used in the present case [*Bachchan Lal v. Narottam Datt* (4)].

The appeal is dismissed with costs, two gold mohurs.

Appeal dismissed.

A. A.

(1) (1891) I. L. R. 18 Calc. 414 ;
L. R. 18 I.A. 73.
(2) (1906) I. L. R. 33 Calc. 881.

(3) (1922) 28 C. W. N. 140.
(4) [1933] A. I. R. (All.) 59 ;
143 Ind. Cas. 423.