

a limit to the amount of the penalty recoverable, which may be quite incommensurate with the damage actually suffered; but it is clear that in providing for the reference of any question arising on the construction of the award, or of any questions left undecided by the award, to a tribunal created by the award, the arbitrator determined a matter not referred to arbitration. It deprived the parties of their ordinary right to resort to the Courts, and indeed of any voice in the selection of the tribunal which was to adjudicate the questions which might arise between them hereafter of the nature mentioned in the clause of the award we are now considering.

Regarding the award as open to objection on this ground, we hold the Judge acted in accordance with law in refusing to file the award.

The application is disallowed with costs.

NOTES.

[I. PRIVATE AWARD—FILING OF, UNDER SEC. 525 C. P. C.—

This case was *overruled* in (1903) 27 Mad. 255=14 M. L. J. 356 *on the point* that the order refusing to file an award under Sec. 525 C. P. C. (1882) is a *decree* and not an *order* as was held here.

So 22 Mad. 299 holding a similar view is also no longer law, and also (1889) 7 Bom. 316; 341 in the light of the Privy Council decision in 29 I. A. 51 *on the point*. See also (1905) 2 C. L. J. 30.

II. COURT'S POWERS TO AMEND OR REMIT IT—

Court has no power to amend or remit the award filed for consideration :—(1905) 27 All. 526.]

[71] APPELLATE CIVIL.

The 10th August, 1880.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Kolluri Nagabhashanum.....(Plaintiff) Appellant

versus

Ammanna.....(Defendant Respondent.*

Decree—Registration Acts of 1871—1877, Section 50.

Decrees being excluded from the operation of Section 50, Act VIII of 1871, and Section 50, Act III of 1877, the omission to register does not make them ineffectual as against subsequent registered assignments or decrees.

In this case the plaintiff, in execution of a decree in Suit 173 of 1872 in the Munsif's Court, dated 22nd July 1872, directing the property in dispute to be sold on failure of payment of the amount decreed, caused the land in dispute to be sold, became auction-purchaser, and was put into possession by the Court in November 1875. The decree was not registered.

Atchuta Ramayya, the defendant in that suit, thereupon brought a suit (13 of 1876) to set aside the auction sale in the Subordinate Court, and got a

* Second Appeal, No. 205 of 1880, from the decree of the Subordinate Judge of Cocanada, reversing the decree of the District Munsif of Cocanada, dated 18th October 1879.

decree in his favour. While plaintiff was appealing against this decree, the holder of another decree against *Atchuta Ramayya* in Suit 193 of 1874 (which was brought upon a mortgage-deed dated 4th January 1873) attached the lands in dispute, and on 27th June 1877 the present defendant, *Ammanna*, purchased them at the Court sale and was put into possession.

The plaintiff's appeal against the decision of the Subordinate Judge in Suit 13 of 1876 was decided in his favour by the District Court in September 1877, and the District Court's decision was confirmed in second appeal by the High Court in March 1878.

After the decision of the High Court in his favour, plaintiff applied to the District Court to be put again in possession of the land in dispute.

By an order dated 11th March 1878 the application was rejected and plaintiff was directed to bring a fresh suit; hence the present suit.

[72] The District Munsif held that at the time of the second sale to the defendant, *Atchuta Ramayya* had no right at all in the lands, and that defendant consequently purchased nothing, and gave plaintiff a decree for the lands claimed.

The Subordinate Judge reversed this decision on appeal.

The plaintiff appealed to the High Court.

T. Rama Rau for Appellant.

Mr. Spring Branson for Respondent.

The Court (TURNER, C. J., and KINDERSLEY, J.) delivered the following

Judgment :—The appellant is entitled to rely on the decree obtained by him on 22nd July 1872, and which ordered that on failure in payment of the amount decreed the property in suit should be sold.

The decree was binding on the judgment-debtor, and on all persons who might thereafter acquire title from him. Although the decree might have been registered, the omission to register it would not make it ineffectual against subsequent assignments or decrees, even though they were registered. Decrees are excluded from the operation of Act VIII of 1871, Section 50, and Act III of 1877, Section 50.

The plaintiff having purchased at a sale held in pursuance of the direction contained in the decree, acquired a title which prevails against all persons whose interests were created by the judgment-debtor subsequently to the date of the decree.

The decree of the Lower Appellate Court dismissing the suit must be set aside, and, inasmuch as in the view taken by the Subordinate Judge it became unnecessary to decide the question as to the amount of mesne profits, and the decision of that issue has now become necessary, we remit to the Lower Appellate Court for determination the issue, What amount is the plaintiff entitled to recover as mesne profits for the period in suit?

The Subordinate Judge is requested to try the foregoing issue upon the evidence already recorded, and upon such further evidence as the parties may adduce, and is directed to return his finding, together with the evidence, to this Court within two months from the date of receiving this order.

NOTE.—*The assignment of a decree must be registered.* I. L. R., 1 Bom. 268