

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr.
Justice Wilkinson.*

VENKAYYA (DEFENDANT), APPELLANT,

v.

VENKATAPPAYYA (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, s. 522—Decree on an award—Appeal.

After issues had been framed in a suit to wind up a partnership, the matter was referred to an arbitrator, who made his award, and with regard to certain property, not part of the partnership property, he referred the parties to a separate suit. A decree was passed in accordance with the award :

Held, that an appeal lies against a decree passed on an award, on the ground that the award was not legal ; but that the award was not illegal by reason of its comprising the reference of the parties to a separate suit.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 73 of 1889, affirming the decree of O. V. Nanjunda Ayyar, Acting District Munsif of Masulipatam, in original suit No. 85 of 1888.

The facts of the case are stated above sufficiently for the purposes of the report.

Pattabhirama Ayyar for appellant.

S. Subramanya Ayyar and *P. Subramanya Ayyar* for respondent.

JUDGMENT.—The first question we have to determine is one raised by the respondent whether any appeal lay from the decree and judgment of the District Munsif, which admittedly were in accordance with the award. It is laid down in section 522 of the Code of Civil Procedure that no appeal shall lie from a decree passed in accordance with an award, except so far as the decree is in excess of, or not in accordance with, the award. It has been held that the effect of that section is that it is not enough for the Appellate Court to satisfy itself as to the mere correspondence of the decree and the award, but that the Appellate Court must so far look behind the decree as to satisfy itself that the award is a legal award. If the Appellate Court is satisfied that an award has been properly and regularly arrived at by an arbitrator or

* Second Appeal No. 1659 of 1889.

arbitrators duly appointed, and that the decree is in accordance with the award, then, and then only, must the appeal be dismissed, *Lachman Das v. Brijpal*(1), *Debendra Nath Shaw v. Aubhoy Churn Bāgchi*(2), *Pugardin v. Moidin*(3). A second appeal will of course lie to this Court on a point of law.

VENKAYYA
v.
VENKATAP-
PAYYA.

Now it is argued for the appellant that the award in the present case was illegal, because the arbitrator, after finding the plaintiff and defendant had equal shares in the indigo vat at Kumrapalem and the Tekupalli sluice, directed the parties to settle those matters by a separate suit. The suit was brought to wind up a partnership. After issues had been framed, both plaintiff and defendant applied to the Court to refer to an arbitrator for disposal "the issues framed by the Court regarding the points in dispute." The arbitrator having submitted an award without recording any finding on the seventh, eighth or ninth issues, the award was remitted. Application was made to set aside the final award on the ground of the misconduct of the arbitrator and the invalidity of the award which it was alleged had not been made within the period allowed by the Court. The objections were fully considered by the District Munsif and overruled, and a decree was passed in accordance with the award. On appeal the District Judge held that there was nothing illegal in the procedure of the arbitrator. We are not prepared to say that the legality of the award was in any way affected, because the arbitrator referred the parties to a separate suit with reference to two matters in which he found they had a common interest. If, as is suggested, the arbitrator virtually decided the indigo vat and the sluice were not partnership property, and that other parties had interests in these works, he was probably right in referring the parties to a fresh suit. He determined all the matters referred to him, but decided that, so far as the vat and the sluice were concerned, they were outside the partnership. Nor can we say that the award was illegal, because no witnesses were examined after remand. It appears that the defendant (appellant) himself dispensed with his witnesses. It has not been made out that there was any illegality in the award which was regularly and properly arrived at by an arbitrator duly appointed, and we therefore dismiss this second appeal with costs.

(1) I.L.R., 6 All., 174. (2) I.L.R., 9 Cal., 905. (3) I.L.R., 6 Mad., 414.