

Parties were not represented.

JUDGMENT.—We do not think this is a case for interference.

In the first place the Magistrate, whose action is impugned, gives in our opinion good reasons for his order. But secondly we are deposed to agree with the view taken in other Courts of section 88, Criminal Procedure Code. What may be said with regard to that section would equally apply to section, 386. In both cases we think, if the Magistrate errs, the remedy of the aggrieved party is by civil suit. All that we can say is that, in cases of dispute, the Magistrate should stay the sale of the property seized to give the claimant time to establish his right.

QUEEN-
EMPRESS
v.
KANDAPPA
GOUNDAN.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

CHINTAMALLAYYA (PLAINTIFF), APPELLANT,

v.

THADI GANGIREDDI (DEFENDANT), RESPONDENT.*

1896.
December 2.

Civil Procedure Code—Act XIV of 1882, ss. 521, 522, 526—Application to file award—Objection that submission was revoked before award made—Jurisdiction of court to determine objection—Subsequent suit to annul award.

The plaintiff's case was that arbitrators, to whom differences between him and the defendant had been referred, had out of enmity to him and at the defendant's instance, made a fraudulent award on 17th February after he had revoked his submission and had antedated it as on 1st February; that the defendant had instituted proceedings under Civil Procedure Code, chapter XXXVII, and his objections to the above effect having been overruled, a decree was passed in terms of the award. He now sued to have it declared that neither the decree nor the award was binding:

Held, that the Court had jurisdiction to determine the genuineness or validity of the award in the proceedings under chapter XXXVII, and that the present suit was not maintainable.

APPEAL against the decree of K. Krishna Rau, Subordinate Judge of Cocanada, in original suit No. 40 of 1894.

The plaintiff alleged that he and the defendant had carried on business in partnership till 29th July 1892, when the partnership

* Appeal No. 199 of 1895.

CHINTA-
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was dissolved, and that certain differences between them were referred to arbitration; "that one of the arbitrators afterwards "misappropriated Rs. 1,800 which had been deposited with him by "the plaintiff as part of the assets of the partnership firm, and "entertaining feelings of animosity, induced the other arbitrator to "join with him at the defendant's instance in making an incorrect "and fraudulent award against the plaintiff after 17th February "1893, on which date the plaintiff had sent the arbitrators a "notice of revocation, but they antedated the award making it "appear that it was made on the 1st February 1893." The defendant having applied under Civil Procedure Code, chapter XXXVII, to have this award filed in Court, the above objections were advanced by the present plaintiff and were overruled and a decree was passed in the terms of the award. The plaintiff now sued "for declarations setting aside the decree and cancelling the "award and for such further relief as he may be found entitled to."

The Subordinate Judge held that the Court had power to overrule the present plaintiff's objections in the proceedings under chapter XXXVII and that the present suit was not maintainable. He referred to *Micharaya Guruvu v. Sadasiva Parama Guruvu*(1), *Hurronath Chowdhry v. Nistarini Chowdrani*(2), *Surjan Raot v. Bhikari Raot*(3), *Dandekar v. Dandekars*(4), *Samal Nathu v. Jaishankar Dalsukram*(5) and *Amrit Ram v. Dasrat Ram*(6).

The plaintiff preferred this appeal.

Krishnasami Ayyar for appellant.

Ramachandra Rau Saheb and *Subba Rau* for respondent.

JUDGMENT.—The argument is that the Subordinate Judge had no jurisdiction to inquire into the genuineness or validity of the award apart from such grounds as would fall under sections 520 and 521 of the Code of Civil Procedure, his authority being limited under section 526 to the matters mentioned in those two sections.

It is true that different views of this matter have been taken by the different High Courts. In our opinion the correct view is that held by the Full Bench of the Allahabad High Court in *Amrit Ram v. Dasrat Ram*(6). It is also in accordance with the opinion expressed by this Court so far back as 1881 in *Micharaya Guruvu v. Sadasiva Parama Guruvu*(1) which we believe has

(1) I.L.R., 4 Mad., 319. (2) I.L.R., 10 Calc., 74. (3) I.L.R., 21 Calc., 213.
(4) I.L.R., 6 Bom., 668. (5) I.L.R., 9 Bom., 254. (6) I.L.R., 17 All., 21.

always been acted on. The weight due to that opinion and practice is not lessened by the fact that the decision in that case, so far as it relates to the right of appeal, has since been overruled in *Husananna v. Linganna*(1). No doubt, Parker, J., in that case expressed himself as inclined to take a different view, but we, however, are unable to do so.

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GANGIREDDI.

The objection that the Subordinate Judge had no jurisdiction therefore fails and his decision in the previous case must be held to be binding in the present suit.

The appeal fails and is dismissed with costs.

APPELLATE CIVIL.

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

SUBBARAYA PILLAI (PLAINTIFF) APPELLANT.

v.

VAITHILINGAM (DEFENDANT), RESPONDENT.*

1896.
September
8, 19.

*Trustee of composition deed—Managing member of a firm appointed as trustee—
Right of suit after dissolution of the firm.*

Certain traders having been adjudicated bankrupts in the Courts of Mauritius, the creditors agreed to a composition deed, which was sanctioned by the Court, whereby the present plaintiff therein described as the managing member of the firm of S. and Company was appointed trustee and his firm guaranteed the payment of a dividend of 50 per cent. The firm was subsequently dissolved and its assets were assigned to a third party. The plaintiff now sued to recover costs decreed to him in his capacity as trustee in various suits in Mauritius, and it was objected that he was precluded from suing by the dissolution of his firm and the assignment away of its assets:

Held, that the plaintiff was entitled to maintain the suit.

SECOND APPEAL against the decree of E. J. Sewell, Acting District Judge of Tanjore, in appeal suit No. 300 of 1894, confirming the decree of V. Srinivasacharlu, Subordinate Judge of Kumbakonam, in original suit No. 21 of 1893.

The plaintiff sued to recover the costs incurred in suits brought by the defendant against him in the Courts in Mauritius and

(1) I.L.R., 18 Mad., 423.

* Second Appeal No. 720 of 1895.