holds that she was entitled to bring this suit because she was a wife of Mokram Ali, the late *mutwali*, but we cannot agree that this is a sufficient reason. Even if we regard her as suing as a person interested in the trust, then on the face of the plaint there are other persons interested, and she could only sue on behalf of all who were so interested, and in order so to sue, she should have obtained the permission of the Court, and otherwise complied with the provisions of s. 30 of the Civil Procedure Code; not having done so, we think, she had no right of action. In whatever light the suit be regarded therefore, we think it clear that it was not properly framed and will not lie. The decree of the lower Appellate Court is accordingly reversed, and the suit dismissed with costs in all the Courts.

1884

LUTIFUNNISSA BIBI *v.* NAZIRUN BIBI.

Appeal allowed.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

JOY PROKASH LALL AND ANOTHER (PLAINTIFFS) *v.* SHEO GOLAM SINGH AND OTHERS (DEFENDANTS.)[*]

1884 *September* 12.

Award—Judgment in accordance with award—Appeal—Defendants not all joining in reference to arbitration.

The question whether, under s. 522 of the Code of Civil Procedure, an appeal will lie against a decree given in accordance with an award, depends upon whether the award upon which the decree is based is a valid and legal award.

A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application); an award was passed and a decree made in accordance with such award. The plaintiffs objected to the validity of the award on the ground that all the parties to the suit had not joined in referring the suit to arbitration; the objection was dismissed, and judgment given in accordance with the award. *Held*, that an appeal would lie from a decree dismissing the objection and confirming the award; but that under the special circumstances of the case, justice was so clearly in favor of the view that the award was good, that the Court, although not entirely approving of certain decisions of the High Court (*Shitanath Biswas* v. *Kishen*

[*] Appeals from Appellate Decrees Nos. 666 and 667 of 1883, against the decrees of J. F. Stevens, Esq., Offg. Judge of Sarun, dated the 9th of January 1883, affirming the decree of Baboo Kali Prosunno Mookerji, First Subordinate Judge of Sarun, dated 1st December 1882.

1884

JOY PROKASH LALL v. SHEO GOLAM SINGH.

Mohun Mookerjee (1); *Ram Soonder Mookerjee* v. *Ram Shurun Mookerjee* (2); *Doorga Churn Thakoor* v. *Kally Doss Hazrah* (3); *Bishoka Dasia* v. *Anunto Lall Pain* (4), which laid down that such an award is good, notwithstanding that some of the parties to the suit may not have joined in the reference to arbitration, did not think fit to differ from those decisions on that occasion.

THESE were two analogous suits numbered 112 and 190 of 1881, which were heard together, and which originated from proceedings held under the Land Registration Act.

The plaintiffs claimed to be recognised as holders of fractional shares in mauza Bissumbhurpur, but the revenue authorities disallowed their claim; the plaintiffs, therefore, brought the present suits for a declaration of their right to be registered as fractional sharers in the mauza.

These suits, as originally framed, were brought against defendants 1 to 8, who contested the plaintiffs' claim, and urged that there was a defect of parties to the suit. The plaintiffs thereupon applied to the Court that certain other persons might be added. In compliance with this petition an order was passed making those persons defendants, *viz.*, defendants 9 to 17.

The defendants 9 to 17 put in no defence in suit No. 112, but in suit No. 190 they put in a written statement stating that they had no interest in the subject-matter of dispute, and that they had therefore been made parties unnecessarily.

During the progress of these suits, the plaintiffs and defendants 1 to 8 made an application to the Court, in which defendants 9 to 17 did not join, for the purpose of having the suits referred to arbitration; and on the 18th February 1882 an order was passed referring the suits to the arbitration of three pleaders of the District Court.

The arbitrators took evidence and gave their award in favor of the defendants, finding that the plaintiffs were not entitled to be registered as fractional sharers in the mauza. This award was on the 4th October 1882 submitted to the Court, and the Court passed a decree in accordance with this award.

(1) 5 W. R., 130
(2) 6 W. R., 25.
(3) 10 W. R., 463.
(4) 4 C. L. R., 65.

1884

JOY PROKASH LALL v. SHEO GOLAM SINGH.

On the 13th November 1882, the day on which the Court re-opened after the vacation, the plaintiffs filed the following objections to the award and asked that the award might be set aside, *viz.*: (1) that all the defendants had not joined in the reference to arbitration, and that therefore the award was bad; (2) that the defendants fraudulently concealed certain facts from the arbitrators; (3) that the arbitrators were guilty of misconduct. On the 6th December 1882 the Subordinate Judge found that the objections taken by the plaintiffs had not been made out, and held that the award should be enforced, and passed judgment in accordance with the awards under s. 522 of the Code of Civil Procedure, the period allowed by law for preferring objections against the award having expired.

The plaintiffs preferred an appeal to the District Judge, who, on the 9th January 1883, held that under the concluding portion of s. 522 of the Code no appeal would lie.

The plaintiffs appealed to the High Court.

Baboo *Mohesh Chunder Chowdry*, Baboo *Chunder Madhub Ghose*, and Baboo *Raghu Nundan Pershad* for the appellants contended that the defendants 9 to 17, not having agreed to refer the matter to arbitration, and not having been parties to the arbitration proceedings, the proceedings taken were without jurisdiction and the award invalid, and the decree passed in accordance with the award was not therefore such a decree as is referred to in s. 522 of the Code.

Baboo *Abinash Chunder Banerji* for the respondents cited *Shitanath Biswas* v. *Kishen Mohun Mookerjee* (1); *Ram Soonder Mookerjee* v. *Ram Shurun Mookerjee* (2); *Doorga Churn Thakoor* v. *Kally Doss Hazrah* (3); *Bishoka Dasia* v. *Anunto Lall Pani* (4), as showing that the award was valid notwithstanding some of the parties had not joined in the reference to arbitration.

The judgment of the Court was delivered by

GARTH, C.J.—These suits were brought on the following allegations:

In mehal No. 2286 of the Saran Towjee, mauza Bissumbhurpur *alias* Aphur represents a 2 annas kolum or share, and of this

(1) 5 W. R., 130.
(2) 6 W. R., 25.
(3) 10 W. R., 463.
(4) 4 C. L. R., 65.

1884

JOY PROKASH LALL v. SHEO GOLAM SINGH.

6 pies belonged to Manessur Sahai and Mussammat Luchmi Koer A private partition of the mauza having been made, the said share comprised among other lands 11 biggahs of *zerat* land in Aphur and 9 biggahs in Putti Esrawan.

Appeal No. 666 relates to the 9 biggahs in Putti Esrawan; and the plaintiffs allege that they purchased these 9 biggahs (with other lands) in certain execution proceedings, and applied to the Collector to have their names recorded as fractional co-sharers in the mehal, and this suit is brought in consequence of the Collector's refusal to so register them as fractional co-sharers.

Appeal No. 667 relates to 1 biggah out of the 11 biggahs in mauza Aphur, and the plaintiffs' allegation is, that they purchased this 1 biggah in certain other execution proceedings, but that the Collector has refused to register them as fractional co-sharers in the mehal in respect of this 1 biggah.

The defendants 1 to 8 are admittedly the purchasers of the 6 pie share of Manessur Sahai and Mussammat Luchmi Koer, after excluding the lands of Putti Esrawan.

The defendants 9 to 17 are the other co-sharers in the 2 annas kolum; they were added as defendants on the objection of defendants 1 to 8, in suit No. 112 on 8th February 1882, and in suit No. 190 on 17th August 1881. In this latter case they filed a written statement on 16th September 1881 in which they supported the plaintiffs' allegations, and urged that they had been improperly made defendants.

On the application of the plaintiffs and defendants 1 to 8 both suits were referred to arbitration on the 15th February 1882. The defendants 9 to 17 admittedly did not join in this application.

The arbitrators found that the plaintiffs as the proprietors of specific plots of land within the mehal were not entitled to be registered as fractional sharers therein, and the first Court gave a decree in accordance with this award, dismissing the plaintiffs' suit.

The plaintiffs having preferred an appeal, the District Judge held that under the concluding portion of s. 522 of the Code of Civil Procedure, no appeal would lie, and he accordingly rejected the application.

1884

JOY PROKASH LALL v. SHEO GOLAM SINGH.

It is contended here, that the order of the District Judge was wrong. It is said that the defendants 9 to 17, not having agreed to refer the matter to arbitration, and not having been parties to the arbitration proceedings, those proceedings were irregular and without jurisdiction, and the award invalid; and that being so, the decree passed in accordance with the invalid award was not such a decree as is referred to in s. 522 of the Code of Civil Procedure.

The question in this case is, whether under s. 522 of the Code of Civil Procedure, an appeal lies against a decree given in accordance with an award. It has been held both by this Court and by the Allahabad Court in *Debendra Nath Shaw* v. *Aubboy Churn Bagchi* (1) and *Lachman Dass* v. *Brijpal* (2), that the answer to this question must depend upon whether the award upon which the decree was based was a valid and legal award. We see no reason to differ from this view of the law. As therefore in this case the question was whether the award was valid, it is clear that the lower Appellate Court ought to have tried the appeals. But it would be obviously useless to remand the case to that Court; we think that as a matter of law the judgment of the first Court should stand.

Upon this point certain cases have been cited before us, in which it was held that the award was good, notwithstanding that some of the parties had not joined in the reference (5 W. R., 130; 6 W. R. 25; 10 W. R., 463; 4 C. L. R., 65).

We are not quite satisfied with those decisions, and we think that upon some future occasion it may be right to review them. But until a suitable occasion arises, we must be guided by their authority, and we are the more disposed to follow them in this instance, because the justice of the case is so clearly in favor of that view.

The plaintiffs are here attempting to set aside an award, and a judgment founded upon that award, on account of a technical mistake to which, if it is a mistake at all, they have themselves been parties. They themselves were the means of excluding the defendants 9 to 17 from the arbitration proceedings, and they never thought of taking the point, upon which they now rely, until the award was made against them.

(1) I. L. R. Cal., 905. (2) I. L. R. 6 All., 174.

1884

JOY PROKASH LALL v. SHEO GOLAM SINGH.

So far as we can see, the award is a perfectly fair one and the plaintiffs have, as a matter of justice, no reason to complain.

Both appeals are dismissed with costs.

Appeals dismissed.

1884 *September* 8.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

IN RE SUNDER DASS (PETITIONER.)*

Civil Procedure Code—Act XIV of 1882, *s.* 295—*Decree-holders sharing rateably in sale proceeds must be bonâ fide decree-holders.*

The words "decree-holders" or "persons holding decrees for money against the same judgment-debtor" in s. 295 of the Code of Civil Procedure, signify *bonâ fide* decree-holders.

A Court is bound, in cases falling within this section, to satisfy itself whether the claimants are *bonâ fide* decree-holders within the meaning of the section, and where it is unable to satisfy itself as to the *bonâ fides* of the claim, the Court should exclude such claimant from the distribution of assets.

ON the 9th February 1884 one Hur Pershad Dass obtained a decree in the Court of the Subordinate Judge of Arrah for Rs. 5,000 against Raghu Nath Pershad and six others upon certain hundies.

On the 15th March 1884 Hur Pershad Dass sold this decree to one Sunder Dass, and on the 18th March 1884 Sunder Dass applied to have his name entered on the record as decree-holder, and on the 3rd April 1884 an order was passed granting this application.

Sunder Dass made several applications for execution of this decree, and the sale of certain properties of the judgment-debtor was ultimately fixed for the 7th July 1884, the judgment-debtor having obtained a postponement of a previous order for sale dated the 2nd June.

On the 7th July 1884 the properties were sold in execution of another decree obtained by one Mullick Feda Ali against the same judgment-debtors, and in consequence thereof the sale in execution of Sunder Dass's decree was stayed.

Sunder Dass, under s. 295 of the Civil Procedure Code, claimed to share rateably in the sale proceeds, but on the 11th July

* Civil Rule No 993 of 1884, against the order passed by Baboo Kali K. Banerjee, Subordinate Judge of Arrah, dated the 16th of July 1884.