The decree is confirmed, and the appeal is dismissed with the costs of the respondents, the Trustees of Pacheappa's Charities.

PULLIAH CHETTI v. VARADA-RAJULU CHETTI.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Wallis.

SUBBIAH IYER (PLAINTIFF), APPELLANT,

v.

SUBRAMANIA AIYAR AND OTHERS (DEFENDANTS NOS. 2 TO 5), RESPONDENTS.*

1908 May 7.

Civil Procedure Code, Act XIV of 1882, ss. 520, 522—Appeal against decree on fresh award made after order of remittal under s. 520 of the Code of Civil Procedure.

Where the Court remits an award under section 520 of the Code of Civil Procedure and the arbitrators submit a fresh award, and the Court passes a decree in accordance with such revised award under section 522 of the Code of Civil Procedure, no appeal lies against such decree on the ground that the order of remittal under section 520 was wrong and that the original award ought to have been accepted and acted upon.

SUIT for a declaration and injunction. On the agreement of parties the dispute was referred to arbitration, and an award was submitted by the arbitrator. The plaintiff put in objections to the award praying that it may be remitted and the fifth defendant opposed the plaintiff's application on the ground that the award was legal and ought not to be remitted. The District Munsif remitted the award under section 520, and the arbitrator put in a supplemental award which not only dealt with the objections for a consideration of which it was remitted, but went much further and reviewed his former award on points not objected to.

The fifth defendant took objection to the revised award. The Munsif overruled the objections and passed a decree in accordance with the revised award. The fifth defendant appealed against this decree on the ground *inter alia* that the order remitting the

* Second Appeal No. 1110 of 1905, presented against the decree of M. R. Ry. T. Sadasiva Ayyar, Subordinate Judge of Tinnevelly, in Appeal Suit No. 512 of 1904, presented against the decree of T. Munro French, Esq., District Munsif of Tinnevelly, in Original Suit No. 257 of 1903.

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award was illegal. The Subordinate Judge upheld this contention. The material portion of his Judgment was as follows:—

"I think the second ground is well-taken. In *George* v. *Vastian Soury* (22 Mad., 202), it was held that, the legality of an order remitting an award for the reconsideration of the arbitrators may be challenged on appeal against the ultimate decree. It was further held that where there was a decision on the whole matter in issue between the parties and there was no illegality on the *face of the award*, the Court ought not to remit the case to the arbitrators, simply because they did not give their findings expressly on some issues in the case. There are certain observations in the Privy Council case in *Ghulam Khan* v. *Muhammad Hassan* (29 Calc., 167 at p. 186) which are also pertinent. The arbitrators 'were not indeed bound to give an award on each point. They had to give their award on the whole case. They may have erred in law, but arbitrators may be Judges of law as well as of fact and an error in law certianly does not vitiate an award.' The expression 'objection to the legality apparent on the face of the award' cannot mean an error of law made in the reasons given by the arbitrator's first award, or an error in the construction of a document or an omission to cosider the probative value of certain evidence. It must be an illegality apparent on the face of the award itself, for instance, where the arbitrator says that the defendant shall pay plaintiff an amount which shall be determined by the casting of lots, or that a third person not a party shall pay plaintiff something in satisfaction, or where the arbitrator directs that the defendant, though a woman or infant, shall be arrested and sent to jail if the decreed amount is not paid and so on.

It is impossible, in my opinion, to state on a perusal of the first award in this case that there is any illegality apparent on the face of the award or that it has left undetermined, any matters referred to the arbitrator.

It might be that, in complicated cases, it is better that the arbitrator appointed by the Court should be given a power to review his award. The Court seems also to have power to remit awards made outside the Court under the Arbitration Act IX of 1899 on equitable grounds other than those mentioned in section 520 of the Civil Procedure Code (see *Protap Chunder Dey* v. *Joolsey Dass Dey* (29 Calc., 793)). But so far as arbitrators in a

suit are concerned, section 520 clearly applies, and it is only on the three grounds mentioned in that section that awards can be remitted for reconsideration. I am of opinion that none of the grounds applied to the first award made by the arbitrator and that the lower Court did not act legally in remitting the award for reconsideration.

In the result, I direct that the judgment in the suit shall follow the first award of the arbitrator and that the decree be drawn up in accordance with the said award. The respondents will pay half of appellant's costs in this appeal and bear their own costs."

The plaintiff appealed to the High Court.

S. Muthiah Mudaliar for *S. Srinivasa Ayyangar* for appellant.

A. S. Balasubrahmania Ayyar for respondent.

JUDGMENT.—This appeal raises an interesting question as to which there is apparently no precise authority. The question is whether after the Court has remitted an award to the arbitrators under section 520, Civil Procedure Code, and the arbitrators have submitted a revised award and the Court has given judgment under section 522, Civil Procedure Code, according to the revised award, and a decree has followed thereon, an appeal will lie from such decree on the ground that the order of remittal under section 520, Civil Procedure Code, was wrong, and that the original award ought to have been accepted and acted on. Section 522, Civil Procedure Code, says that no appeal shall lie from the decree so passed except in so far as the decree is in excess of, or not in accordance with the award, and this, in our opinion, means the award according to which judgment was given, which is of course the revised award. The present decree is in accordance with the revised award and, in our opinion, section 522, Civil Procedure Code, bars an appeal on the ground that the earlier order of remittal under section 520, Civil Procedure Code, was wrongly made. It was not contended that an appeal would lie against a decree passed by the Court in accordance with the award on the ground that the Court had improperly refused an application for an order of remittal under section 520, Civil Procedure Code, and the policy of the law appears to be to refuse to allow appeals against decrees in accordance with awards on the ground either that an order under section 520, Civil Procedure Code, was improperly made or improperly refused. The decision of the

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Privy Council in *Ghulam Khan* v. *Muhammad Hassan*(1) shows that the provisions of section 522, Civil Procedure Code, as to appeals, must be strictly enforced. The case of *George* v. *Vastian Soury*(2), and the cases there cited, are not in point, as, in each of these cases, after the order of remittal under section 520, Civil Procedure Code, had been made, the arbitrators refused to reconsider their award, which consequently, became void under section 521, Civil Procedure Code, and the Court proceeded to try the case and pass a decree in the ordinary way.

The appeal must be allowed and the decree of the Subordinate Judge set aside, and that of the District Munsif restored, with costs here and in the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Abdur Rahim.

1908 July 31.

RANGANATHA RAO AND OTHERS (DEFENDANTS NOS. 1 TO 3), APPELLANTS,

v.

NARAYANASAMI NAICKER AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 4 TO 8), RESPONDENTS.*

Hindu Law - Partition, Proof of—Presumption of general division from the separation of one.

Separate residence is not, of itself, conclusive or even strong evidence of partition.

There is no presumption of a general division among all the members of a coparcenary from the fact that one of its members has separated.

Balabux v. *Rukhma Bai*, (I. L. R., 30 Calc., 725), referred to.

SUIT for partition.

The plaintiff and the defendants were members of a Hindu family which was once joint. There was a partial partition in 1864, and a list was made of the properties which remained joint.

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(1) I. L. R., 29 Calc., 167. (2) I. L. R., 22 Mad., 202.

* Second Appeal No. 1183 of 1906, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 1440 of 1905, presented against the decree of M. R. Ry. A. N. Anantarama Ayyar, District Munsif of Tanjore, in Original Suit No. 207 of 1903.