

would hardly have given the note ; but in any case, it only comes to this that the defendants have an unliquidated claim against the plaintiff. They are not entitled in law to set off an unliquidated claim ; indeed, they have not pleaded a set off. In our opinion, defendants Nos. 1 and 2, the makers of the note have no answer to the suit. As regards the other defendants, the District Judge states that they are members of the undivided families of one or other of the defendants, and interested in their joint trade ; but this appears to be merely a statement of the plaintiff's case, as there is no evidence to show that the joint families were interested in the joint trade, and it is not admitted but denied. Under these circumstances they cannot be made liable either on the note or under Hindu Law as explained in *Krishna Ayyar v. Krishna-sami Ayyar* (1). As regards them the appeal must be allowed with costs. As against defendant No. 2, this second appeal must be dismissed with costs.

VALLAM-
KONDU
SUBBIAH
v
MALUPREDDI
VENKATA-
RAMIAH

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Sankaran-Nair.

ACHUTHAYYA (DEFENDANT), APPELLANT,

v.

THIMMAYYA AND ANOTHER (PLAINTIFFS NOS. 1 AND 2),
RESPONDENTS.*

1908.
March 18.

Civil Procedure Code—Act XIV of 1882, s. 521—Order setting aside award under s. 521 can be questioned on appeal against the final decree.

Where a Court sets aside an award of arbitrators on application under section 521, Civil Procedure Code, and decides on the merits, the Court of appeal can, on appeal from the final decree, inquire into the propriety or otherwise of the order setting aside the award.

Ganga Prasad v. Kura, (I.L.R., 28 All., 408), not followed.

(1) I. L. R., 23 Mad., 597.

* Second Appeals Nos. 662 and 663 of 1905, presented against, and Civil Revision Petitions Nos. 244 and 245 of 1905 under section 622 of the Code of Civil Procedure praying the High Court to revise, the decree of A. M. Slight, Esq., District Judge of Kuraool, in Appeal Suit No. 98 of 1904, presented against the decree of M.R.Ry. V. V. S. Avadhani, District Munsif of Gooty, in Original Suit Nos. 661 and 707 of 1902.

ACHUTHAYYA THE facts necessary for this case are stated in the judgment.

^{v.}
THIMMAYYA. *K. Narayana Rao* for appellant.

T. V. Seshagiri Ayyar for respondent.

JUDGMENT.—These cases depend upon the same question. The suit was referred to an arbitrator. The arbitrator made his award. The defendant applied under section 521, Civil Procedure Code, to set aside the award. The award was set aside by the Munsif. Afterwards, the suit came on for decision on the merits, and was determined by the Munsif in favour of the defendant. The plaintiff appealed, and the District Judge, on appeal, decided that the Munsif was wrong in setting aside the award; and, without going into the merits, reversed the decree of the Munsif, and entered judgment in accordance with the award in favour of the plaintiff. The defendant now objects that the District Judge had no authority to go behind the decision of the Munsif in setting aside the award, relying upon *Ganga Prasad v. Kura* (1) and *Kalyan Das v. Pyare Lal* (2).

If these cases are intended to decide, and do decide that, on final appeal a District Judge cannot enquire into, and decide as to, the propriety or otherwise of a decision of the Munsif setting aside an award they are contrary to the decisions in *Abdul Rahman v. Yar Muhammad* (3), *Chattar Singh v. Lekhraj Singh* (4), *Ambica Dasia v. Nadyar Ohand Pal* (5), *Mothooranath Tewaree v. Brindabun Tewaree* (6), *Shyama Charan Pramanik v. Prothad Durwan* (7), *Damodar v. Raghunath* (8) and *George v. Vastian Soury* (9).

We prefer to follow these latter decisions which we think are right, and we dismiss these second appeals and revision petitions with costs.

(1) I. L. R., 29 All., 408.

(3) I. L. R., 3 All., 636.

(6) I. L. R., 11 Calc., 172.

(7) 8 C. W. N., 392.

(9) I. L. R., 22 Mad., 202.

(2) 4 A. L. J., 256.

(4) I. L. R., 5 All., 293.

(6) 14 W. R., 327.

(8) I. L. R., 26 Bom., 551.