APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

1917, November 14 and 15.

MADEPALLI VENKATASWAMI (FIRST DEFENDANT), APPELLANT,

v.

MADEPALLI SURANNA AND FOUR OTHERS (PLAINTIFF AND DEFENDANTS 2 TO 5), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), second schedule, paragraph 14, clause (c)—Award—'Illegal on the face of it,' meaning of—Patent illegality—Remittance to arbitrators for re-consideration, when permissible.

In a suit for partition and recovery of a share in the family properties, the defendants pleaded *inter alia* that the plaintiff was born blind and was therefore not entitled to any share under Hindu Law. After issues were framed the whole dispute was by agreement of the parties referred to arbitrators who, without deciding the question as to congenital blindness, passed an award to the effect that the plaintiff was entitled to a life-interest in one-fourth share subject to its becoming an absolute interest in case the plaintiff married.

Held, on objection to the award, that the award was not so patently illegal as to come within the mischief of clause (*c*) of paragraph 14 of the second schedule of the Civil Procedure Code, and that the award could not be remitted to the arbitrators for re-consideration.

English and Indian cases reviewed.

SECOND APPEAL against the decree of P. C. TIRUVENKATA ACHARIYAR, the Additional Temporary Subordinate Judge of Rajahmundry, in Appeal Suit No. 4 of 1916, preferred against the decree of K. NARASIMHAM Garu, the Additional District Munsif of Amalapuram, in Original Suit No. 245 of 1912.

The plaintiff sued for partition and recovery of his one-fourth share in his family properties from the defendants who were the other members of the joint Hindu family. The defendants pleaded that the plaintiff was born blind and was not entitled to any share in the joint family properties under the Hindu Law. The parties agreed to the submission of the whole dispute to the arbitration of certain persons named by them. The submission was in general terms as follows :—"We have selected the undermentioned arbitrators to give an award con-

* Second Appeal No. 1461 of 1916.

sidering the facts of this suit. We have agreed to abide by the judgment to be given by a majority of them." The arbitrators, without deciding the question as to the congenital character of the blindness of the plaintiff, passed an award granting *inter alia* the plaintiff only a life-interest in one-fourth share in the family properties subject to its becoming an absolute interest in case the plaintiff married. The plaintiff objected to the award as illegal on the face of it, and the trial Court (the Court of the District Munsif) upheld the objection and remitted the award to the arbitrators for their re-consideration under paragraph 14 (c) of the second schedule of the Code of Civil Procedure, and on the failure of the arbitrators to pass a revised award as directed, revoked the arbitration, tried the suit and passed a decree in favour of the plaintiff. The first defendant appealed against the decree to the lower Appellate Court, which confirmed the decree of the Original Court and dismissed the appeal. The first defendant preferred this Second Appeal.

B. Narasimha Rao for the appellant.

P. Somasundaram for the respondents.

The JUDGMENT of the Court was delivered by—

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—Plaintiff sues for a share in the family properties. The defence is that he was born blind and that consequently he is not entitled to any share under the Hindu Law. A number of issues were raised including the one on the question whether the plaintiff was congenitally blind. After the settlement of the issues, the parties agreed to refer the dispute to certain arbitrators. The agreement to refer is very general in its terms and apparently all questions of fact and of law were referred to arbitrators. Upon the reference, the arbitrators decided that the plaintiff was entitled to a life-interest in a fourth share in the properties subject to its becoming an absolute interest in case the plaintiff married.

On the submission of this award, objections were taken by the plaintiff on the ground that it was illegal on the face of it and the Court should not accept it. Both the Courts below have upheld this contention and have set aside the award.

In Second Appeal, the learned vakils have argued the case very elaborately; we have come to the conclusion that the Courts below are wrong.

MADEPALLI VENKATA-SWAMI v. MADEPALLI SUBANNA.

SESHAGIRI AYYAR, J.

Paragraph 14 of the second schedule to the Civil Procedure Code sets out the grounds on which an award may be set aside. Clause (*a*) refers to the arbitrators not deciding what has been referred to them and to deciding matters not within their jurisdiction, clause (*b*) refers to an indefinite award. Clause (*c*) refers to an award whose illegality is patent upon the face of it.

In the present case, the complaint is that the award is illegal as it apparently proceeded on the ground that the plaintiff, though not born blind, was not entitled to his full rights in the family. It may be observed in passing that the rights of the plaintiff were not beyond question until the recent decision of the Judicial Committee in *Mussumat Gunjeshwar Kunwar* v. *Durga Prashad Singh*(1). The arbitrators were of opinion, whether rightly or wrongly, that the plaintiff should not have anything more than a life-interest in the properties. Now the point is whether this conclusion is so patently illegal as to come within the mischief of clause (*c*) of paragraph 14.

A large number of English decisions were quoted by Mr. Somasundaram for the respondent. They all assume that where an error of law appears on the face of the award the error can be remedied by Courts. The various dicta to be found on this subject all refer to the decision in *Hodgkinson* v. *Karnie*(2) as enunciating this proposition. On examining that case, we find this statement of the law in the judgment of WILLS, J., one of the ablest common law Judges of his time :

"I am entirely of the same opinion, and I should have been of that opinion if I had come to the conclusion that that very experienced arbitrator, Mr. Richards, had decided this matter as erroneously as, upon reading the affidavits, I am satisfied that he decided rightly. The parties agreed to take his decision upon the question of damages instead of that of the Court and Jury ; and if we were now to substitute ours for his, we should be acting contrary to the agreement of the parties, and without jurisdiction. It is quite clear that before the passing of the last Common Law Procedure Act, the Court could not, as a general rule, interfere with the discretion of an arbitrator. An exception had been introduced in the case of a mistake of law apparent on the face of the award. I do not say that my reason assents to that exception. We are bound by

(1) (1917) 22 M.L.T., 403 (P.C.). (2) (1857) 3 C.B. (N.S.), 189.

the course of decisions. I regret that we are so, however, this case does not come within the exception."

If we may say so with respect, we share the doubt expressed by the learned Judge regarding the 'practicability' and soundness of enforcing the time-honoured principle referred to by him. Moreover, the later decisions to which we shall presently refer and the Civil Procedure Code do not appear to have accepted the proposition that an erroneous view of law appearing on the face of the award vitiates it. In *King and Duveen, In re*(1) CHANNEL, J., said that if on a question of law referred to the decision of an arbitrator he has given an erroneous decision, it should not be questioned by the Court. In *Muhammad Newaz Khan* v. *Alam Khan*(2), the Judicial Committee have laid down the same principle. In *Ghulam Khan* v. *Muhammad Hassan*(3) they say expressly that an arbitrator has jurisdiction to decide both on facts and on law and that the Courts have no right to sit in judgment over his views. In *Adams* v. *Great North of Scotland Railway Company*(4), the same view was held. See also *Dinabhandu Jana* v. *Chintamoni Jana*(5). As regards the decision in *British Westing House Electric and Manufacturing Company, Limited,* v. *Underground Electric Railway Company of London, Limited*(6), what was said by Lord HALDANE in the House of Lords was that if the result of an arbitration was induced by a wrong direction as to law given by a Court, the Appellate Court is not powerless and the Court below is not entitled to shelter itself under the award. It is true that the decision of a Division Bench in *Landauer* v. *Asser*(7) supports the contention of the learned vakil for the respondents. But that case stands by itself, and although there are dicta of a very general character in the English Reports, in no case except in the case in *Landauer* v. *Asser*(7) was an award set aside on the ground that the arbitrator has given an erroneous decision on law.

Coming to the Civil Procedure Code, we think that clause (c) of paragraph 14 should be confined to cases like those where the

(1) (1913) 2 K.B., 32. (2) (1891) I.L.R., 18 Calc., 414 (P.C.).
(3) (1902) I.L.R., 29 Calc., 167 (P.C.).
(4) (1891) A.C., 31. (5) (1914) 19 Calc., W.N., 476.
(6) (1912) A.C., 673. (7) (1905) 2 K.B., 184.

MADUPALLI VENKATA-SWAMI v. MADUPALLI SUBANNA.

SESHAGIRI AYYAR, J.

arbitrator perversely and manifestly misapplies a rule of succession or applies to the parties a rule by which they are not bound; we are not to be supposed to have exhausted the category of the cases which may come under that clause, but we do think that where the arbitrator has applied his mind honestly and has arrived at a decision to the best of his ability, the fact that a Judge might take a different view is not a ground for holding that the award is illegal on its face. We must reverse the decrees of the Courts below and remand the suit to the Court of First Instance for its being heard on the other objections taken to the award. Costs to abide the result.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

1917, Nov. 30 and Dec. 12.

ABI DHUNIMSA BIBI, APPELLANT (PLAINTIFF),

v.

MAHAMMAD FATHI UDDIN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Muhammadan Law—Dower, relinquishment of, by a Muhammadan woman of the age of 15, whether valid—Indian Majority Act (IX of 1875), sec. 2—'Act in the matter of dower,' meaning of—Indian Contract Act, sec. 11.

A relinquishment of her right to dower by a Muhammadan woman, who is a minor under the Indian Majority Act, is invalid under the Indian Contract Act (IX of 1872).

To relinquish dower is not 'to act in the matter of dower' within section 2 of the Indian Majority Act.

SECOND APPEAL against the decree of S. G. ROBERTS, District Judge of South Arcot, in Appeal No. 2110 of 1915, preferred against the decree of A. V. RATNAVELU PILLAI, District Munsif of Chidambaram, in Original Suit No. 627 of 1914.

Plaintiff, a Muhammadan woman aged about 20, sued her deceased husband's heirs for recovery of Rs. 725, the dower settled at the time of her marriage. The defendants pleaded

* Second Appeal No. 1277 of 1916.