

## APPELLATE CIVIL.

*Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.*

V. N. KRISHNA IYER (DEFENDANT), APPELLANT,

1932,  
January 11.

v.

V. N. SUBBARAMA IYER AND ANOTHER (PLAINTIFFS),  
RESPONDENTS.\*

*Code of Civil Procedure (Act V of 1908), Sch. II, para. 20—  
“Subject-matter of award” in—Meaning of—Court within  
whose jurisdiction portion only of immovable properties  
forming subject-matter of award is situate—Jurisdiction of,  
to entertain application to file the award—Application to  
file award under para. 20.—Separate order on, for filing  
of award under para. 21—Necessity for—Absence of—  
Appeal—Right of, in such a case.*

The expression “the subject-matter of the award” in paragraph 20 of Schedule II of the Code of Civil Procedure means the whole, and not the whole or a portion, of the subject-matter of the award. A Court within whose jurisdiction a portion of the immovable properties forming the subject-matter of an award is not situated has, therefore, no jurisdiction to entertain an application to file the award made under that paragraph.

When an application is made under paragraph 20 of Schedule II of the Code, the Court should first pass a separate order that the award be filed under paragraph 21 of that schedule and then proceed to pronounce judgment according to the award. In a case in which there is no such separate order the Court must be deemed to have passed such an order and the party affected will have the right to appeal from it.

APPEAL against the order of the Court of the Subordinate Judge of South Malabar at Palghat, dated 19th August 1930 and made in Original Suit No. 47 of 1926.

*T. M. Krishnaswami Ayyar* (with him *C. K. Viswanatha Ayyar*) for appellant.

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\* Appeal against Order No. 69 of 1931.

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*Advocate-General (A. Krishnaswami Ayyar), with him P. S. Raghava Raman and C. S. Vaidyalinga Ayyar for respondents.*

### JUDGMENT.

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ANANTAKRISHNA AYYAR J.—The appellant before us is the youngest of the three brothers of an undivided Hindu family, the eldest being the first respondent, and the other brother being the second respondent. The family had a cloth trade at Palghat, and another business at Mysore and Bangalore relating to mining leases, etc. The family possessed immovable properties in Malabar, in Bangalore and in Travancore. Disputes having arisen between the brothers, they executed an agreement in favour of three persons to settle as arbitrators the matter of partition of all the joint family properties including the businesses at Palghat and Bangalore. On the allegation that the arbitrators passed the award—Exhibit C—dividing the immovable properties among the brothers in the way they thought fit and also deciding how the business should be disposed of and fixing the liability of the parties to each other in various respects, the two respondents filed an application in the Court of the Subordinate Judge of Palghat under paragraph 20 of the second schedule of the Code of Civil Procedure—praying that “the award may be filed in Court and a decree passed in terms thereof.” The appellant, who was made the respondent to the said petition, raised various objections to the filing of the award, one of the objections being that the lower Court had no jurisdiction to entertain the application as the whole of the subject-matter of the award was not within the jurisdiction of the lower Court [paragraph 14 (a) of the defendant’s statement of objections filed in the lower Court]. The lower Court

overruled that objection, and, finding that the objections raised by the appellant on the merits had not been made good, directed the award to be filed in Court and a decree drawn up, remarking at the same time,

“ but there will be no directions in the decree as regards the immovable properties situated in Parur (Travancore) and Bangalore.”

The decree as drafted however contained the provision in paragraph 9 that

“ the plaintiffs be at liberty to institute proper proceedings in Courts having jurisdiction over the properties situated in Mysore and Travancore States based on this judgment and to obtain reliefs as provided for in the award.”

In this appeal, the appellant reiterated his objection as regards jurisdiction of the lower Court to entertain the application under paragraph 20 of Schedule II of the Code of Civil Procedure, and also complained against the decision of the learned Subordinate Judge on the merits. The objection as to the jurisdiction, since it goes to the root of the whole proceedings, has first to be considered. The arbitrators awarded the house properties in Bangalore to the first respondent, and the immovable properties in Travancore to the first and the second respondents jointly. The other immovable properties in Malabar were allotted some to the first respondent, some to the second respondent, and some to the appellant. We need not here give details of the mode in which the business at Palghat and Bangalore was dealt with by the arbitrators.

The application to the lower Court was made under paragraph 20 of Schedule II of the Code of Civil Procedure. Sub-clause (1) of the said paragraph enacts as follows :—

“ Where any matter has been referred to arbitration without the intervention of a Court and an award has been

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made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court."

It is argued that the Court to which an application is made should have jurisdiction "over the subject-matter of the award", that is, it is contended—over "the whole" of the subject-matter of the award; as the lower Court had admittedly no jurisdiction over the immovable properties of the joint family situated in Travancore, it is argued that the lower Court had no jurisdiction to entertain an application under paragraph 20.

On the other side, it was argued that the words "subject-matter of the award" should be considered with reference to the jurisdiction of the Courts in British India and as meaning "subject-matter situated in British India"; and as the Subordinate Judge's Court is a Court of unlimited jurisdiction, and, as many items of immovable properties included in the award are situated in Malabar within the lower Court's jurisdiction, the lower Court should be taken to have jurisdiction over the subject-matter of the award.

In this case we need not decide whether the properties situated in Bangalore should be taken to be properties situated outside British India, since it is admitted that the award has dealt with the immovable properties of the family situated in the Travancore State, and, as the lower Court had no jurisdiction over immovable properties in the Travancore State, the present is a case where a portion of the properties which form the subject-matter of the award is situated outside British India.

No direct decision on the question that we have to decide has been quoted to us. A similar question was

raised in *Ramlal Hargopal v. Kishanchand*(1). There also an application was made to file a private award under section 525 of the Code of 1882. At page 372, their Lordships of the Privy Council observed as follows :—

“It was contended on behalf of the appellant that if an award relates to more than one subject-matter and only one is within the jurisdiction of the Court, it cannot be filed in that Court; in fact, that it can be filed in no Court, because no one Court would have jurisdiction over the whole subject-matter. Their Lordships deem it unnecessary to rest their judgment on any such general proposition. In their view, there is no substantial question decided by the award which affects property within the jurisdiction of the Berar Court. No one of the three temples is within that jurisdiction, and two of them are within the dominions of the Nizam and outside British India. A large part of the award relates to family questions and money payments to be made by members of the family; and all the members of the family are within the Nizam's dominions. It was urged that two of the villages which form the principal endowments of the temples are situated in Berar. But their Lordships cannot find that there was any dispute concerning the ownership or management of the villages nor any denial that the revenues must be appropriated to the three temples.”

Each side claimed that the observations made by their Lordships at pages 372 and 373 of the report supported its respective contentions; but we are unable to gather that their Lordships decided the question now before us. Finding as a fact that there was no dispute concerning the ownership or management of the villages within British India, they proceeded to observe that no decree could be framed upon that award which would affect any person or property within the jurisdiction. Their Lordships therefore had not to decide the question whether such an award could be filed and a decree passed thereon if the subject-matter

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(1) (1923) I.L.R. 51 Calc. 381 (P.O.).

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of the award comprised immovable properties both within British India and outside.

One has therefore to seek light on this question from other sources. *Prima facie*, the expression "over the subject-matter of the award" would seem to imply over the *whole* of the subject-matter of the award. The words "whole" or "in part" occur in paragraph 11, of the second Schedule, and, in section 17 of the Code, the words "any portion of the property" occur. If therefore the intention of the Legislature was that the words "subject-matter of the award" should mean the whole or a portion of the subject-matter of the award, then it is reasonable to expect that it would have said so expressly. An analogous question arose under section 327 of the Code of Civil Procedure (Act VIII of 1859) in *Gangappa v. Kapinappa*(1), and SCOTLAND C.J. and COLLETT J. observed at pages 128 and 129 as follows:—

"The application must be made to a Court having jurisdiction in the matter 'to which the award relates'. . . From this it appears quite clear to us that the Court applied to meet be one having jurisdiction in respect of the whole matter."

In *Rethamalai Servai v. Ramaswami Servai*(2) KUMARASWAMI SASTRI J. observed at page 58 as follows:—

"Paragraph 20 of the second Schedule of the Code of Civil Procedure directs the filing of the award in any Court having jurisdiction over the subject-matter of the award. By 'subject-matter of the award', I think, is meant the whole matter dealt with and decreed by the award, and not any particular portion which affects any particular party. The jurisdiction of the Court will depend upon the reliefs awarded by the award."

The same view was taken by the same learned Judge in *Nemichand Sowcar v. Kesarimull Sowcar*(3), where an

(1) (1869) 5 M.H.C.R. 128.

(2) (1919) 10 L.W. 57.

(3) (1928) 56 M. L.J. 35.

application for a decree in terms of an award was dismissed, the properties being situated some outside British India and some within Madras. No doubt the learned Judge's decision was based on other grounds also. The decision in *Murlī Mal v. Sant Ram*(1) was relied on, as a case similar to the present. Our attention was also drawn to the observations made by the learned referring Judges in *S. A. Mathan v. S. R. Samson*(2). The award in that case dealt not only with the immovable properties within the jurisdiction of the British Courts but also with immovable properties in the French territory of Pondicherry. The award was filed and a decree passed in terms thereof by the Subordinate Judge of Cuddalore, but the learned Judges of the High Court held that the Court of the Subordinate Judge of Cuddalore had no jurisdiction to have the award filed in the circumstances nor to pass a decree in terms thereof.

Thus, whatever authority there is on the point seems to favour the contention raised by the learned Advocate for the appellant. When an application is made under paragraph 20, notice is given to the other parties to the arbitration; and under paragraph 21, when the Court is satisfied of certain particulars mentioned therein, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award. Upon judgment so pronounced, a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award. Thus the judgment should be in accordance with the award; and the decree that should follow should be in accordance with the judgment. Therefore the decree should be in accordance with the award. The award deals with immovable property

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(1) A.I.R. 1929 Lah. 24.

(2) (1931) I.L.R. 9 Rang. 480, 484, 485.

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outside British India. The decree also therefore should deal with immovable property outside British India. Has the Court in British India jurisdiction to pass such a decree? *Prima facie*, not.

Then it was suggested that the decree should be confined to the subject-matter of the award in so far as the same is within the jurisdiction of the British Indian Courts according to the Municipal law of British India. That probably is the view taken by the learned Subordinate Judge in the present case; for in his judgment, in paragraph 75, he observed as follows:—

“The award will be filed in Court and a decree will be drawn up, but there will be no directions in the decree as regards the immovable properties situated in Parur (Travancore) and Bangalore.”,

though, as already noted, the decree in paragraph 9 declared that

“the plaintiffs be at liberty to institute proper proceedings in Courts having jurisdiction over the properties situated in Mysore and Travancore States based on this judgment and to obtain reliefs as provided for in the award.”

Has the Court jurisdiction to direct the award to be filed in part and pass a decree in terms of portions only of the award under paragraph 20 of the second Schedule? It seems to us that it is not open to the Courts to do so in a case like the present. The wording of paragraph 21 that “the Court shall pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow” would seem to be, *prima facie*, against such a contention. That contention is also opposed to various decisions passed by several Courts in India. In *Mana Vikrama, the Zamorin of Calicut v. Mallichery Kristnan Nambudri*(1) TURNER C.J. and MUTTUSWAMI AYYAR J. held that

“a Court could not file an award under section 525 of the Code of 1882 only as regards a portion of the award.”



They further observed at page 69 as follows :—

“ Although an award may perhaps be held enforceable in this country if the invalid portion can be separated from, and is independent of, the valid portions of the award, it cannot be enforced by summary proceedings under section 526 of the Code. It is not without reason that in such a case the Legislature should think it inexpedient to give the party seeking to enforce the award a summary remedy, and it may have advisedly left him to obtain from the Court the relief to which he may be entitled by regular proceedings.”

See also *Allarakhia Shivji v. Jehangir Hormasji*(1); *Altif Hossein v. Grish Chunder Roy*(2); *Dandekar v. Dandekars*(3); *Thiruvengadathingar v. Vaidinatha Ayyar*(4) and *Mustafa Khan v. Phulja Bibi*(5).

In *Narsingh Narain Singh v. Ajodhya Prasad Singh*(6) the learned judges, MOOKERJEE and CARNDUFF JJ., observed at page 114 as follows :—

“ We may add that it is not competent to the Courts below in a proceeding under section 525 of the Code of 1882 to direct that the award be filed in part; the Court was bound to refuse the application if in its opinion the award was open to attack in part.”

Turning to English Law we find the following :—

“ It is clear that the property to be partitioned must be within the jurisdiction of the Court. The Chancery Division has no jurisdiction to order partition of immovable property outside the jurisdiction.”

See Halsbury's Laws of England, Volume XXI, page 838, paragraph 1569. In such cases it is not entirely correct to say that the relief sought for can be entirely obtained through the personal obedience of the defendants within the meaning of section 16 of the Code of Civil Procedure. The principle of *Penn v. Baltimore*(7) would not, in our opinion, apply to such a case, having

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(1) (1873) 10 B.H.C.R. 391.

(2) (1871) 15 W.R. 556.

(3) (1882) I.L.R. 6 Bom. 663, 668.

(4) (1905) I.L.R. 29 Mad. 303.

(5) (1905) I.L.R. 27 All. 526.

(6) (1911) 15 C.L.J. 110.

(7) (1750) 27 E.R. 1132.

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regard to the wordings of paragraphs 20 and 21 of the second Schedule. Anyhow we are here concerned only with the question of jurisdiction to entertain the application, and not with the subsequent question whether a private award which the Court had jurisdiction to file could be split up when separable, and filed in part, with a decree following only the portion of the award so directed to be filed.

As observed in *Bindessuri Pershad Singh v. Jankee Pershad Singh*(1), when the question of jurisdiction is raised, that question has to be decided first before proceeding further with the matter. In that case, with reference to an application filed under section 525 of the Code of 1882, the other side raised objection to the jurisdiction of the Subordinate Judge before whom the application was filed. The learned Judges, MITTER and BEVERLEY JJ., observed at page 486 as follows:—

“The Subordinate Judge, before entertaining the application of the respondent, was bound to satisfy himself that he had jurisdiction to entertain it.”;

and they added that

“with reference to such objections he was bound even to take evidence before assuming jurisdiction.”

The question of jurisdiction to entertain the application under paragraph 20 of the second Schedule of the Code of Civil Procedure has thus to be first considered and decided by us; and, having regard to the considerations mentioned above, we think that our answer should be that the lower Court had no jurisdiction to entertain the application to file the award in the present case.

It is perhaps needless to mention that paragraph 20 provides a special procedure for filing awards in matters referred to arbitration without the intervention of

Courts and to have decrees passed according to the award. It will be noticed that no appeal lies against such a decree except in so far as the decree is in excess of or not in accordance with the award. There is an appeal provided against an order filing or refusing to file an award in an arbitration without the intervention of the Court by clause (f) of section 104 of the Code of Civil Procedure. Filing awards under paragraph 20 is only an extra and special statutory right conferred on parties under particular conditions imposed by that paragraph. The provisions in paragraph 20 do not constitute any bar to a regular suit to enforce the rights created by an award. Though in the first and the second drafts of the present Code of Civil Procedure it was sought to enact otherwise by the addition of a special clause to that effect to section 525, that was not ultimately done. The framers of the first draft observed as follows with reference to clause 525 :

“One of the principal reasons for the ineffectiveness of arbitration without the intervention of the Courts is that the procedure allowed by the present section has been held not to exclude alternative remedies. It is considered expedient to negative the rulings to this effect.”

The special clause to that effect which was sought to be inserted in the first two drafts was omitted by the expert committee from the Bill which ultimately was enacted as the present Civil Procedure Code. The decisions on the point, therefore, remain good law at present, and the decisions are clear on that point; and it is only necessary to mention the Privy Council decision in *Muhammad Nawaz Khan v. Alam Khan*(1). As observed by their Lordships,

“the refusal of an application for the filing of an award, under section 525 of the Code of Civil Procedure, merely leaves the award to have its own ordinary legal effect; and it cannot

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be contended that an award is not to be relied on as a defence in a suit relating to the special matter dealt with by it only because such an application has not been granted."

Regular suits to enforce rights conferred by an award have been held to lie in *Bhajahari Saha Banikya v. Behary Lal Basak*(1), *Gopi Reddi v. Mahamandi Reddi*(2), *Narasayya v. Ramabhadra*(3), *Krishna Panda v. Balaram Panda*(4), *Rajmal Girdharlal v. Maruti Shivram*(5) and *Harakh Ram Jani v. Lakshmi Ram Jani*(6). We may probably conclude our judgment, as did the learned Judges in the case in *Mustafa Khan v. Phulja Bibi*(7), under somewhat similar circumstances as follows:—

"We wish it to be understood that we decide this appeal entirely upon the question of the true meaning of section 526 of the Code of 1882 (corresponding to paragraphs 20 and 21 of the second Schedule of the present Code), and that we do not determine any other question raised before the Court below."

Without going into any other questions raised, this miscellaneous appeal must be allowed with costs here and in the Court below, and the application filed in the lower Court will be returned to those who presented it.

The learned Subordinate Judge ought to have first passed an order that the award be filed under paragraph 21 of the second Schedule of the Code of Civil Procedure. He should then have proceeded to pronounce judgment according to the award; and a decree should follow the judgment so pronounced. In this case it does not appear that there was a separate order, as contemplated by paragraph 21; but that would not prejudice the party affected from filing an appeal against the order, which should be deemed to have

(1) (1906) I.L.R. 33 Calc. 881.

(2) (1891) I.L.R. 15 Mad. 99.

(3) (1892) I.L.R. 15 Mad. 474.

(4) (1896) I.L.R. 19 Mad. 290.

(5) (1920) I.L.R. 45 Bom. 329.

(6) (1920) I.L.R. 43 All. 108.

(7) (1905) I.L.R. 27 All. 526.

been passed by the lower Court in the circumstances. In fact, it was not disputed before us that the matter should be viewed in this light, and it is clear that the present civil miscellaneous appeal is competent; see *Selvarayan Samson v. Amalorpavanadham*(1).

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REILLY J.—I agree.

A.S.V.

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### APPELLATE CIVIL.

*Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.*

P. O. KARTHIRUMA GOUNDAN (FIRST RESPONDENT),  
PETITIONER,

1922,  
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v.

RANGAMMAL AND ANOTHER (PETITIONER AND THIRD  
RESPONDENT), RESPONDENTS.\*

*Indian Succession Act (XXXIX of 1925), sec. 192—Petition presented under—Jurisdiction of Subordinate Judge to deal with—Madras Civil Courts Act (III of 1873), sec. 29—General notification of High Court issued under—Subordinate Judge empowered to deal with matters under Indian Succession Act by—Sec. 29 (1) of Madras Civil Courts Act—Effect of.*

A Subordinate Judge empowered to deal with matters under the Indian Succession Act by a general notification of the High Court issued under section 29 of the Madras Civil Courts Act has jurisdiction to deal with a petition presented to him under section 192 of the Indian Succession Act.

Section 29 (1) of the Madras Civil Courts Act extends not only to proceedings under Part IX of the Indian Succession Act but to proceedings under any part of that Act other than those of which a District Delegate can dispose. The words "which cannot be disposed of by District Delegates" do not

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(1) (1927) 55 M.L.J. 262.

\* Civil Revision Petition No. 1033 of 1931.