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That share would be one-third under the Mitakshara law, which has been rightly found by the lower Court to apply to the present case.

As the rights of the parties are ascertained in this case, it is unnecessary to require the defendants first party to bring another suit for partition, and accordingly the decree will be drawn up thus: that the plaintiffs do recover two-thirds of the properties Nos. 1 to 6, their claim as regards property No. 7 being dismissed.

Mesne profits will be given on the same principle.

Costs will be given in proportion to the amounts decreed, and dismissed both in this and the lower Court.

Decree modified.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

BIJADHUR BHUGUT (PLAINTIFF) *v.* MONOHUR BHUGUT (DEFENDANT).*

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Appeal—Application to file award—Order rejecting Appeal, Matters to be decided upon—Application to file an award—Court-fee on such application.

No appeal lies from an order upon an application to file an award under s. 525 of the Civil Procedure Code. Upon an application to file an award under s. 525 of the Civil Procedure Code, the Court to which the application is made has no jurisdiction to enquire whether the defendant has agreed to the terms of the instrument referring the matter to arbitration, or whether the terms were obtained by fraud. When such objections are made, it is the duty of the Court to reject the application under s. 525, and refer the parties to a regular suit.

The proper Court-fee upon an application to file an award under s. 525 is the Court-fee prescribed for applications, and not the Court-fee upon a plaint.

IN this case the plaintiff sought to enforce the filing of an award, said to have been made by an arbitrator appointed by himself and the defendant, as well as for possession of the properties included in the award. The defendant denied that he had entered into any agreement to refer the matters to which the

* Appeal from Original Decree No. 6 of 1882, against the decree of Baboo Kali Prosunno Mookerjee, Sub-Judge of Sarun, dated the 1st November 1881.

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award related to arbitration, and contended, among other things, that the award, which the plaintiff sought to enforce, was fraudulent and collusive, and made in his absence. The following issues were framed:

1*st*.—Whether the plaint is properly stamped?

2*nd*.—Whether the defendant did not agree to the terms of the ekrarnama, and they were fraudulently made?

3*rd*.—Whether the award is contrary to the ekrarnama?

4*th*.—Whether the arbitrator is guilty of any misconduct?

5*th*.—Whether the award can be enforced, and the plaintiff can recover possession under it?

With regard to the first issue the lower Court ordered the defendant to pay the sum of Rs. 328-8, being the difference between the stamp on an application and the Court-fee on a plaint for property of the value of the subject-matter of the award. On the second and third issues the Court made the following remarks: "It is to be observed that the plaintiff seeks in this case to have an arbitration award filed under s. 525 of the Civil Procedure Code. The defendant contends that the award is collusive and fraudulent, the arbitrator guilty of corruption, and that matters, which were not intended to be referred to arbitration, have been included in the award. These objections of the defendant are such as are contemplated by ss. 520 and 521 of the Civil Procedure Code. When such objections are raised against an attempt to file an award under s. 525, the rule laid down by PONTIFEX, J., in the case of *Sreeram Chowdhry* v. *Dinobundhoo Chowdhry* (1), must be followed. His Lordship says: 'But in my opinion this goes to show that it was not intended that an award should be filed under s. 525 if either of the parties to the reference showed cause against it by affidavit or verified petition within the provisions of s. 520 or s. 521. In such cases I think it would be the duty of the Court, without enquiring into the validity of the cause so shown, to refuse the application to file the award, and to leave the applicant to his remedy by suit.' In this case the defendant's objections amount to those mentioned in ss. 520 and 521, and when such objections have been

(1) I. L. R., 7 Calc., 490.

made, the plaintiff's prayer for filing the award must, under the above precedent, be refused.

"On all these accounts I am of opinion that the relief claimed by the plaintiff cannot be allowed to him in this case, and that his case must fail both on facts and law."

The plaintiff appealed to the High Court.

Baboo *Chunder Madhub Ghose*, and Baboo *Aubinash Chunder Banerjee*, for the appellant.

Baboo *Mohesh Chunder Chowdhry*, and Baboo *Kali Kissen Sen* for the respondent.

The judgment of the Court (MITTER and TOTTENHAM, JJ.) was delivered by

MITTER, J.—We are of opinion that in this case there is no appeal, because the proceedings in the lower Court were held under ss. 525 and 526 of the Civil Procedure Code. While rejecting this appeal upon this ground, we are at the same time of opinion that the lower Court has exercised a jurisdiction not vested in it by law in deciding the question raised in the second issue mentioned in its judgment, *viz.*, whether the defendant did not agree to the terms of the ekrarnama, and they were fraudulently made. It appears from s. 526 that the Court has jurisdiction to adjudicate only upon the grounds of objection mentioned in ss. 520 and 521. Now the defendant's objection, that he did not agree to the terms of the ekrarnama, and that he was imposed upon in being persuaded to put his signature to the particular ekrarnama which was the foundation of the award in this case, is not one which comes within the purview of ss. 520 and 521. When an objection of this nature was raised it was the duty of the Court to reject the application under s. 525, and refer the parties to a regular suit. No doubt the defendant also raised certain other objections which came within the purview of ss. 520 and 521, but the lower Court has not disposed of them, being of opinion that the mere fact of their having been mentioned in the petition of objection would oust it of its jurisdiction to deal with the case under ss. 525 and 526. Whether this view of the law is correct or not, it is not necessary to determine, but it is quite clear to us that the lower Court was not competent in this case to adjudicate upon the second issue raised before it,

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viz., "whether the defendant did not agree to the terms of the ekrarnama, and they were fraudulently made." We, therefore, set aside the decree of the lower Court by which the plaintiff's suit was dismissed, and direct that the application under s. 525 should be rejected upon the ground that the defendant had raised an objection which the Court under ss. 525 and 526 could not dispose of. It further appears that the lower Court, upon the objection of the respondent before us on the 28th March 1881, directed that the plaintiff should pay a Court-fee stamp of Rs. 328-8-0 to make up the deficiency in the Court-fee stamp required for the plaint. The lower Court was evidently under the impression that this being a suit the plaintiff was bound to pay the Court-fee for a plaint according to the value of the suit as required by the Court Fees' Act, but it has evidently overlooked the provision of the law that the application for enforcing an award under s. 525 shall be simply numbered and registered *as a suit* between the parties. It is not considered a suit, but it is to be numbered and registered *as* a suit. Therefore, under the Court Fees' Act, the plaintiff appellant was only bound to pay the Court-fee for an application to the lower Court. The order of the lower Court, dated 28th March 1881, directing the plaintiff to pay Rs. 325-8 Court-fee stamp to make up the deficiency is therefore erroneous, and in making that order the Court acted in the exercise of its jurisdiction *illegally*. We, therefore, set aside that order also. That order being set aside the plaintiff will be entitled from the lower Court to a certificate for the refund of that stamp. Under the circumstances of this case, we think that in the lower Court each party should bear their own costs. In this Court the respondent is entitled to recover his costs from the appellant.

Decree modified.