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brought into litigation for purposes of partition in this manner, the broad partition which can be effected only by a Revenue Court, such as is contemplated by ss. 107 to 139 of the Revenue Act, could not be properly worked. The only ruling upon which reliance is placed for the opposite view by Mr. *Ratan Chand* on behalf of the respondents is the ruling to which I have already referred. And as the judgment in that case was delivered by myself, I think I need only say that the effect of that judgment is simply to hold that when a civil Court has passed a decree whereby certain trees were to be uprooted, without specifying the exact area from where the trees were to be uprooted, the Court executing that decree (behind which decree such Court could not go) could give effect to that decree without resorting to the provisions contained in s. 265 of the Code. I do not understand that ruling to mean that any co-sharer of a joint zamíndári estate could, by suing for partition and division of isolated plots of land, bring about a state of things whereby it would (when the question arises before the Revenue Court) be extremely inconvenient, if not impossible, to duly effect a partition, such as the Revenue Act in s. 135 and in other sections contemplates. I hold therefore, that the nature of the claim set forth in the plaint in this suit, and the defence set up thereto, gave rise to a dispute of such a character as could not be entertained by a civil Court, and should have been dismissed upon this ground *in limine*. For these reasons I decree this appeal, setting aside the decrees of both the lower Courts. The plaintiffs-respondents' suit will stand dismissed with costs in all the Courts.

Appeal allowed.

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June 20.

Before Mr. Justice Mahmood.

NAURANG SINGH AND OTHERS (DEFENDANTS) *v.* SADAPAL SINGH, PLAINTIFF.*

Arbitration—Revocation of submission to arbitration—Appellate decree in accordance with award—Second appeal—Civil Procedure Code, ss. 508, 521, 522, 582.

By reason of s. 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of first appeal, holding that the award was not open to

* Second Appeal, No. 928 of 1886, from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 25th February, 1886, reversing a decree of Babu Nihal Chandra, Munsif of Azamgarh, dated the 18th July, 1885.

objection upon the grounds mentioned in s. 521, passes a decree strictly in accordance with the award, such appellate decree is entitled to the same finality as the first Court's decree would have been under the last paragraph of s. 522, and cannot be made the subject of second appeal. *Pareshnath Dey* v. *Nobin Chunder Dutt* (1) and *Rughoober Dyal* v. *Maina Koer* (2) dissented from.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Mr. *G. T. Spankie*, for the appellants.

Mr. *W. S. Howell*, for the respondent.

MAHMOOD, J.—Mr. *Spankie*, who has appeared on behalf of the defendants-appellants in this case, has conceded that in view of the ruling of this Court in the case of *Nainsukh Rai* v. *Umadai* (3), which followed the ruling of the Lords of the Privy Council in *Pestonjee Nussurwanjee* v. *Manockjee and Co.* (4), the first ground taken in the memorandum of appeal is not maintainable; and the learned counsel has also abandoned the third ground which appears in the memorandum of appeal. The only ground upon which he insists is the contention contained in the second ground of the memorandum of appeal; and in order to dispose of that contention it is necessary to refer to the following facts :—

The suit was for possession of certain zamindári shares, and it was instituted in August, 1884. On the 10th January, 1885, the parties agreed to refer the matter to arbitration, and on the same day the Court of first instance made an order referring the dispute to the arbitration of the persons named in the submission. Subsequently, on the 19th January, 1885, the defendants put in an application, complaining of the arbitrators, and praying that the case might be disposed of on the merits. On the 23rd January, 1885, an order was passed by the first Court to the effect that the objections raised by the defendants were not sufficient to disturb the submission, and that the proper time for presenting such objections was after the arbitration award. That award was made on the 16th February, 1885, and the defendants presented a second application containing their objections to the award, which objections charged the arbitrators with misconduct and corruption. Those objections were allowed by the Court of first instance, without going into the evidence on the allegations, on the 26th February,

(1) 12 W. R., 93.
(2) 12 C. L. R., 564.
(3) I. L. R., 7 All. 273.
(4) 12 Moo. I. A., 130.

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1885, and that Court proceeded to deal with the case upon the merits irrespective of the arbitration award of the 16th February, 1885. The result of such trial was to decree the claim in part. This decree was made on the 18th July, 1885, and from that decree an appeal was preferred by the plaintiff, and the lower appellate Court remanded the case under s. 566 of the Civil Procedure Code for inquiry as to whether the arbitration award of the 16th February, 1885, was valid with reference to the question raised by the defendants under s. 521 of the Civil Procedure Code. This order of remand was made on the 1st December, 1885, and the case going back to the Court of first instance, the defendants appear to have been served with notice calling upon them to produce evidence in the Court of first instance. But they did not do so, and the Court of first instance recorded its finding upon the issue remanded, finding that no such ground of complaint was proved as was contemplated by s. 521 of the Code, because the defendants had produced no evidence. Upon receipt of this finding the Court of first appeal held that the arbitration award of the 16th February, 1885, was not open to any legal objection; that it was valid and binding upon the parties, and holding this, that Court passed a decree in accordance with the terms of that award, thereby decreeing the whole claim of the plaintiff-respondent.

From that decree this second appeal has been preferred, and Mr. *Howell*, on behalf of the respondent, contends that the appeal does not lie, because under the last part of s. 522 of the Civil Procedure Code, the decree passed by the lower appellate Court, being in accordance with the award, is non-appealable. On the other hand, Mr. *Spankie*, relying upon the ruling of the Calcutta Court in the case of *Pureshnath Dey* v. *Nobin Chunder Dutt* (1), which was followed in the case of *Rughoobur Dyal* v. *Maina Koer* (2), contends that because the decree of the first Court was not in accordance with the arbitration award, the mere circumstance that the decree of the lower appellate Court reversing the decree of the Court of first instance gives effect to such award will not preclude the right of second appeal which would otherwise exist under the law. Then the learned counsel further argues that the Court of first instance, to which the case

(1) 12 W. R. 93. (2) 12 C. L. R. 564.

was remanded under s. 566 of the Code, did not allow sufficient time to the defendants-appellants for producing evidence to prove the corruption and misconduct of the arbitrators, as they alleged in their petition of objections of the 18th February, 1885, and that therefore the non-production of evidence was matter to be dealt with as such, with reference to the allegations contained in the defendants-appellants' application of the 13th February, 1886, where they stated that one of the petitioners had been seriously ill, and the other was taking care of the other appellant, and that only five days were allowed for production of evidence. I am of opinion that both the rulings upon which Mr. *Spankie* has relied support his contention. But with due respect for the views of the learned Judges who decided those cases, I find myself unable to hold that the provisions of s. 521 or s. 522 of the Code are to be limited either to the Court of first instance or to the Court which makes the order referring the case to arbitrators. In neither of the rulings relied upon are there any reasons given for holding that those provisions are not available to the Court of appeal. It is conceded that if the Court of first instance in this case had disallowed the objections to the arbitration award taken by the defendants, and had passed a decree in accordance with the arbitration award, such a decree would have been final, under the last part of s. 522 of the Civil Procedure Code. What is contended is that a Court of first appeal when, in exercising its power as a Court of appeal empowered to deal with the merits, it does exactly what, if the Court of first instance did, would render the decree of that Court final, the decree of such appellate Court is not exempt from appeal under the last part of s. 522 of the Code. I am of opinion that the provisions of the whole of ss. 521 and 522 of the Code are applicable to the Court of first appeal by reason of the provisions of s. 582 of the Civil Procedure Code, and that when a Court of first instance wrongly sets aside an arbitration award, and passes a decree against the terms of such award, and a Court of appeal dealing with the merits of the case comes to the conclusion that the award was not open to any such objections as are contemplated by s. 521 of the Code, and upon that finding passes a decree strictly in conformity with the terms of such arbitration award, such decree of the Court of first appeal is entitled to the same

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finality as a decree of the first Court would have been entitled to under the last part of s. 522 of the Code. This view seems to be supported by the fact that whilst cls. 25 and 26 of s. 588 of the Civil Procedure Code allow appeals from orders superseding an arbitration or modifying an award, no such appeal is allowed from orders passed under s. 521, disallowing objections to arbitration awards. The decree of the learned Judge of the lower appellate Court is, therefore, a decree which is in conformity with the award, because the judgment, of which it is the result, rejects the objections which were raised against such award under s. 521 of the Code. The decree is, therefore, final, and cannot be made the subject of second appeal any more than the decree of the first Court could have been made the subject of the first appeal if it had rejected the objections against the arbitration award and conformed with the requirements of s. 522 of the Civil Procedure Code.

The Code throughout gives to the Court of appeal all the powers that the Court of first instance has in connection with litigation; and if the question did arise as to the questions of minor detail, I should probably hold that the Court of first appeal has all the powers of a Court of first instance in dealing with references to arbitration, and disposing of objections to arbitration awards.

For these reasons I hold that the decree from which this appeal has been preferred is a final decree, and could not be appealed from; and this view, dissenting as it is from the rulings cited by Mr. *Spankie*, renders it unnecessary for me to consider the question whether, under the circumstances of this case, the lower Courts acted rightly in not allowing to the defendants-appellants further time for producing evidence to substantiate the objections contained in the application of the 18th February, 1885, in respect of the corruption or misconduct of the arbitrators. I dismiss this appeal with costs.

Appeal dismissed.