

1897

DALIP
 RAI
 v.
 DEOKI
 RAI, &c.

is not open to a litigant to practically abandon a portion of his contention in one Court and then at his convenience to resuscitate it in another. The effect is that these appeals will be dismissed with costs.

Appeals dismissed.

REVISIONAL CIVIL.

1898
 June 27.

Before Sir Louis Kershaw, Kt., Chief Justice, and Mr. Justice Burkitt.

CHATARBUJ DAS (DEFENDANT) v. GANESH RAM (PLAINTIFF).*

Civil Procedure Code, section 516—Award—Decree passed on award filed in Court without notice of its filing being sent to the parties—Revision.

Held, that it was a good ground for revision of a decree based upon an award filed in Court that no notice of the filing of the award was given by the Court to the parties as required by section 516 of the Code of Civil Procedure, even though the applicant in revision might have received information *aliunde* that the award had been filed. *Rangasami v. Muttusami* (1) followed.

THE plaintiff and defendant in this case having agreed to refer the matters in dispute between them to arbitration, the plaintiff applied to the Court to have the agreement of reference filed in Court. A summons was issued to the defendant, but he did not put in a defence. The case was proceeded with *ex parte*, and the agreement of reference was filed in Court, and ultimately, on the 17th February 1898, the award based on the said agreement was filed within the time limited by the Court. The defendant on the 3rd of March 1898, filed a *vakalat-namah* authorizing his pleader to object to the award, and on the 18th March objections were filed. The material objection of the defendant was that no notice of the filing of the award had been given to him by the Court as required by section 516 of the Code of Civil Procedure. The Court (Subordinate Judge of Mainpuri) held that under the circumstances of the case such notice was not necessary, as the defendant in fact knew that the award

* Civil Revision No. 24 of 1898.

(1) I. L. R., 11 Mad., 144.

had been filed. The Court further held that the defendant's objections were barred by limitation under article 158 of the second schedule to the Limitation Act, and accordingly disallowed the objections and ordered that a decree should be prepared in accordance with the award. Against this order the defendant applied in revision to the High Court.

Mr. *W. Wallach* and Babu *Badri Das* for the appellant.

Pandit *Sundar Lal* and Pandit *Baldeo Ram* for the respondent.

KERSHAW, C. J. and BURKITT, J.—This is an application calling on this Court to exercise its revisional powers in respect of a decree passed on the 28th of March 1898 by the Subordinate Judge of Mainpuri on an award submitted by arbitrators appointed by the parties. The first ground taken in the petition of revision, and the only ground argued before us, is that the learned Subordinate Judge acted with material irregularity, in the exercise of his jurisdiction, in that he passed the decree on the award without first having sent to the parties the notice required by section 516 of the Code of Civil Procedure. It is admitted that notice was not sent; but it was contended, and it is probably true, that the applicant did know that the award had been filed. That matter, however, we regard as immaterial; it was the duty of the Court to send notice. The applicant, in our opinion, might have remained inactive in the case, and was not bound to take any steps in it until he received notice from the Court. This case is on all fours with the case of *Rangasami v. Muttusami* (1). In that case it was observed that the Court of the Munsif which passed the decree was bound to give the petitioners notice of the filing of the award, which it failed to do, and that the omission to do so was a material irregularity. The High Court further went on to hold that the Munsif should not have proceeded to pass a decree in conformity with the award without first hearing the petitioner's objections. In these observations we fully concur, and adopting the form of

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the decree used by the Madras Court, we allow this application. We set aside the decree of the Subordinate Judge. We direct him to restore the suit to the file, and after considering the objections which we understand have been filed by the applicant, to pass such orders as appear to be just. The applicant will have his costs of this application.

APPELLATE CIVIL.

1898.

June 27.

Before Mr. Justice Blair and Mr. Justice Aikman.

RANJIT (PLAINTIFF) v. RADHA RANI AND ANOTHER (DEFENDANTS)*
*Act No. XV of 1856 (Re-marriage of Hindu widows) section 2—Hindu Law
—Hindu widow—Rights of widow in deceased husband's property—
Widows whose re-marriage is valid independently of the Statute.*

Held, that a Hindu widow belonging to the Kurmi caste, in which the re-marriage of widows was permitted, by custom of the caste, independently of Act No. XV of 1856, was not, by reason of her re-marriage, deprived of her right to remain in possession of her deceased husband's estate during her life-time, and that a suit brought during her life-time by the reversioners to the estate of her husband to obtain immediate possession of such estate could not succeed. *Har Saran Das v. Nandi* (1), and *Dharam Das v. Nand Lal Singh* (2), followed.

IN this case the plaintiff claimed certain immovable property which had been owned in his life-time by one Ganga Prasad, a somewhat remote collateral. Ganga Prasad had died in 1893, leaving him surviving his step-mother Radha Rani, who was actually in possession of the property, and a widow, Sugna. Sugna had married again after the death of Ganga Prasad. The parties were Kurmis, amongst whom the re-marriage of widows is permitted. The plaintiff, however, alleged that the defendant Sugna had by her re-marriage lost all right to her deceased husband's property, and that, inasmuch as Radha Rani, being the step-mother of the last owner, could not be his heir, he (the plaintiff) was entitled to the property.

* Second Appeal No. 546 of 1896, from a decree of F. W. Fox, Esq., District Judge of Jhansi, dated the 20th April 1896, confirming a decree of Mr. Azizul Rahman, Subordinate Judge of Jhansi, dated the 4th March 1896.

(1) L. L. R., 11 All., 330.

(2) Weekly Notes, 1889, p. 78.