

would not willingly have been made plaintiffs to it. We therefore must allow the appeal, set aside the decree, and, as the case has been decided on a preliminary point, we remand it under section 562 of the Code of Civil Procedure to the lower Court, to be replaced on the file of pending cases under its original number in the register, for the determination of the issues which have been left undecided. The costs of this appeal must abide the event.

*Appeal decreed and cause remanded.*

1898

BINI SINGH  
v.  
NAWAL  
SINGH.

*Before Mr. Justice Knox and Mr. Justice Blair.*

1898  
January 20.

PITAM MAL (DEFENDANT) v. SIDIQ ALI (PLAINTIFF) AND SUGHRA  
FATIMA AND OTHERS (DEFENDANTS).\*

*Award—Appeal from decree based on an award—Civil Procedure Code,  
section 506—“All the parties to the suit.”*

*Held* that the words “all the parties to a suit” in section 506 of the Code of Civil Procedure refer to the succeeding words of the same section “any matter in difference between them in the suit,” and would not necessarily include parties who never put in any appearance in the Court, and between whom and any of the parties to the submission there was not in fact any matter in difference in the suit. *Deo Nandan v. Bhirju Rai* (1).

THIS was a suit for sale upon a mortgage. During the pendency of the suit the plaintiff and the answering defendants agreed to refer the matters in dispute between them to arbitration. An award was pronounced. Subsequently one of the defendants raised objections to the award, but those objections were disallowed, the Court of first instance holding that it was sufficient that the plaintiff and the answering defendants who had entered an appearance were parties to the submission, and that it was not necessary to join those of the defendants who had never appeared in Court at all. The award was made a rule of Court, and a decree passed thereon. Against this decree the objecting defendant appealed to the District Judge. His appeal was dismissed, and he again appealed to the High Court, raising his former objection that the arbitration was invalid, and the consequent award illegal because all the parties to the suit did not consent to

\* Second Appeal No. 870 of 1898, from a decree of L. M. Thornton, Esq., District Judge of Farrukhabad, dated the 6th September 1898, confirming a decree of Rat Anant Ram, Subordinate Judge of Fatehgarh, dated the 23rd December 1897.

(1) Weekly Notes, 1887, p. 215.

1898

PITAM MAL  
*v.*  
 SADIK ALI  
 AND  
 SUGHEA  
 FATIMA.

refer the matter in difference to arbitration ; and a further ground that the Court of first instance had acted illegally in refusing the appellant's application to summon two of the arbitrators.

Maulvi *Ghulam Mujtaba* (for whom Maulvi *Muhammad Ishaq*), for the appellant.

Pandit *Moti Lal Nehru* (for whom Pandit *Tej Bahadur Sapru*), for the respondents.

KNOX and BLAIR, JJ.—A preliminary objection has been raised to the hearing of this appeal, namely, that inasmuch as the decree is in accordance with the award, no appeal lies. In answer to this, two points have been taken. The first is, that inasmuch as all the parties to the suit did not join in the submission, there was no award which could be made the award of the Court ; and the second, that the Court before which the award came in the first instance, refused to summon two of the arbitrators in accordance with a request made by Seth Pitam Mal, and so there was no judicial determination, and therefore an appeal lies. In support of the first our attention was called to the case of *Deo Nandan v. Bhirgu Rai* (1). The case therein set out does not appear to have been reported in the Indian Law Reports. At first sight this case does seem to be in support of the contention raised, but we prefer to hold that the words "all the parties to the suit" mentioned in section 503, Civil Procedure Code, must refer to the succeeding words, "any matter in difference between them in the suit." In this case the persons who were not parties to the award never put in any appearance in the Court, and so far as we can discover, there was not any matter in difference between them and any other of the persons who submitted the matter in difference between them to arbitration. There is a distinction between "all parties to a suit" and "all the parties to a suit," and the words used in section 503 of the Code of Civil Procedure are "all the parties to a suit.". It has been held by the Calcutta High Court that this section refers to all the parties to a suit who are interested. This appears to us to be the proper interpretation. As regards the second point, we are not prepared to hold that simply because two persons were not summoned, there was no judicial determination by the Court. There is the judgment by the Court

(1) Weekly Notes, 1887, p. 215.

which is a judicial determination. There may have been some irregularities preceding it, but what we have really to remember is that, if the decree is in accordance with the award no appeal lies except in so far as the decree is in excess of, or not in accordance with, the award. There was an award, and no plea has been argued before us that the decree was in excess of, or was not in accordance with, the award. The preliminary objection taken prevails, and this appeal is dismissed with costs.

*Appeal dismissed.*

1898

PITAM MAL  
v.  
SADIK ALI  
AND  
SUGHEA  
FATIMA.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.*

SYEDA BIBI AND ANOTHER (PLAINTIFFS) v. MUGHAL JAN AND OTHERS  
(DEFENDANTS).\*

1902  
January 24.

*Muhammadan law—Shias—Waqf—Invalid waqf—Condition suspending operation of waqf-namah—Condition that waqf-namah should not take effect until registration.*

According to the Shia law it is one of the essential conditions precedent to the validity of a waqf that it should not be rendered contingent upon any future event, whether such event is likely or possible to occur, or even when it is certain to occur, such as the beginning of the next month, or the occurrence of the death of the waqf.

Hence where a Muhammadan of the Shia sect executed a waqf-namah in which it was provided that "this deed of waqf shall come into force from the date of its registration, no one shall be at liberty to take any objection, etc.," it was held that this condition was repugnant to the doctrine of the Shia law and the waqf was invalid. *Agha Ali Khan v. Altaf Husain Khan* (1) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Messrs. Abdul Racoof and Karamat Husain, for the appellants.

Mr. W. M. Colvin, the Hon'ble Mr. Conlan and Pandit Sundar Lal, for the respondents.

STANLEY, C.J. and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Jaunpur in a suit brought by the plaintiff for the recovery of the property of the late Syed Hasan Ali by right of inheritance, and for a declaration that a

\* First Appeal No. 300 of 1898 from a decree of Maulvi Muhammad Abdul Ghafur, Subordinate Judge of Jaunpur, dated the 8th September 1898.

(1) (1892) I. L. R., 14 All., 429.