

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

BASANT LAL (PLAINTIFF) v. KUNJI LAL AND ANOTHER
(DEFENDANTS)*

1905
May 17.

*Civil Procedure Code, section 525—Award—Order rejecting application to file
award made out of Court—Appeal.*

Held that no appeal will lie from an order refusing to file an award made between the parties without the intervention of a Court. *Bhola v. Gobind Dayal* (1) and *Katik Ram v. Babu Lal* (2) followed. *Ghulam Khan v. Muhammad Hassan* (3) distinguished. *Muhammad Nawaz Khan v. Alam Khan* (4) referred to.

THIS was an application under section 525 of the Code of Civil Procedure praying that an award which the applicants alleged had been made as between them and the opposite parties on the 20th of December 1900 as the outcome of a private reference to arbitration might be made a rule of Court and a decree passed thereon. The opposite parties took numerous objections to the award being filed, and amongst others that long before the award was made they had for good reason revoked their submission to arbitration. The Court (Subordinate Judge of Cawnpore) found that under the special circumstances of the case the defendants were justified in revoking their submission, and therefore refused to file the award and rejected the application. Against this order one of the applicants appealed to the High Court where, on the appeal coming on for hearing, the respondents took a preliminary objection that no appeal lay from the order complained of.

Babu *Jogindro Nath Chaudhri* and Pandit *Moti Lal Nehru*, for the appellant.

The Hon'ble Pandit *Sundar Lal* and The Hon'ble Pandit *Madan Mohan Malaviya*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This appeal arises out of the rejection by the Court below of an application to file an award under section 525 of the Civil Procedure Code. The award was passed in arbitration proceedings entered into by the parties without the intervention of the Court. The present

* First Appeal No. 111 of 1903, from a decree of Babu Bipin Bihari Mukerji, Subordinate Judge of Cawnpore, dated the 17th of February 1903.

(1) (1884) I. L. R., 6 All., 186.
(2) Weekly Notes, 1903, p. 234.

(3) (1901) I. L. R., 29 Cal., 167.
(4) (1891) I. L. R., 18 Cal., 414.

1905

BASANT LAL
v.
KUNJI LAL.

appeal has been preferred against that order. A preliminary objection has been raised to the hearing of the appeal on the ground that no appeal lies from such an order. This question was the subject of determination by a Full Bench of this Court so long ago as the year 1884. In that year, in the case of *Bhola v. Gobind Dayal* (1), it was held by four out of five Judges constituting a Full Bench of the Court that an appeal does not lie from an order disallowing an application for the filing of an award under section 525 of the Civil Procedure Code. The learned advocate for the appellant, however, relies upon an observation of Lord Macnaghten in a judgment of their Lordships of the Privy Council in the case of *Ghulam Khan v. Muhammad Hassan* (2) as being in conflict with the Full Bench ruling. At p. 183 of that judgment his Lordship, in dealing with the provisions of the Code of Civil Procedure in relation to awards, classifies them under three heads, the last head being the case of awards which have been made in arbitration proceedings without the intervention of the Court. He observes that "in cases falling under heads II and III proceedings described as a suit and registered as such must be taken in order to bring the matter, the agreement to refer or the award, as the case may be, under the cognizance of the Court. That is, or may be, a litigious proceeding; cause may be shown against the application, and it would seem that the order made thereon is a decree within the meaning of that expression as defined in the Civil Procedure Code." The learned advocate relies upon these words as indicating that an order rejecting an application made by an applicant under section 525 as well as an order made in his favour are both decrees within the meaning of decree as defined in the Code. As was pointed out by a Bench of this Court in the later case of *Katik Ram v. Babri Lal* (3) dealing with this question, the point for decision by their Lordships was a different one from that which is at issue before us. They say:—"The case before them was not upon the same basis as the present one, in which the parties had proceeded without the intervention of a Court

(1) (1884) I. L. R., 6 All., 186. (2) (1901) I. L. R., 29 Cal., 167.

(3) Weekly Notes, 1903, p. 234.

until an application was made to file the award. The question therefore was not before them for decision." Then they refer to the words which we have quoted from Lord Macnaghten's judgment and say:—"It seems to us that what their Lordships said was intended to apply to cases where an order has been made directing an award to be filed and not to cases where such applications have been rejected." We entirely concur in the view entertained by the learned Judges in this case. It appears to us that their Lordships of the Privy Council only had in contemplation a case in which an order for the filing of an award was passed in pursuance of the provisions contained in section 525. This appears to be manifest from the earlier decision of their Lordships in the case of *Muhammad Nawaz Khan v. Alam Khan* (1). In that case it was held that the refusal of an application for the filing of an award under section 525 merely leaves the award to have its own ordinary legal effect. Lord Morris, in delivering the judgment of their Lordships, observes in the course of his judgment:—"The first contention on the part of the appellants before their Lordships has been that the decree of the Subordinate Judge dismissing the claim of Alam Khan to file the award pursuant to section 525 of the Code of Civil Procedure has the effect under section 13 of the same Code of *res judicata*. One of the Judges of the Chief Court says that that contention was not very strongly pressed before them. It has been most strongly urged before their Lordships who cannot accede to it. Though the application under section 525 was refused, that merely left the award to have its ordinary legal validity. It could not be successfully contended that an award is not valid because the party in whose favour it was had never applied to have it filed in Court. Can then the refusal to file, or of an application made to do so, have the effect that the award can never be relied upon in any suit relating to the subject-matter dealt with it." Now, if an order refusing to file an award does not amount to a *res judicata*, it follows that it cannot be a decree. Their Lordships held in the case which we have last cited that it is not *res judicata*. Therefore it appears to us that it cannot

1905

 BASANT LAL
 C.
 KUNJI LAL.

1905

BASANT LAL
v.
KUNJI LAL.

be regarded as a decree, and consequently no appeal lies from it. The preliminary objection is therefore allowed and the appeal is dismissed with costs.

Appeal dismissed.

1905
May 26.

Before Mr. Justice Banerji and Mr. Justice Richards.
GANGA PRASAD (PLAINTIFF) v. AJUDHIA PRASAD AND OTHERS
(DEFENDANTS).*

Muhammadan law—Pre-emption—Talab-i-ishtishhad—Witnesses not specifically invoked.

Held that the mere fact that the talab-i-ishtishhad is made in the presence of certain persons who happen to be present at the place where it is made is not sufficient to make the demand a good one unless those persons are specifically called upon to bear witness to the demand being made. *Issur Chunder Shaha v. Mirza Nisar Hossain* (1) followed.

THIS was a suit for pre-emption in which the parties, though Hindus, apparently agreed that they were bound by the Muhammadan law of pre-emption. Amongst other defences the defendants pleaded that the requirements of the Muhammadan law of pre-emption had not been fulfilled, and this was the subject of the fourth issue framed by the Court of first instance. That Court (Munsif of Shahjahanpur) found on this issue that although a demand of pre-emption had been made and certain persons had in fact been present when this was done, yet, inasmuch as those persons had been present merely as casual spectators and had not been called upon as witnesses to attest the demand, the demand was therefore not a sufficient compliance with the law, and it accordingly dismissed the plaintiff's suit. On appeal by the plaintiff the lower appellate Court (District Judge of Shahjahanpur) confirmed the decision of the Munsif. The plaintiff accordingly appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Mr. *Karamat Husain* and *Munshi Gobind Prasad*, for the respondents.

BANERJI AND RICHARDS, JJ.—This is an appeal against the decree of the Court below dismissing the plaintiff's claim for

* Second Appeal No. 841 of 1903, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 14th of August 1903, confirming a decree of Maulvi Mubarak Husain, M.A., Munsif of Shahjahanpur, dated the 17th of April 1903.