

1907

KADHU
SINGH
v.
BALJIT
SINGH.

We dismiss the appeal and direct that the costs of all the parties represented here shall abide the decision of the case.

Appeal dismissed.

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March 5.

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

SHAM LAL AND ANOTHER (DEFENDANTS) v. MISRI KUNWAR (PLAINTIFF)
AND RAM SARUP (DEFENDANT).*

*Civil Procedure Code, sections 521, 522—Arbitration—Award—Decree on
judgment in accordance with award—Appeal.*

During the pendency of a suit in the Court of a Subordinate Judge the matters in dispute between the parties were referred to arbitration. In due course a document purporting to be the arbitrator's award was received by the Court through the post. Objections were filed by one of the defendants to the suit: but these objections were, after hearing, disallowed by the Court, which proceeded to pass a decree in accordance with the award.

Held that an appeal would lie from such a decree upon the ground that the so-called award was never delivered by the arbitrator and was in fact and in law no award at all.

IN the suit out of which this appeal arose the parties agreed to refer the matters in dispute between them to the arbitration of one Moti Ram. An order of reference was made, and in course of time what purported to be the award of the arbitrator was received by the Court (Additional Subordinate Judge of Aligarh). Sham Lal, one of the defendants, filed objections to the award, but his objections were overruled, and the Court passed a decree in accordance with the award. The defendants appealed to the High Court, reiterating the objections which they had taken in the Court below, and which were to the effect that the document purporting to be an award, which had reached the Court through the post, was in fact and in law not the award of the arbitrator appointed by the Court at all; but, if anything, one of two conflicting awards which the arbitrator had prepared with the view of inducing the parties to compromise the case; and that it had not been sent to the court by the arbitrator or any one else on his instructions.

Mr. B. E. O'Connor and the Hon'ble Pandit Sundar Lal, for the appellants.

* First Appeal No. 98 of 1905, from a decree of Maulvi Maula Baksh, Additional Subordinate Judge of Aligarh, dated the 22nd of February 1905.

Babu *Jogindro Nath Chaudhri* and Dr. *Satish Chandra Banerji*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This appeal and the connected appeal No. 99 of 1905, arise out of suits instituted by the plaintiff *Musammat Misri Kunwar* for a determination of her rights as to certain property. In the plaint she claimed a declaration that she was in possession of the property in dispute under a partition, but that if the Court found that she was out of possession then that possession might be awarded to her. In the progress of litigation the parties agreed to refer their disputes to the arbitration of one *Moti Ram*, who is connected with the parties. On or about the 6th of January 1905, the Court received what purports to be an award. Notification of the award was given to the parties, whereupon the defendant *Sham Lal* filed an objection to the alleged award, stating in his objection that the arbitrator did not investigate the subject-matter of the arbitration; that he did not record any award, but repeatedly asked him (the objector) to have the matter in dispute compromised, and refused to decide the case as arbitrator. He prayed that the award might be set aside. The Court, however, did not entertain the objection, but passed a decree upon the award, holding that it was a valid and binding award. The appellants now appeal from this decree, and allege that there was in fact no legal award made by the arbitrator, and that the arbitrator was guilty of such misconduct as justified them in applying to the Court to have the award set aside.

The arbitrator was examined, and he bears out fully the allegations of the appellants. It appears from his deposition that he was desirous that the parties should amicably settle their differences, and in order to compel them to do so he prepared two awards, one favourable to the plaintiff and the other favourable to the defendants, and that having these awards ready he used them to coerce the parties into a compromise. In his evidence he says :—“ I did not make any award in the presence of the parties on the 31st of December 1904. The award now before the Court was in my bag; but I did not intend to make it. It was only to threaten the parties that I kept in my bag this award and also another of an entirely contrary nature.” Then

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he says that these two awards were in the handwriting of his grandson Janki. The evidence given by Moti Ram is very meagre and it is noticeable that it does not appear from it how the award came to be filed in Court. Mr. O'Connor on behalf of the appellants suggests that the document was abstracted from Moti Ram's bag, but there is no evidence to support this suggestion. It is particularly unfortunate that Moti Ram was not subjected to more severe cross-examination, or even to a more lengthy examination-in-chief, and that the Court did not put to him some pertinent questions in regard to the remarkable evidence which he gave. Be this as it may, however, the fact remains that Moti Ram himself repudiates the idea that the award upon which the decree has been based, was a genuine award made or published by him. He shows by his own evidence that it was not a genuine award and was not intended to be used as such, but was simply drafted with a view to compel the parties to come to terms. From his own evidence it is apparent that he has been guilty of grave misconduct, and in view of his misconduct and of the evidence it is clear that the Court ought not to have passed a decree as it did upon this so-called award. We, therefore, allow the appeal, set aside the decree of the Court below and direct the learned Subordinate Judge to reinstate the suit in the file of pending suits and dispose of it according to law. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.