

they are not subordinate. We, therefore, allow the appeal, set aside the decree of the learned Judge of this Court and also the decrees of the lower courts and dismiss the plaintiff's suit with costs in all Courts.

Appeal decreed.

1907

UMBAO
SINGH
v.
HARDEO.

APPELLATE CIVIL.

1907
February 13.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.

KADHU SINGH (PLAINTIFF) v. BALJIT SINGH AND OTHERS
(DEFENDANTS)*

Civil Procedure Code, section 506— Arbitration— Application for reference signed by pleader holding a defective vakalat-namah.

An application under section 506 of the Code of Civil Procedure for a reference to arbitration was made by the parties to a pending suit. This application was signed on behalf of the defendants by some of the defendants personally, and on behalf of the others by a pleader. It appeared, however, that the pleader's vakalat-namah had not been signed by one of the defendants on whose behalf the pleader had signed. *Held* that, in the absence of any circumstance to estop the defendant who had not signed from objecting to the reference, the reference to arbitration and all subsequent proceedings founded thereupon were invalid. *Pitam Mal v. Sadiq Ali* (1) distinguished.

THE suit out of which this appeal arose was brought by the plaintiff to enforce a mortgage executed by one Kunjal Singh. The mortgagor, his son's grandsons and great-grandsons, were made parties to the suit, and the plaintiff sought to obtain a decree against the joint ancestral property of the defendants. A joint written statement was filed on behalf of all the defendants by a pleader named Munna Lal. Subsequently the defendants applied for a reference to arbitration, and the suit was referred to arbitration and award was made. In these proceedings the submission to arbitration was signed by three of the defendants, Baljit Singh, Punni Singh and Tara Singh, and on behalf of the rest by Munna Lal. Objections were taken to the award by two of the defendants, but these were overruled and a decree passed upon the award. Against this decree one of the defendants, Daryao Singh, appealed upon the ground that he had never executed the vakalat-namah in favour of Munna Lal in virtue of which

*First Appeal No. 61 of 1906, from an order of E. O. E. Leggatt, Esq., District Judge of Bareilly, dated the 19th of April 1906.

(1) (1898) I. L. R., 24 All., 229.

1907

KADRU
SINGH
v.
BALJIT
SINGH.

Munna Lal signed the submission to arbitration; consequently there was no valid submission, and the award and decree based thereon were bad in law. The Court (District Judge of Bareilly) allowed this appeal and set aside the award and the decree based thereon. The plaintiff appealed to the High Court.

Mr. *Muhammad Ishaq Khan*, *Munshi Jung Bahadur Lal* and *Babu Surendra Nath Sen*, for the appellant.

Munshi Gobind Prasad and *Babu Sital Prasad Ghosh*, for the respondents.

KNOX and RICHARDS, JJ.—This was a suit to enforce a mortgage. The mortgage was made by one Kunjal Singh. He, his sons, grandsons and great-grandsons were all made parties to the original suit, and the plaintiff sought to obtain a decree against the joint ancestral property of the defendants. A joint written statement was filed on behalf of all the defendants by a pleader named Munna Lal. The suit was subsequently referred to arbitration, and an award, which we have no reason to think to be an unfair or unreasonable award, was made. It, however, appears that the original vakalat-namah given to Munna Lal was not signed by one of the defendants, Daryao Singh. The submission to arbitration was signed by three of the defendants, namely, Baljit Singh, Punni Singh and Tara Singh. Munna Lal purported to sign on behalf of the other defendants. An objection was taken to the award by two of the defendants, namely, Lochan Singh, and Hem Singh. The objections appear to have been frivolous. The objections were overruled by the Subordinate Judge, and a decree was passed on the award. Daryao Singh appealed, and the District Judge allowed his appeal and set aside the decree, on the ground that there was no "reference by the parties to the suit on the application of the parties in person or by a pleader specially authorized in writing in that behalf." It is admitted that Daryao Singh never executed the original vakalat-namah or the reference to arbitration and, accordingly, it is quite clear that unless Daryao Singh is estopped from denying the validity of the reference, there was no reference by him within the meaning of section 506 of the Code of Civil Procedure. We find no facts or circumstances which would enable us to say that the "declaration, act or omission" of Daryao Singh

estopped him from setting up the case he made in his appeal to the District Judge. The law provides the mode in which these references of suits to arbitration are to be carried out and it was the duty of the appellant to see that the submission to arbitration was in due form and binding on all the defendants. It is said that if Daryao Singh did not authorize Munna Lal to file the written statement, he admitted the plaintiff's claim, and, accordingly, that there was no "difference" between him and the plaintiff, and that, therefore, he was not a necessary party to arbitration. In support of this the case of *Pitam Mal v. Sadiq Ali* (1) has been cited. It was there contended that it was necessary for the validity of an award that all parties to the suit should be parties to the award. The Courts held that it was only necessary to have the parties to the suit parties to the award between whom the differences submitted to arbitration existed. The present case is clearly distinguishable. Here the plaintiff seeks to bind Daryao Singh by the award and by the decree which incorporates the award. He seeks to bind Daryao Singh as if he were expressly a party to the award and the decree founded thereon. A second point was urged here by the appellant, namely, that the decree at the most should be set aside only as against Daryao Singh. We do not agree with this contention. The ground of the decree was the award, which award was founded on the reference, and unless the reference was valid under the provisions of section 506 of the Code of Civil Procedure, the award and the decree were invalid, and, in our opinion, proceeded on a ground common to all the defendants.

The only remaining question to be dealt with is the question of costs. We find that all the defendants were members of a joint Hindu family. They were represented by a single pleader, Munna Lal, and Daryao Singh's father, Tara Singh, signed the vakalat-namah and also the reference. We strongly suspect that Daryao Singh was fully aware of the proceedings. In fact it is hard to conceive how he can be ignorant of them. There is a great deal which induces us to think that this is the last attempt to get rid of what was really an honest award by Mr. Banerji.

(1) (1898) 1. L. R., 24 All., 229.

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.

1907
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.