

Before Mr. Justice Karamat Husain and Mr. Justice Griffin.

PACHKAURI RAM AND OTHERS (PLAINTIFFS) v. NAND RAI AND ANOTHER
(DEFENDANTS).*

1908
August 4.

Civil Procedure Code, sections 508 et seqq.—Arbitration—Award—Award set aside—Court not empowered to make a second reference on the same submission.

The parties to a suit pending in the Court of a Munsif referred the matters in dispute between them to arbitration. An award was made and delivered: but it was afterwards discovered that one of the plaintiffs had died before the termination of the arbitration proceedings, and the Munsif accordingly set aside the award. *Hold* that the Munsif had no power to make a second order on the same agreement of the parties again referring to arbitration the matters in dispute between them.

THE facts of this case are as follows:—

The suit out of which this appeal has arisen was brought for recovery of possession of a plot of land. The suit was referred to arbitration on the 4th of March 1907. The arbitrators submitted their award on the 2nd of April 1907. On the 11th of April 1907 objections were filed by the defendant. One of the objections was that one of the plaintiffs had died and that his heirs had not been brought on the record. The Court (Munsif of Ghazipur) on the 20th of April 1907, set aside the award and sent back the case to the arbitrators for decision, giving them time up to the 4th of May 1907.

The arbitrators made a fresh award and the Munsif passed a decree in accordance with that award. The defendants appealed and the appellate court (Subordinate Judge of Ghazipur) sent the case back under section 562 of the Code of Civil Procedure. From that order the plaintiffs appealed to the High Court.

Mr. M. L. Agarwala, for the appellants.

Babu Beni Madho Ghosh, for the respondents.

KARAMAT HUSAIN, J.—The suit out of which this appeal has arisen was brought for recovery of possession of a plot of land. The suit was referred to arbitration on the 4th of March 1907. The arbitrators submitted their award on the 2nd of April 1907. On the 11th of April 1907, objections were filed by the defendants. One of the objections was that one of the plaintiffs had died and that his heirs had not been brought on the record. The learned Munsif on the 20th of April 1907, set aside the

* First Appeal No. 113 of 1907 from an order of Srish Chandra Bose, Subordinate Judge of Ghazipur, dated the 10th September 1907.

1908

PACHAUBI
RAM
v.
NAND
BAL.

award and sent back the case to the arbitrators for decision, giving them time up to the 4th of May 1907. He said:—"The arbitrators have submitted their award. It is objected to on the ground, *inter alia*, that one of the plaintiffs had died during the arbitration and before the award, hence the award is illegal. I am of opinion that this contention must prevail. The plaintiff Gopichand died two weeks before the 12th of April 1907. The arbitrators not only delivered and made the award on the 2nd of April 1907, but they examined witnesses on the 1st of April 1907, *i.e.*, after the death of one of the plaintiffs. Of this fact (*i.e.* the death of one of the plaintiffs) the other plaintiff, the defendants, and possibly the arbitrators, could not have been ignorant. Hence the award is defective, as the representatives of the deceased plaintiff had not been brought on the record before the case was heard and award made by the arbitrators. Under these circumstances the ruling in *Chetan Charan Das v. Balbhadra Das* (1) would not apply. The award must therefore be set aside. As the representative of the deceased plaintiff has been brought upon the record and he agrees to the submission, it is ordered that the award of the 2nd of April 1907, be set aside and the case be sent back to the arbitrators for decision. The arbitrators are given time up to the 4th of May 1907, to make their award."

The arbitrators made a fresh award and the learned Munsif passed a decree in accordance with that award. The defendants appealed and the learned Subordinate Judge sent the case back under section 562 of the Code of Civil Procedure. The plaintiffs have preferred an appeal from that order.

It is contended on their behalf that the Court of first instance was competent to refer the case again to the arbitrators; that its action amounted to a remission under section 520 (c) of the Code of Civil Procedure, and that no appeal lay to the lower appellate Court.

There is no force in these contentions. The learned Munsif in express terms set aside the award of the 2nd of April 1907, as his order of the 20th of April 1907, and his judgment of the 15th of May 1907, show, and I cannot construe his order of the

(1) (1899) I. L. R., 21 All., 314.

2nd of April 1907, to mean that he remitted the award under section 520 (c). No objection to the legality of the award was apparent on the face of it. The learned Munsif could not, therefore, remit it under section 520 (c). See *Nanak Chand v. Ram Narayan* (1). His finding that the arbitrators examined the witnesses after the death of one of the plaintiffs and his remarks that the ruling in I. L. R., 21 All., 314, does not apply, clearly show that he, acting under section 521 (a), set aside the award of the 2nd of April 1907, and it is too late to discuss now that he, in the absence of an express finding that the arbitrators had knowledge of the death of Gopi Chand, was not justified in setting the award aside. He did set it aside, and both the parties submitted to that order, and they cannot attack that order at this stage of their litigation. It is, however, argued that the award of the 2nd of April 1907, in consequence of recording evidence after the death of one of the plaintiffs was waste paper, that the Munsif ignoring it could, on the basis of a subsisting agreement to refer to arbitration (see I. L. R., 27 Mad., 112), refer it to arbitration again. No section of the Code of Civil Procedure is quoted in support of this argument, and the help of the inherent powers of a Court of justice is invoked to legalize the action of the Court. This argument is of no use. Because after setting aside the first award the power of the learned Munsif to refer the matters in dispute was exhausted.

When a matter in difference has once been referred to arbitration, the Court by section 508 is precluded from dealing with it, save in accordance with the provisions of succeeding sections, and none of them confers upon that Court a power to refer the matters in difference again to arbitration. The inherent powers of a Court of Justice in opposition to the express provisions of section 508 of the Code of Civil Procedure are of no avail.

For the above reasons I would hold that the order of the lower appellate Court is right and would dismiss the appeal with costs.

GRIFFIN, J.—The question is not to my mind free from doubt, but I am not prepared to differ from the conclusion arrived at by my learned colleague. I concur in the proposed order.

(1) (1879) I. L. R., 2 All., 181.

1908

PACHKAURE
RAM
v.
NAND RAI.

BY THE COURT.—The order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

1908

August 4.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
RAM KALI (DEFENDANT) v. JAMMA AND ANOTHER (PLAINTIFFS). *
Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Succession—"Male lineal descendant"—Illegitimate son—Hindu law.

Held that the illegitimate son of a man belonging to one of the Sudra caste by a kept woman, or continuous concubine, was capable of succeeding to the occupancy holding of his father as a "male lineal descendant" within the meaning of section 22 of the Agra Tenancy Act, 1901. *Inderun Valungyooly Taver v. Ramasawmy Pandia Talaver (1), Sarasuti v. Mannu (2) and Hargobind Kuari v. Dharam Singh (3)* referred to.

ONE Mahtab Singh, an occupancy tenant, had a son Ghansham Singh, by a concubine with whom he had lived for a considerable period, Musammam Jamuna. Mahtab Singh died, and on his death Jamuna and Ghansham Singh applied in the revenue court for the entry of their names in respect of Mahtab Singh's occupancy holding. Their application was refused, and they accordingly brought the present suit, in which they asked for a declaration that Jamuna was the wife and Ghansham Singh the son of Mahtab Singh and that as such they were entitled to succeed to Mahtab Singh's occupancy holding. The court of first instance (Munsif of Chandausi) decreed the claim and this decree was in appeal upheld by the Additional Judge of Moradabad. The defendant appealed to the High Court.

The Hon'ble Pandit *Madam Mohan Malaviya* and *Munshi Iswar Saran* for the appellant.

Babu Durga Charan Singh (for whom *Babu Beni Madho Ghosh*), for the respondents.

STANLEY, C.J., and BANERJI, J.—The question in this second appeal is whether the plaintiff respondent, Ghansham Singh, who is the illegitimate and only son of one Mahtab Singh, deceased, by a concubine who had lived continuously with Mahtab Singh, is entitled to the occupancy holding of his father as

* Second Appeal No. 355 of 1907, from a decree of W. F. Kirton, Additional Judge of Moradabad, dated the 19th December 1906, confirming a decree of Kunwar Sen, Munsif of Chandausi, dated the 6th of June 1906.

(1) (1869) 13 Moo., I. A., 141. (2) (1879) I. L. R., 2 All., 134.

(3) (1884) I. L. R., 6 All., 329.