

1909

KING
EMPEROR
v.
GANESH.

contemplation when the girl was taken away from Sunder's house. According to the girl, whose evidence I believe on this point, she lived with the appellant and his wife for 14 days during which period there was no question of getting her married to any one. I think that when Sital saw the girl he wished to marry her and persuaded the appellant, who was his brother-in-law, to allow the marriage to take place. This the appellant had no right whatever to consent to. What happened in this case after the girl had been taken away from lawful guardianship illustrates the wisdom of the legislature in excluding motive from the definition in section 361. One never can tell what wrong may not result from taking a young girl away from lawful guardianship. The view which I have taken of the facts was the view taken by the police who investigated the case, for they sent it up under section 363. The assessors convicted, but there is nothing to show that they understood the law on the subject, their reasons for convicting not having been recorded. I accordingly alter the conviction from one under section 366 to one under section 363 of the Indian Penal Code and reduce the sentence to one of eighteen months' rigorous imprisonment. The appeal is otherwise dismissed.

Appeal dismissed.

APPELLATE CIVIL.

1909
May 10.

Before Mr. Justice Banerji and Mr. Justice Tudball.

SHIB LAL AND OTHERS (PLAINTIFFS) v. CHATARBHUJ AND OTHERS (DEFENDANTS).*

Code of Civil Procedure (Act No. XIV of 1882), section 522.—Arbitration—Invalid reference and award—Appeal from decree passed in accordance with such award.

Where there is no valid reference to arbitration and no valid award the decree passed in accordance therewith cannot be maintained, and an appeal lies against such decree. *Negi Puran v. Hera Singh* (1), referred to.

THE facts of the case are as follows :—Shiv Lal and Badri Das brought a suit for recovery of money against two brothers,

* Second Appeal No. 439 of 1908 from a decree of B. J. Dalal, District Judge of Agra, dated the 31st of March 1908 confirming a decree of Chhajju Mal, Subordinate Judge of Agra, dated the 17th of July 1906.

Chatarbhuji and Ganga Prasad. The defence of Chatarbhuji was that he was not joint with his brother Ganga Prasad and that he was not liable for the money. Ganga Prasad put in no appearance. The matter was referred to arbitration by Chatarbhuji and one Bhag Chand who purported to act for the plaintiffs. The arbitrators dismissed the suit. The plaintiffs preferred objections under section 521 of the Code of Civil Procedure, 1882. The Court of first instance overruled the objections and on appeal to the District Judge, it was held that no appeal lay to him as the decree was in conformity with the award. The plaintiffs appealed to the High Court.

1909
SHIB LAL
v.
CHATARBHUJ.

The Hon'ble Pandit *Sundar Lal* for the appellants contended that Badri Das and Ganga Prasad were no parties to the reference. The reference being invalid there was no valid award. There being no valid award in law, an appeal lay to the District Judge. *Behari Lal v. Chunni Lal* (1), *Nazam-ud-din v. Albert Puech* (2), *Shiam Lal v. Misri Kunwar* (3), *Negi Puran v. Hira Singh* (4).

Mr. B. E. O'Connor (with him Pandit *Mohan Lal Sandal*) for the respondent. Ganga Prasad put in no appearance and was not a contesting party. The reference was not invalid simply by reason of Ganga Prasad's not joining it. *Pitam Mul v. Sadiq Ali* (5).

BANERJI and TUDBALL, JJ.—This appeal arises out of a suit brought by two plaintiffs, namely Shib Lal and Badri Das, to recover money alleged to be due on two *hundis*. The suit was brought against two defendants Chatarbhuji and Ganga Prasad. Chatarbhuji defended the suit. An application was made to refer the disputes between the parties to arbitration. This application was made by Chatarbhuji alone among the defendants and not by Ganga Prasad. On behalf of the plaintiffs the reference to arbitration was made by one Bhag Chand and a pleader appointed by him. It has been found that he had a power of attorney from Shib Lal, which authorized him to abide by the oath of any person, but it has not been found whether it gave him authority to refer any matter to arbitration. It has also been

(1) (1907) I. L. R., 29 All., 457. (3) (1907) I. L. R., 29 All., 426.

(2) (1907) I. L. R., 29 All., 584. (4) (1909) 6 A. L. J. R., 35.

(5) (1898) I. L. R., 24 All., 229.

1909

SHIB LAL
v.
CHATARBHUI,

found that Bhag Chand had no authority from Badri Das to make a reference to arbitration on his behalf. As we have said above the case was referred to arbitration on behalf of the plaintiffs by Bhag Chand and by a pleader appointed by Bhag Chand on behalf of Badri Das. As Bhag Chand had no authority from Badri Das to refer any matter to arbitration the pleader appointed by him had no such authority. Therefore there was no valid reference to arbitration by Badri Das. Admittedly there was no reference at all to arbitration by Ganga Prasad. Therefore it is manifest that the reference was not made by all the parties to the suit as mentioned in section 503 of Act XIV of 1882. As there was no reference to arbitration by Badri Das and by one of the defendants, the arbitrators appointed under the reference had no power to decide the matter in controversy and their award was *ultra vires*. There being no award in law an appeal lay to the court below from the decree which was passed by the court of first instance in accordance with the award and an appeal lies to this court also. The latest case on the point in this Court is that of *Negi Puran v. Hira Singh* (1). As there was no valid reference to arbitration and no valid award, the decree passed in accordance with it cannot be maintained. We accordingly allow the appeal, set aside the decrees of the courts below and remand the case to the court of first instance under order 41, rule 23 of the Code of Civil Procedure, with directions to reinstate the suit in the file of pending cases, under its original number in the register, and to dispose of it according to law. Costs here and hitherto will abide the event.

Appeal allowed.

(1) (1909) 6 A. L. J. R., 933.