

1911

PARMANAND  
v.  
SRI  
PRASAD.

if it was duly stamped, was sufficient to entitle the donee to execute or take steps to execute the decree in Cawnpore. Our decision relates only to the question whether or not the document was duly stamped. Assuming merely for the purpose of deciding the question before us that the document was sufficient if duly stamped, we hold that the document was not duly stamped, and that it ought to have been stamped with the stamp provided for by article 48, Schedule I, of the Stamp Act. We make no order as to costs.

## APPELLATE CIVIL.

1911

February 21.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*  
SHIB CHARAN DAS (PLAINTIFF) v. RAM CHANDRA SARUP AND OTHERS  
(DEPENDANTS).\*

*Award—Refusal of court to file a private award—Subsequent suit to enforce terms of award—Res judicata.*

*Held* that the refusal of a court to file a private award will not operate as *res judicata* in respect of a subsequent suit brought to enforce the award. *Kunji Lal v. Dwaga Prasad* (1) followed. *Basant Lal v. Kunji Lal* (2) referred to.

THE facts of this case were as follows:—The plaintiff and other parties had disputes about the partition of certain property which belonged to them. They prepared lots and appointed an arbitrator for the purpose of assigning the lots to the different persons interested. On the 17th December, 1904, an agreement of reference was drawn up and one Babu Kumanuj Dayal was appointed arbitrator. On the 23rd of December, 1904, lots were drawn and lot No. 1 fell to the share of the plaintiff and his co-sharers. One of the properties comprised in that lot was 20 biswas of the village Sherpur. On the 14th of December, 1905, an award was made, but in that award by a mistake instead of entering the whole of the 20 biswas of the village Sherpur in lot No. 1 only a half of that village was entered by the clerk who copied out the lots embodied in the award. The mistake was discovered and the attention of the arbitrator was drawn to

\* First Appeal No. 390 of 1909 from a decree of Kanhaiya Lal, Second Additional Judge of Meerut, dated the 11th of August, 1909.

(1) ( 1910 ) I. L. R., 32 All., 484.      (2) ( 1905 ) I. L. R., 28 All., 21.

it. He accordingly made a supplementary award on the 11th of March, 1906, which was in fact an amendment of the first award. By that supplementary award he assigned to the lot of the plaintiff and his co-sharers the whole of the village Saerpur. The practical result of the two awards was this, that by the first award only a half share of the village Sherpur was assigned to lot No. 1, and by the second award the remaining half was also allotted to lot No. 1. On the 11th of April, 1905, the owners of lot No. 1 made an application to the court under section 525 of Act No. XIV of 1882 for the filing of both the awards. The court filed the first award and made a decree in accordance with it, but refused to file the supplementary award. Thereupon the suit out of which this appeal has arisen was brought by the plaintiff and he claimed in it a 5 biswas share in mauza Sherpur on the basis of the supplementary award—he and his co-sharers being admittedly in possession of a ten biswas share in the village.

The court of first instance (Second Additional Judge of Meerut) dismissed the suit as barred by *res judicata* owing to the refusal of the former court to file the supplementary award. The plaintiff appealed to the High Court.

Babu Jogindro Nath Chaudhri (with him Pandit Mohan Lal Sandal), for the appellant.

Munshi Gokul Prasad (with him Babu Sital Prasad Ghosh), for the respondents.

STANLEY, C. J., and BANERJI, J:—The question in this appeal is, whether the plaintiff's claim is barred by the rule of *res judicata*. The facts are these:—The plaintiff and other parties had disputes about the partition of certain property which belonged to them. They prepared lots and appointed an arbitrator for the purpose of assigning the lots to the different persons interested. On the 17th December, 1904, an agreement of reference was drawn up and one Babu Ramanuj Dayal was appointed arbitrator. On the 23rd of December, 1904, lots were drawn and lot No. 1 fell to the share of the plaintiff and his co-sharers. One of the properties comprised in that lot was 20 biswas of the village Sherpur. On the 14th of December, 1905, an award was made, but in that award by a mistake, instead of

1911

---

 SHIB  
 CHARAN DAS  
 v.  
 RAM  
 CHANDRA  
 SARUP.

1911

SHIB  
CHAMAN DAS  
v.  
RAM  
CHANDRA  
SARUP.

entering the whole of the 20 biswas of the village Sherpur in lot No. 1, only a half of that village was entered by the clerk who copied out the lots embodied in the award. The mistake was discovered and the attention of the arbitrator was drawn to it. He accordingly made a supplementary award on the 11th of March, 1906, which was in fact an amendment of the first award. By that supplementary award he assigned to the lot of the plaintiff and his co-sharers the whole of the village Sherpur. The practical result of the two awards was this, that by the first award only a half share of the village Sherpur was assigned to lot No. 1, and by the second award the remaining half was also allotted to lot No. 1. On the 11th of April, 1905, the owners of lot No. 1 made an application to the court under section 525 of Act No. XIV of 1882 for the filing of both the awards. The court filed the first award and made a decree in accordance with it, but refused to file the supplementary award. Thereupon the suit out of which this appeal has arisen was brought by the plaintiff and he claimed in it a 5 biswas share in mauza Sherpur on the basis of the supplementary award—he and his co-sharers being admittedly in possession of a ten biswas share in the village.

There is no question that all the parties to the reference to arbitration intended that the plaintiff and his co-sharers should get the whole of the village Sherpur, and there is no question also that it was the intention of the arbitrator to award to the plaintiff the 5 biswas now claimed by him in addition to what he has already got. The court below, however, has dismissed the suit on the ground that the decision of the Subordinate Judge refusing to file the supplementary award operates as *res judicata*. We are unable to agree with the learned Additional Judge. Having regard to the judgement of the Subordinate Judge in the case under section 525 of Act XIV of 1882, we must hold that the court refused to file the supplementary award, by which, as we have pointed out above, an additional 10 biswas share in Sherpur was allotted to the share of the plaintiff and his co-sharers, the owners of lot No. 1. From this order of refusal no appeal lay, as held in the case of *Basant Lal v. Kanji Lal* (1), in which the previous rulings on the subject were

cited. This view was adhered to in the recent case of *Kunji Lal v. Durga Prasad* (1). In the case last mentioned it was further held that a refusal of a court to file an award will not operate as *res judicata* in respect of a subsequent suit brought to enforce the award. The same view was held in the case of *Mustafa Khan v. Musammat Phuljha Bibi* (2), which has not yet been reported. Having regard to these rulings the view taken by the court below cannot be supported. There is no doubt as to the question of the plaintiff's title to the property claimed on the strength of the supplementary award. The result is that we allow the appeal, set aside the decree of the court below and decree the plaintiff's claim with costs in both courts.

*Appeal allowed.*

1911

SHIB  
CHARAN DAS  
v.  
RAM  
CHANDRA  
SARUP.

## FULL BENCH.

1911

February, 28.

*Before Mr. Justice Sir George Knox, Mr. Justice Banerji and Mr. Justice Karamat Husain.*

JAIMANGAL DEO AND OTHERS (DEFENDANTS) v. BED SARAN KUNWARI  
(PLAINTIFF).\*

*Civil Procedure Code* (1908), section 11, explanation VI—*Res judicata*—"Right claimed in common"—*Jus tertii*.

In a suit for ejectment in a Revenue Court the defendants denied the title of the plaintiff, and set up their own title as to part of the property and a *jus tertii* as to the rest. The Revenue Court elected to try the question of title itself, and found that the plaintiff had not established her proprietorship, and that decision became final.

*Held*, in a subsequent suit in the Civil Court for a declaration of title, that the decision of the Revenue Court, although it constituted a *res judicata* as between the plaintiff and the then defendants, could not amount to a *res judicata* as between the plaintiff and the third parties whose rights those defendants had set up.

THE facts of this case were as follows:—The plaintiff, on the 26th of September, 1906, sued the defendants, Bhagat Deo and Rabinath, father of Kinkin Deo, and Harbans Deo, in the court of an Assistant Collector of the first class for ejectment. The Assistant Collector held that the plaintiff was not the

\* First Appeal No. 42 of 1910 from an order of Muhammad Ali, District Judge of Mirzapur, dated the 26th of February, 1910.

(1) (1910) I. L. R., 32 All., 484. (2) F. A. 209 of 1909, decided on the 19th January, 1911.