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defendants' evidence, which is, however, cogent to show that they have in fact been in possession for more than 12 years prior to the filing of the plaint, are of opinion that the appeal from the decision of the High Court of Bengal should be dismissed, and the decree appealed from affirmed, and they will humbly advise Her Majesty accordingly.

The appellants will pay the costs of the appeal.

*Appeal dismissed.*

Solicitors for the appellants : Messrs. *T. L. Wilson & Co.*,

Solicitors for the respondents : Messrs. *Oehme, Summerhays & Co.*

C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Mitter and Mr. Justice Beverley.*

BINDESSURI PERSHAD SINGH AND OTHERS (DEFENDANTS) *v.* JANKEE PERSHAD SINGH (PLAINTIFF).*

1889 *February* 14.

*Superintendence of High Court—Arbitration—Award—Application to file award, objection to—Decree on award, finality of—Private Arbitration—Revisional powers of High Court—Jurisdiction—Civil Procedure Code (Act XIV of* 1882), *s.* 520, 521, 525, 526 *and* 622.

Certain disputes between parties were referred under a written agreement to an arbitrator, who, in due course, made his award. The plaintiff then applied to the Subordinate Judge to have the award filed in Court under the provisions of s. 525 of the Code of Civil Procedure. The defendants came in and objected to the award on the following amongst other grounds :—

(1) That the value of the property in suit was Rs. 500 only, and therefore that the application should have been made in the Munsiff's Court and not in that of the Subordinate Judge.

(2) That the agreement of submission was vague and indefinite and did not clearly set out the matters in dispute.

The Subordinate Judge overruled the objection without taking any evidence, and directed the award to be filed and a decree to be passed

* Appeal from Order, No. 362 of 1888, against the order of Baboo Upendra Chunder Mullick, Subordinate Judge of Bhaugulpore, dated the 18th of May 1888.

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thereon. The plaintiff appealed. The defendants contended that no appeal lay, and that if it did, it lay to the District Judge and not to the High Court.

*Held*, that, assuming that on a proceeding under ss. 525 and 526, the Court has power to consider such objections as are mentioned in ss. 520 and 521, the above objections did not fall under either section, but that the Subordinate Judge, before entertaining the application, was bound to satisfy himself that he had jurisdiction to entertain it, and for that purpose to take evidence regarding the value of the property; and that even if no appeal lay, the High Court could interfere under its revisional powers, because the Subordinate Judge had acted in the exercise of his jurisdiction illegally in assuming jurisdiction without taking such evidence.

*Held*, further, that as the second objection was well founded inasmuch as the agreement to refer was vague and indefinite, and did not clearly lay down the power of the arbitrator in dealing with the subject-matter in dispute, and as it was not possible to make out what powers were intended to be conferred upon the arbitrator, the award should not be allowed to be enforced under the provisions of ss. 525 and 526.

THIS was an appeal from an order passed by the Subordinate Judge of Monghyr, upon an application to file an award, under the provisions of s. 526 of the Code of Civil Procedure.

Upon the application being made, the defendants (appellants) objected, and showed cause why the application should not be granted. Amongst other objections the defendants contended that the property was under Rs. 1,000 in value, and that the Subordinate Judge had no jurisdiction to entertain the application. The Subordinate Judge, however, held that the award should be filed and enforced as a decree.

The material portion of the judgment of the Subordinate Judge was as follows:—

"There is nothing to show that the claim has been undervalued, but there are reasons to believe that it has been properly valued, the land and buildings being the subject-matter of the award."

"The award has been read over, and I think that, considering the ability of Pandit Teknarain Das, it is sufficiently clear to decide the points in dispute. The arbitrator measured the lands and prepared plans and khusra by consent of parties. The petition of reference is, no doubt, not very happy and clear; but since the parties chose to leave the matter in general terms in

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the hands and discretion of the arbitrator selected by them, it cannot now be said that the arbitrator has exceeded the bounds of his authority. I hold that the award, as it is, is valid. No other valid grounds have been made out against the filing of the award. I accordingly allow it to be filed, and under the peculiar circumstances of the case each party shall bear its own costs."

Against that order the defendants preferred this appeal to the High Court.

Mr. *C. Gregory* and Baboo *Rajendronath Bose* for the appellants.

Mr. *Rash Behary Ghose* and *Baboo Nilkant Sahai* for the respondent.

The nature of the grounds upon which it was contended that the order and decree of the lower Court should be set aside appear sufficiently for the purpose of this report in the judgment of the High Court (MITTER and BEVERLEY, JJ.) which was as follows:—

This is an appeal from an order of the Subordinate Judge of Monghyr, directing an award to be filed under the provisions of s. 526 of the Code of Civil Procedure.

A preliminary objection has been raised on behalf of the respondent that no appeal against such an order will lie, and that, if an appeal be allowed, it will lie to the District Judge and not to this Court.

We are clearly of opinion that, under the provisions of the Code, no appeal will lie against the order directing the award to be filed.

But in the present case the award has been followed by a decree, and the question is whether, regarding this as an appeal against that decree, the appeal will lie.

There has been some conflict of authority in this Court as to the proper construction of ss. 525 and 526 of the Code, and the procedure which they are intended to lay down. On the one hand it has been held in the cases cited in the margin that, if upon an application to file an award under

(1) *Sree Ram Chowdhry* v. *Denobundhoo Chowdhry* (I.L. R., 7 Calc., 490) decided by Pontifex and Field, JJ.

(2) *Huronath Chowdhry* v. *Nistarini Chowdrani* (I. L. R., 10 Calc., 74,) decided by Garth, C.J., and Macpherson, J.

(3) *Iohamoyee Chowdhranee* v. *Prosunno Nath Chowdhry*, (I.L. R., 9 Calc., 557) decided by Wilson and Macpherson JJ. This view seems also to have found favor in a decision of a Full Bench of the Allahabad Court in *Bhola* v. *Gobind Dayal* (I. L. R., 6 All., 186.)

s. 525, any objection, such as is mentioned or referred to in ss. 520 and 521, is taken to the award, the Court is not at liberty to inquire into the validity of such objection, but should stay its hand, refuse to file the award, and leave the party aggrieved to enforce by it regular suit.

On the other hand, the cases cited in the margin have ruled that when objections are preferred to the filing of an award under ss. 525 and 526, the Court is bound to inqnire into those objections, and to decide whether or not the award should be enforced.

(1) *Dutto Singh* v. *Dosad Bahadur Singh* (I. L. R., 9 Calc., 575) decided by Mitter and O'Rinealy, JJ, following *Dandekar* v. *Dandekars*, (I. L. R., 6 Bom., 663) decided by Melvill and Pinhey, JJ. The same view was taken in *Jones* v. *Ledgard* (I. L. R., 8 All., 340) by Straight, J. and apparently also by the Madras Court in *Micharaya Guruvu* v. *Sadasiva Parama Guruvu* (I. L. R., 4 Mad., 319) decided by Turner, C.J., and Muttusami Aiyar, J.

By s 526 an award when filed, "takes effect as an award made under Chapter XXXVII," and s. 522 prescribes the mode in which effect is to be given to an award. "The Court shall proceed to give judgment according to the award," and "upon the judgment so given a decree shall follow." Then come the words: "No appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award."

In *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* (1), a Full Bench of this Court held, upon s. 327 of the old Code of 1859, that where there was no valid award, an appeal would lie against the decree made upon it; and a similar opinion was expressed in *Joy Prokash Lall* v. *Sheo Golam Singh* (2).

It would seem to follow, therefore, that there is an appeal against a decree made upon an award—

(1) when the decree is in excess of the award;

(2) when it is not in accordance with the award; or

(3) when there is no valid award.

Now the objections made to the award in the present case may be summarized as follows:—

(1) That the value of the property in suit was Rs. 500 only, and, therefore, that the application should have been made in the Munsiff's Court, and not in that of the Subordinate Judge.

(1) 8 B. L. R., 315.

(2) I. L. R., 11 Calc, 37.

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(2.) That the agreement of submission is vague and indefinite and does not clearly set out the matters in dispute,

(3.) That the award is indefinite and merely an expression of the arbitrator's opinion; that there was in fact no decision.

(4.) That the arbitrator took no evidence and proceeded in the absence of the objectors.

The Subordinate Judge found that the arbitrator had proceeded in accordance with the ikrarnamah submitting the case to him for arbitration; that he had not exceeded his authority; and that his award was sufficiently clear to decide the points in issue. No ground, therefore, such as is mentioned or referred to in s. 520 or s. 521, having been shown against the award, he ordered it to be filed, and made a decree in accordance with it.

Assuming that in a proceeding under ss. 525 and 526, the Court has power to consider such objections as are mentioned in s. 520 or s. 521, of the objections summarized above the first and second do not fall under either section. The Subordinate Judge, before entertaining the application of the respondent, was bound to satisfy himself that he had jurisdiction to entertain it. If the value of the property be below 1,000 rupees, he would have no jurisdiction to entertain the application. With reference to this objection he was bound to take evidence before assuming jurisdiction. This he has not done. Therefore, even if no appeal lies, we can interfere with the decision of the lower Court upon this point, because it has acted in the exercise of its jurisdiction illegally in assuming jurisdiction without taking evidence. Having regard to the second objection, which seems to us to be well founded, we are of opinion that we ought to interfere under s. 622. We have referred to the terms of the ikrarnamah, and it appears to us to be vague and indefinite in not clearly laying down the powers of the arbitrator in dealing with the subject-matter in dispute. The passage which was intended to define his powers is as follows:—

"We, the declarants (all three parties), in order to set the aforesaid disputes and quarrels at rest, do appoint Sri Pandit Teknarayan Dasji, disciple of Sri Motiram Dasji, inhabitant of mohullah Kamchha, city Kashiji, district Benares, as a panch

or arbitrator, and declare and give in writing that the said arbitrator would come to a decision in accordance with *kurrah* and with reference to possession; in respect of such Dih lands as are occupied by dwelling-houses according to *kurrah* and such as are held possession of without reference to *kurrah*; as also in respect of the property claimed in the suit brought in the Court of the Munsiff of Begu Serai."

We have not been able to make out what powers were intended to be conferred upon the arbitrator by this passage.

The agreement, therefore, not clearly defining the powers of the arbitrator, we are of opinion that the award should not be allowed to be enforced under the provisions of ss. 525 and 526 of the Civil Procedure Code. We, therefore, set aside the decree of the lower Court, and direct the application of the respondent to be dismissed. The agreement executed by both parties being vague and indefinite, the appellants are, in our opinion, not entitled to costs in either Court.

H. T. H. *Appeal allowed.*

## CRIMINAL MOTION.

*Before Mr. Justice Miller and Mr. Justice Macpherson.*

ABRAHAM (PETITIONER) *v.* MAHTABO AND ANOTHER (OPPOSITE-PARTIES).*

1889 *March* 28.

*Criminal Procedure Code (Act X of 1882), s. 551—"Unlawful detention for an unlawful purpose—Infant, Custody of.*

A Hindu girl, under the age of 14 years, went of her own accord to a Mission House where she was received and allowed to remain. The mother and husband of the girl thereupon applied to the Magistrate, who took proceedings under s. 551 of the Criminal Procedure Code. The Lady Superintendent of the Mission House denied that the girl was legally married, and alleged that she was practically being brought up with the connivance of the mother to a life of prostitution. The Magistrate, after recording evidence, found that the girl was legally married; that the other allegation was not established; and that, although she went to and remained in the Mission House of her own free will, there was, under the

* Criminal Motion No. 25 of 1889, against the order passed by C. C. Quinn, Esq., Magistrate of Patna, dated the 6th of December 1889.