

It is quite clear that the learned District Judge is wrong. To ask a non-legal appellant to argue his case is asking for what is practically impossible. The application for adjournment shows clearly and distinctly that he did not wish to drop his appeal. He wished to press it. The bare fact that he could not argue it did not justify the District Judge in dismissing it. It was necessary for him under the circumstances to consider the grounds of appeal and to decide the case on the merits. This he has not done. We therefore admit the appeal, set aside the decree of the District Judge and remand the case to his court with directions to re-admit the appeal to its original number in the register and to dispose of it on the merits. Costs will follow the event.

*Appeal allowed and cause remanded.*

1912

BALDEO  
PRASAD  
v.  
KUNWAR  
BAHADUR.

1912,  
November, 18.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*  
SABTA PRASAD AND ANOTHER (DEFENDANTS) v. DHARAM KIRTI SARAN  
AND OTHERS (PLAINTIFFS).\*

*Arbitration—Award—Party to the suit not made party to the submission to arbitration—Party so omitted not a necessary party to the suit.*

*Held* that an arbitration and an award made in the course of a suit would not be rendered invalid by the mere fact that a party whose name was on the record, but who was not a necessary party to the suit, was not made a party to the arbitration proceedings

In a suit for partition of the property of a joint Hindu family between two branches thereof, the widow of one of the members of the family was made a party defendant. The subject matter of the suit was referred to arbitration, but to the submission the widow was not a party. An award was made, upon which a decree followed which was in accordance with the award. Against this decree the defendants appealed upon the ground that the widow was no party to the arbitration proceedings upon which the decree rested.

Mr. B. E. O'Connor and Maulvi Ghulam Mujtaba for the appellants.

Mr. A. H. C. Hamilton, The Hon'ble Pandit Madan Mohan Malaviya, Babu Jogindro Nath Chaudhri, Babu Satya Chandra Mukerji, Munshi Girdhuri Lal Agarwala, Munshi Benode Behari and Pandit Rama Kant Malaviya, for the respondents.

\*First Appeal No. 264 of 1910, from a decree of S. R. Daniels, District Judge of Moradabad, dated the 8th of May, 1909.

1912

SABTA  
PRASAD  
v.  
DHARAM  
KIRTI SARAN.

RICHARDS, C. J., and BANERJI, J.:—This and the connected appeal No. 20 of 1911 arise out of two suits brought for partition of certain property which originally belonged to Sahu Radha Kishan.

The plaintiffs to the two suits are the descendants of Sahu Ganga Sahai and Sahu Gokal Prasad, two of the sons of Sahu Radha Kishan. One Musammat Janki was made a defendant to the suit: she is the widow of Sahu Shiam Saran, one of the sons of Sahu Ganga Sahai. All the parties to the two suits referred their disputes to arbitration, save and except Musammat Janki, who did not join in the submission. A decree was made by the arbitrator, who was the Subordinate Judge in whose court the suits were filed, and who was appointed arbitrator not only with the consent of the parties but also with the sanction of the Government. Decrees have been passed in both the suits in accordance with the award, and it is against these decrees that the two appeals before us have been preferred as also the appeal No. 21 of 1911 in which Musammat Janki is the appellant. The decree having been made in accordance with the award, a preliminary objection has been taken on behalf of the respondents that no appeal lies. If the award is legally valid, the decree being in accordance with the award no appeal can be preferred from the decree and the objection must prevail. We have therefore to determine whether the award is a legally valid award.

Mr. O'Connor, who appears for the appellants, challenges the validity of the award on the sole ground that Musammat Janki was not a party to the submission. If Musammat Janki was not a necessary party to the suit, the fact of her not joining in the submission would not in our opinion affect the validity of the award. As regards Musammat Janki the allegation of the plaintiff was that she was in possession of some villages in lieu of maintenance. Her statement was also to the same effect, and what she claimed was that her right of maintenance should not in any way be affected by the partition claimed in the two suits. It thus appears that all parties were agreed that she was not a necessary party having regard to the nature of her rights. Had the case gone to trial no question of her rights could have been determined in a partition suit. So that it is manifest that she was not, as the parties themselves also practically admitted, a

necessary party to the suit. The fact that she did not join in the submission did not therefore in our opinion vitiate the award. The decree having been passed in accordance with the award, no appeal lies and these two appeals must fail.

We accordingly dismiss this appeal with two sets of costs, one set to be obtained by Parsotam Saran respondent and the other by Sahu Dharam Kirti respondent. The objections under order XLI, rule 22, fail and are dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Tudball.*

EMPEROR v. UDIT NARAIN DUBE AND OTHERS.\*

*Criminal Procedure Code, section 439—Revision—Powers of High Court—District Registrar.*

A District Registrar is not a court subordinate to the High Court either on the civil, criminal or revenue side, and the High Court has no power to interfere with the order of the Registrar impounding a document and calling upon the applicants to show cause why they should not be prosecuted for forgery.

The facts of this case were as follows:—

The District Registrar of Mirzapur had before him an application with reference to a certain document for an order of compulsory registration of that document. The Sub-Registrar had refused to register it on the ground of denial. After making some inquiry the District Registrar refused to register it on the ground that he believed the document to be a forgery. He passed the order on the 27th of July, 1912. Immediately below the order he recorded the following order:—

"The deed in question is impounded. An inquiry will be held by me under section 476, Criminal Procedure Code, on my return from leave. The writer of the deed, the attesting witnesses, Khub Lal and Udit Narain, will be called on to show cause why they should not be prosecuted for forgery."

The parties against whom this order was made applied in revision to the High Court asking that it might be set aside.

Mr. D. R. Sawhny for the applicants.

The Assistant Government Advocate (Mr. R. Malcolmson) for the Crown.

1912

SABTA  
PRASAD  
v.  
DEBAM  
KIRTI,  
SARAN.

1912,  
November, 27.

\*Criminal Revision No. 857 of 1912 from an order of W. R. G. Moir, District Registrar of Mirzapore, dated the 27th of July, 1912