

recover the full sum of Rs. 470-11-2 as compensation as originally allowed to them by the District Judge on the 27th of July, 1917. The appellants will be entitled to their costs of this appeal from the opposite party.

Appeal allowed.

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CHANDAR
LAL SAH
v.
THE
COLLECTOR
OF BAREILLY.

MISCELLANEOUS CIVIL.

Before Mr. Justice Walsh and Mr. Justice Wallace.

RAM LAL (PLAINTIFF) v. DEO RAJ (DEFENDANT)*

Arbitration—Reference to arbitration made pending a reference of an appeal to the High Court under section 17 of the Ajmer Courts Regulation—Jurisdiction—Civil Procedure Code, 1908, schedule II, paragraph 1.

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July, 26.

Held, on a reference to the High Court under section 17 of the Ajmer Courts Regulation, that it is open to the parties to an appeal to refer the matters in dispute between them to arbitration even after they have obtained an order of reference to the High Court.

THIS was a reference to the High Court under section 17 of the Ajmer Court Regulation. The facts which gave rise to the reference and the points as to which the decision of the High Court was asked are set forth in the following order of the Additional District Judge of Ajmer-Merwara:—

“In suit No. 11 of 1912 filed by the applicant in this reference, Ram Lal, for cancellation of a sale-deed against the opposite party Sheo Das, the Assistant Commissioner and Subordinate Judge, Ajmer, gave Ram Lal a decree. Sheo Das then filed an appeal in this Court and it was in due course dismissed. Sheo Das then obtained a reference to the Hon'ble the High Court at Allahabad. When this reference was pending Sheo Das died; moreover, parties filed an application in this Court asking this Court to refer this case to arbitration. The High Court accordingly was pleased to send back the case here, to bring the representative of Sheo Das on the record as well as to dispose of the arbitration petition. This Court accordingly decided to refer the case to arbitration. Ram Lal was evidently dissatisfied with the award and filed an objection, which was overruled. He then filed a Civil Suit, No. 42 of 1919, before the Subordinate Judge, Ajmer, seeking a declaratory decree to the effect that the order of this Court (*i.e.*, the District Judge)

* Civil Miscellaneous No. 246 of 1921.

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dated the 18th of August, 1916, referring the matter to arbitration was *ultra vires* and all proceedings subsequent thereto null and void. The defendant met the suit with the following pleas:—

- (1) That the suit was not maintainable.
- (2) That the court had no jurisdiction to entertain it.
- (3) That the suit was barred by the rule of *res judicata*.

The Subordinate Judge framed, amongst others, the following issues:—

(a) Had the District Judge no jurisdiction to refer the matter to arbitration, in the course of proceedings under section 17 of the Ajmer Courts' Regulation and are his proceedings *ultra vires*?

(b) Is this court competent to entertain the suit?

(c) Is the suit barred by the rule of *res judicata*?

The Subordinate Judge decided the first issue against Ram Lal, the second and third in his favour, and dismissed the suit.

There was an appeal to this Court and I confirmed the judgment and decree of the Subordinate Judge, not merely because I concurred with him in his finding on the first issue but also because I was of opinion that the question of want of jurisdiction or otherwise of this Court to deal with the petition of arbitration was not a question which could be re-agitated in a suit, and that the act of this Court in having placed the case in the hands of the arbitrators being unchallenged in the court above—in the court of the Hon'ble the Chief Commissioner—, became a finally decided matter between the parties and the parties were estopped from re-opening the case by a suit. On the question of merits *i.e.*, whether this Court could, properly speaking, refer the matter to arbitration when it had washed its hands of the case after dismissing the appeal, I was of opinion that the requirement of Schedule II, Rule 1, of the Code of Civil Procedure that a case can be referred to arbitration only before a judgment is pronounced, was fully satisfied, as the reference of this case to Allahabad re-opened it.

The questions, therefore, for decision of the Hon'ble the High Court are as follows :—

- (a) Whether the reference of the case to the Hon'ble the High Court re-opened it, so as to confer on this court jurisdiction to refer the matter to arbitration.
- (b) Did the decision of this court to refer the matter to arbitration estop the plaintiff Ram Lal from re-opening the question by a suit, *i.e.*, whether he was bound by the estoppel of *res judicata*?
- (c) Could a suit lie to obtain the declaration of the question whether the District Court or any other court had jurisdiction to dispose of the case in the way they did, *i.e.*, by referring to arbitration?

The case is accordingly submitted under section 17 of the Ajmer Courts Regulation No. I of 1877 to the Hon'ble the High Court for judgment on the above points. My own opinion as to point (a) is in the affirmative and as to (b) and (c) in the negative."

The case was argued before the High Court by—

Mr. *Nihal Chand* and Babu *Surendra Nath Gupta*, for the applicant and Mr. *N. C. Vaish*, for the opposite party.

WALSH and WALLACH, JJ.:—We have no doubt as to what our answers to these questions should be.

To question (a) our answer is, to adopt a technical form, "No, it did not re-open it so as to confer jurisdiction to refer the matter to arbitration, but it did not affect it and the Ajmer Court had original jurisdiction to refer the matter to arbitration up till the final disposal of the suit."

We will state our reasons to remove any possible misunderstanding. The position presents itself in this way. The courts at Ajmer having *pro tanto* disposed of the litigation, there still remained the right of the parties to obtain a reference to the High Court. As appears by the referring order of 1916, the parties were within their rights in asking for a reference. The decision of the suit hinged, as is said in the referring order, upon the questions referred, and the Ajmer District Court expressed its own opinion as to what the answers of the questions should be. The Ajmer Act provides that the final decision shall

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be entered up in accordance with the decision of the High Court. In our view the best analogy is that of a preliminary decree and a final decree, and pending the final order of the Ajmer court on receiving the answers of the High Court to the reference, the suit was still, to adopt the language of the arbitration schedule in the Code of Civil Procedure, "pending judgment." While it was so pending and the High Court had not given its answers the parties agreed to refer the matter to arbitration. We are clearly of opinion that without the agreement of the parties the court could not have done so, because the court had already adopted the agreement of the parties to refer the matter to the Allahabad High Court, but it could allow the parties to override the reference on any terms they saw fit. It is no business of ours why they did so, but, as we have said, pending the final decision, while the matter was in the High Court, they agreed in the most explicit terms to settle the case amicably, to appoint a Barrister and a Pandit as arbitrators, to agree to what they decided and "never to go back upon it"—language which has a strange ring in 1921, though used as the foundation of an application to the court in 1916. The High Court was informed of this agreement and held its hand. On the 8th of August, 1916, in pursuance of the agreement, the District Judge ordered the matter to go to arbitration and directed the arbitrators to file their award by the 31st of August, 1916. In our opinion, in spite of the reference to the High Court, and not in any way because of the reference to the High Court, or because of anything which the High Court said, this was an arbitration in a suit in which the parties agreed that the matters between them should be referred to arbitration. By paragraph 1 of schedule II of the Code of Civil Procedure they were, at any time before judgment was pronounced, at liberty to apply to the court which ordered the order of reference. By paragraph 3(2) of the same schedule the court, from the date of that order, was unable to deal with the matter in suit. It follows from this that our answer to question (b) must be "yes." The court was prevented by law from dealing with the matter in the suit thereafter, and *a fortiori* from dealing with it in another suit.

It follows that the answer to question (c) must be "No, no suit would lie."

Let the record go back to the Ajmer Court with this expression of our opinion.

Under section 20 of the Ajmer Courts Regulation the costs of this reference ought to be costs in the appeal out of which the reference arose. We recommend accordingly.

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APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

BHUP SINGH (DEPENDANT) v. JHAMMAN SINGH AND OTHERS (PLAIN-
TIFS) AND MUSAMMAT GURGA KUNWAR AND ANOTHER (DEPEND-
ANTS).*

1921
July, 28.

Hindu law—Hindu widow—Power of widow or other female limited owner to bind the estate—Legal necessity—Consent of reversioners.

When the alienation of the whole or part of the estate in possession of a Hindu widow or other such female owner has to be supported on the ground of necessity, then if such necessity is not proved *alimunde* and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to quarrel with the transaction will be held to afford a presumptive proof, which, if not rebutted by contrary proof, will validate the transaction as a right and proper one.

Where a widow or other such female owner of an estate borrows money for the purposes of the estate on a simple bond and subsequently gives the security of the estate for the payment of the debt, it is within her power to bind the estate.

Jugul Kishore v. Jotendro Mohun Tajor (1), *Debi Prosad Chowdhury v. Golap Bhagat* (2) and *Rangasami Gounden v. Nachiappa Gounden* (3) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Munshi Panna Lal, for the appellants.

Babu Piari Lal Banerji, for the respondents.

TUDBALL and SULAIMAN, JJ.:—This appeal is connected with F. A. 124 of 1919, as the mortgage which is the subject

* First Appeal No. 33 of 1919, from a decree of Muhammad Ali Ausaf, subordinate Judge of Aligarh, dated the 8th of November, 1918.

(1) (1884) I. L. R., 10 Cal., 985. (2) (1913) I. L. R., 40 Cal., 721.

(3) (1913) 17 A. L. J., 536.