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is a co-sharer, that is to say there would be no right of pre-emption in favour of a proprietor of one village in respect of a share sold in another village, even though both the villages happen to be within the same mahal. The proprietor in one village, by reason of his proprietary rights, is necessarily a co-sharer in the mahal which includes this village along with the village of the vendor, but under sub-section (2) he is not allowed a right to pre-empt a share in the other village. The policy of the legislature appears to be that the right of pre-emption should be confined to proprietors in the same village and not extended to shares sold in other villages. In our opinion it would make no difference whether one mahal consists of two or more complete villages or only portions of two or more villages.

On the findings returned by the lower appellate court it is quite clear that the plaintiffs have no preference over the defendant vendee. The appeal is accordingly dismissed with costs.

REVISIONAL CIVIL.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice, and Mr. Justice King.

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May, 14.

RISAL SINGH (PLAINTIFF) *v.* FAQIRA SINGH AND ANOTHER (DEFENDANTS).*

Civil Procedure Code, section 115—"*Case decided*"—*Order setting aside an award in a pending suit.*

No revision lies from an order setting aside an award. Such an order disposes of a proceeding during the pendency of the suit, and the decision of the question whether the award is valid or not does not amount to a "case decided" within the meaning of section 115 of the Civil Procedure Code.

Dr. *K. N. Malaviya*, for the applicant.

Mr. *G. S. Pathak*, for the opposite parties.

SULAIMAN, A. C. J.:—This is a plaintiff's application in revision from an order of the Munsif of

*Civil Revision No. 394 of 1930.

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Saharanpur setting aside an arbitration award. A preliminary objection to the hearing of this application is taken and it is urged that no case has been decided and therefore no revision lies under section 115 of the Code of Civil Procedure. The learned advocate for the respondents relies on the case of *Rudra Prasad* v. *Mathura Prasad* (1) decided by a Bench of which I was a member. It was pointed out in that case that there had been a recent decision in the case of *Shah Muhammad Fakhruddin* v. *Rahimullah Shah* (2) in which exactly the same point had been decided against the applicant. Following that decision we held that no revision lay.

In that case of *Shah Muhammad Fakhruddin* v. *Rahimullah Shah* another Bench had held that no application in revision would lie from an order setting aside an award. The Bench considered that they were following the pronouncement of the Full Bench in *Buddhu Lal* v. *Mewa Ram* (3). But in this Full Bench case the opinion of RYVES, J., which turned the scale, was simply this that "No revision lies from a finding on an issue relating to the question of jurisdiction". There is, however, an earlier case of *Chattar Singh* v. *Lekhraj Singh* (4), in which also it was held that no revision lay from an order setting aside an award. On the other hand, in *Bhola Nath* v. *Raghunath Das Mithan Lal* (5) it was held that an application in revision would lie from an order superseding a reference to arbitration before the award was delivered. That case also was decided by a Bench of which I was a member. The case of *Chatarbhuj* v. *Raghubar Dayal* (6), which was exactly on all fours with the case then before us, was cited and followed by us. We held that the termination of the proceeding relating to the supersession of the arbitration amounted to a case decided within the meaning of section 115.

(1) (1925) I.L.R., 47 All., 916.
(2) (1924) I.L.R., 47 All., 121.
(3) (1921) I.L.R., 43 All., 564.
(4) (1883) I.L.R., 5 All., 293.
(5) (1929) I.L.R., 51 All., 1010.
(6) (1914) I.L.R., 36 All., 354.

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The learned advocate for the respondents has urged before us that the two last mentioned cases can be distinguished on this ground that an application for the supersession of the arbitration proceedings before the award is delivered is not expressly provided for anywhere in the Code and the proceeding started by such an application may be treated as a separate proceeding. A case within the suit, resulting in the supersession of the arbitration, may amount to "a case decided" within the meaning of section 115. On the other hand, the order setting aside the award is an order contemplated by schedule II of the Code of Civil Procedure and is a part of the proceeding in the suit itself.

I must admit that the distinction sought to be drawn is very thin and that to some extent there is unfortunately a want of harmony. *Bhola Nath's* case can be distinguished only on the ground that if the court allows a new proceeding to be started, which the law does not contemplate and which is outside the scope of the suit, resulting in the interruption of its normal course, and passes an order not warranted by law, the proceeding is deemed to be a "case" in itself.

As the facts of the case before us are identical with the facts of the first three cases quoted above, it must be decided in accordance with the view expressed in those cases. I would therefore dismiss this revision.

KING, J.:—I concur. The order setting aside the arbitration award disposed of a proceeding during the pendency of the suit and, in my opinion, the decision of the question whether the award was valid or invalid did not amount to the decision of a "case" within the meaning of section 115 of the Code of Civil Procedure. The rulings in *Chattar Singh* v. *Lekhraj Singh* (1), *Shah Muhammad Fakhruddin* v. *Rahimullah Shah* (2) and *Rudra Prasad* v. *Mathura Prasad* (3) are exactly in point and I think that they should be followed.

(1) (1883) I.L.R., 5 All., 293. (2) (1924) I.L.R., 47 All., 121.
(3) (1925) I.L.R., 47 All., 916.