

REVISIONAL CIVIL.

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

MUHAMMAD ALJAZ ALI KHAN AND ANOTHER (DEFEND-
ANTS) v. BASANT RAI AND OTHERS (PLAINTIFFS).*

1931
August, 3.

*Arbitration—Reference of whole case—Not necessary for
court to frame issues first—Question of jurisdiction
involving law and facts may be referred—Decree on
award—Revision on ground of invalidity of order of
reference—Civil Procedure Code, section 115.*

A revision can lie against an order disallowing objections to an award, on the ground of invalidity of the order of reference itself.

Where the whole suit is referred to arbitration, it is not necessary for the validity of the reference that the court should frame issues, noting the points in dispute, and refer them specifically to the arbitrator.

A question of territorial jurisdiction, involving questions of fact as well as of law, raised in a suit may validly be referred to arbitration: so the reference of a suit to arbitration is not invalid by reason of such question of jurisdiction being one of the questions raised in the suit.

Dr. K. N. Katju and Mr. M. A. Aziz, for the applicants.

Mr. N. P. Asthana, for the opposite parties.

SULAIMAN, A. C. J. and SEN, J.:—This is a revision from an order disallowing objections to an award.

A preliminary objection is taken that no revision lies. Inasmuch as the applicant wishes to challenge the validity of the order of reference itself, we cannot hold that no revision can at all be entertained.

On the merits there is no force in the revision at all. It was not absolutely necessary for the court

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below to frame issues noting the points in dispute between the parties and refer them specifically to the arbitrator. The points of conflict were apparent from the pleadings, and the order of the court below shows that the whole case was referred to the arbitrator and he was called upon to decide all questions that were in dispute between the parties, and therefore there was no irregularity in this respect.

The next objection is that the arbitrator had refused to act and the court therefore was not authorised to refer the matter back to him. It is even suggested that the court forced him to arbitrate. This is quite wrong. As a matter of fact, the arbitrator had never actually refused to arbitrate. What happened was that time had been extended but the arbitrator found that he was too busy in February and could not take up the matter, and that he would be out of station in March, 1928, and would not be able to arbitrate. He accordingly reported this to the court and returned the papers. He never expressly said that he declined to arbitrate. The court no doubt first fixed the 5th of March, 1928, for the parties to nominate a fresh arbitrator, but the procedure laid down in rule 5 of schedule II as to notice was not followed. On that date the plaintiff intimated that the arbitrator was willing to arbitrate if further time were allowed. The court then inquired from him and he expressed his willingness to arbitrate in the month of April. The papers were then accordingly sent back to him and he delivered his award. We think that there had been no refusal on his part and the court had jurisdiction to send the papers back to him and to extend the time. The lower court has itself found that there was no refusal and we must accept that finding.

The next point urged is that the court below had no power to refer the question of jurisdiction to the

arbitrator. A plea had been taken that no part of the cause of action had arisen at Agra, but that plea was dependent on questions of fact as well as of law. The arbitrator had full power to decide such a question of jurisdiction, and we do not think that the court below acted illegally in referring this matter to him: *Ghulam Khan v. Muhammad Hassan* (1). There is accordingly no force in this revision, and we dismiss it with costs.

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 FULL BENCH.

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

RAM KARAN SINGH AND ANOTHER (DEFENDANTS) v.
 RAM DAS SINGH AND OTHERS (PLAINTIFFS).*

 1931
 August, 4.

Agra Tenancy Act (Local Act No. III of 1926), sections 99, 230—Suit by tenant for declaration and possession against co-tenant—Cause of action accruing before present Tenancy Act—Whether section 99 applies—Retrospective effect—“Claiming through” landholder—Jurisdiction—Civil and revenue courts—Interpretation of statutes.

Held by the Full Bench (SULAIMAN, A. C. J., and BAJPAI, J., *dubitante*) that section 99 of the Agra Tenancy Act, 1926, has no application to a suit by a tenant against a co-tenant for a declaration of title and, in the alternative, for possession, where the cause of action, namely the dispossession or resistance to possession, arose before the coming into force of the Tenancy Act of 1926. Such a suit is accordingly cognizable by the civil court.

The words “claiming through”, in clause (b) of section 99 of the Agra Tenancy Act, 1926, mean ‘holding a derivative title from the landholder’ and so a suit for possession between co-tenants falls within the purview of section 99.

* Second Appeal No. 314 of 1929, from a decree of Sarup Narain, Second Additional Subordinate Judge of Jaunpur, dated the 15th of November, 1928, reversing a decree of M. M. Husain, Second Additional Munsif of Jaunpur, dated the 13th of February, 1928.

(1) (1901) I.L.R., 29 Cal., 167.