

## APPELLATE CIVIL

Before Mr. Justice King and Mr. Justice Niamat-ullah  
UPENDRA NATH BASU (DEFENDANT) v. HET LAL  
(PLAINTIFF)\*

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March, 2

*Civil Procedure Code, schedule II, paragraph 20—Application for filing an award—Venue—"Court having jurisdiction over the subject-matter of the award"—Territorial jurisdiction.*

In order to decide whether the court, to which an application for filing an award under paragraph 20 of the second schedule of the Civil Procedure Code is made, has jurisdiction over the subject-matter of the award, it is necessary to consider the reliefs granted by the award and to determine whether the court would have jurisdiction to try a regular suit between the parties in which the reliefs claimed were the reliefs granted by the award.

It was agreed between a debtor and a creditor that the creditor should have a half share in a certain zamindari property of the debtor in lieu of his loan; but no conveyance was executed, and the debtor continued in possession of the entire property, paying a half share of the profits to the creditor. Disputes subsequently arose and were referred to arbitrators, the matters to be decided being (1) the question of accounts and (2) the question of transfer of the property. The award decided that the debtor was to pay a certain sum to the creditor to buy out the latter's half share, and until such payment was made the latter would remain owner of that share. An application to file the award was made in the court of the Subordinate Judge of Benares; the parties were residents of Benares, but the property was situate in Patna. *Held* that the court was not a court having jurisdiction over the subject-matter of the award. The award dealt with two points, one being the sum of money due in respect of the profits and the other relating to the transfer of the property. Only the first matter was within the jurisdiction of the court, but not the second. The court could not assume jurisdiction by ignoring and rejecting a portion of the award and the court was wrong in treating that portion as a nullity on the ground that there having been no conveyance in favour of the creditor, that portion of the award which declared his ownership was a nullity.

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\*First Appeal No. 48 of 1932, from an order of Mathura Prasad, Subordinate Judge of Benares, dated the 9th of January, 1932.

Mr. *B. Malik*, for the appellant.

Sir *Tej Bahadur Sapru* and Messrs. *Shiva Prasad Sinha* and *C. B. Agarwala*, for the respondent.

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KING and NIAMAT-ULLAH, JJ. :—This is a defendant's appeal arising out of an order passed by the Subordinate Judge of Benares under paragraph 21 of the second schedule of the Code of Civil Procedure ordering an award to be filed and pronouncing judgment according to the award.

The appellant Babu Upendra Nath Basu was defendant No. 1 in the suit. In the year 1908 he purchased certain zamindari property in a village called Raitar in the district of Patna, which is in the province of Bihar and Orissa. In 1912 the appellant borrowed a sum of Rs.61,000 from Ishwari Prasad and in 1914 Ishwari Prasad and the appellant agreed that Ishwari Prasad should have a half share in the Raitar property in lieu of his loan. No conveyance was executed in Ishwari Prasad's favour but the appellant continued to manage the Raitar property both for Ishwari Prasad and for himself and to pay a half share of its profits to Ishwari Prasad.

After Ishwari Prasad's death his sons and grandsons entered into an agreement with the appellant on the 25th of April, 1925, in respect of the Raitar property. It was agreed that the appellant should execute a conveyance to the heirs of Ishwari Prasad in respect of one-half of the property and that he should continue to manage it on behalf of both parties. It was further agreed that in case of dispute, the dispute should be referred to arbitration. Disputes arose, and on the 3rd of April, 1928, the appellant and the heirs of Ishwari Prasad referred their disputes to arbitrators. The terms of reference required the arbitrators to go into the accounts and the transfer of the Raitar property. On the 1st of August,

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Het Lal, who is one of the sons and heirs of Ishwari Prasad, applied to the Subordinate Judge of Benares under paragraph 20 of the second schedule for an order that the award be filed in court and that a decree be passed accordingly. The appellant resisted the application on several grounds, one of which was that the Subordinate Judge of Benares had no jurisdiction over the subject-matter of the award. The court below remarked that the award related to two matters, namely to accounts and to transfer of Raitar property. So far as the accounting and the award of money to the plaintiff and defendants 2 to 4 were concerned, it was admitted that the court had jurisdiction. It may be here observed that the parties are residents of Benares. In so far as the award related to the transfer of Raitar property the court below came to the conclusion that in reality the heirs of Ishwari Prasad were not legally owners of a half share and that the clause in the award which declared the ownership of those persons in the Raitar property was a mere nullity. The learned Subordinate Judge therefore treated the award as granting merely certain sums of money to the heirs of Ishwari Prasad and treated the clause in the award relating to ownership in Raitar property as a mere nullity which could be ignored without affecting the rest of the award. The result was that the court below passed an order that the award be made a rule of the court, excepting the portion which deals with the ownership of the Raitar property.

The appellant challenges the order of the court below on several grounds, but for the purpose of disposing of

this appeal it is only necessary for us to consider the objection that the court below had no jurisdiction to pass the order that the award be made a rule of the court subject to a certain modification.

The question raised depends upon the interpretation of schedule II, paragraph 20, clause (1) which lays down that "Where any matter has been referred to arbitration without the intervention of a court, and an award has been made thereon, any person interested in the award may apply to any court having jurisdiction over the subject-matter of the award that the award be filed in court." The question is whether the Subordinate Judge of Benares had jurisdiction over the subject-matter of the award. The award, as we have already stated, dealt with two principal points, one was the sum of money due from the appellant to the heirs of Ishwari Prasad in respect of the profits of Raitar property; the other point related to the transfer of Raitar property, i.e. the question whether the appellant should execute a conveyance in respect of a half share of the Raitar property in favour of the heirs of Ishwari Prasad, or whether he should buy out their interests in the property.

It is argued for the appellant that the court must have jurisdiction over the whole of the subject-matter of the award and that as the Raitar property, which forms the subject-matter of the award, is outside the territorial jurisdiction of the court, the court has no jurisdiction under paragraph 20. Several authorities have been cited for the proposition that the court must have jurisdiction over the whole of the subject-matter. In *Krishna Iyer v. Subbarama Iyer* (1) it was held that the expression "the subject-matter of the award" in paragraph 20 of schedule II of the Code of Civil Procedure means the whole, and not the whole or a portion, of the subject-matter of the award and that a court within whose jurisdiction a portion of the immovable properties forming

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the subject-matter of an award is not situated has no jurisdiction to entertain an application to file the award. That case related to the partition of joint family property which was situated partly in British India and partly outside British India. It was argued that the decree might be confined to the subject-matter of the award in so far as it was within the jurisdiction of the British Indian courts. The learned Judges held that it was not open to the court to direct the award to be filed in part and to pass a decree in terms of portions only of the award under paragraph 20 of the second schedule. In the present case the court below has only been able to assume jurisdiction by treating the award as merely an award of money and by disregarding the portion relating to the ownership of the Raitar property. On the strength of the Madras ruling, the court below was not justified in passing a decree in terms of a portion only of the award and we think the court took an erroneous view in treating the portion relating to the ownership of Raitar property as a mere nullity. In the Madras ruling cited above a number of authorities on the same point are mentioned and relied upon and it is unnecessary for us to discuss the rulings separately. In the present case we think it is unnecessary to decide that where an award relates to immovable property, then the court has no jurisdiction under schedule II, paragraph 20, unless every item of the immovable property is within the territorial jurisdiction of the court. It appears to us that, even according to the respondents' contention, the question of jurisdiction must be decided against them. It was argued for the respondents that the question of jurisdiction must be decided with reference to the provisions of sections 16 to 20 of the Code of Civil Procedure. That contention seems to us sound. In order to decide whether the court has jurisdiction over the subject-matter of the award, it is necessary to consider the reliefs granted by the award and to determine whether the court would have jurisdiction to try a regular suit between the parties in which the

reliefs claimed were the reliefs granted by the award. For the purpose of deciding the question it seems necessary to refer to sections 16 to 20 of the Code, as these seem to be the only rules of law applicable. If this test is applied, however, we think that the decision must be against the respondents. Under section 16, clause (d), it is laid down that a suit "for the determination of any other right to or interest in immovable property" must be instituted in the court within the local limits of whose jurisdiction the property is situate. It appears to us that the award did determine that the heirs of Ishwari Prasad had a legal title to a half share in the Raitar property and that they were entitled to retain their ownership until they had received certain sums of money from the appellants. It has been contended for the respondents that no question of title was raised or decided and that there never was any dispute regarding the ownership of the Raitar property. This is only true in a certain sense. The appellants apparently never contested the fact that the heirs of Ishwari Prasad were entitled to a half share in the Raitar property. If their rights had not been acknowledged, there could have been no meaning in the reference to arbitration regarding the share of profits due to the heirs of Ishwari Prasad. In another sense, however, there was a dispute regarding ownership. No deed of conveyance has been executed in favour of Ishwari Prasad's heirs and there was some dispute whether such a conveyance should be executed and, if so, on what terms, or whether Ishwari Prasad's heirs should relinquish their interests in the Raitar property in lieu of hard cash and, if so, what amount. We think that in view of the pleadings it is not open to the plaintiff to argue that there never was any dispute regarding the proprietorship of village Raitar. In the very first paragraph of the plaintiff's application he states "that there was a dispute between the parties regarding the proprietorship of village Raitar in the district Patna." On the plaintiff's own showing, therefore, there was such a dispute and we have

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already indicated the nature of the dispute. As the award declared the legal ownership of Ishwari Prasad's heirs in the Raitar property and declared that they were entitled to retain their ownership until the specified sums of money had been paid to them, we think that under section 16(d) the suit could only be instituted in a court within the local limits of whose jurisdiction the Raitar property is situated.

It has been contended that the proviso to section 16 is applicable, but in our opinion, when the relief granted by the award is a declaration of proprietary title to certain immovable property the proviso is not applicable. The arbitrators in effect gave Ishwari Prasad's heirs a charge over the immovable property until the specified sums were paid to them, and the terms of the award were similar in many respects to a decree for redemption.

In our opinion, therefore, the court below had no jurisdiction over the subject-matter of the suit within the meaning of schedule II, paragraph 20 and the appeal must be allowed. We allow the appeal with costs here and in the court below. The application filed in the lower court will be returned to the plaintiff respondent.

*Before Mr. Justice Thom and Mr. Justice Rachhpal Singh*

NAGESHAR PRASAD (SURETY) v. GUDRIMAL NARAIN  
DAS (DECREE-HOLDER)\*

*Civil Procedure Code, section 55(4)—Release from arrest of judgment-debtor intending to apply for insolvency—Surety—Terms of security bond not in accordance with section—Discharge of surety according to actual terms of bond—Whether a nullity—Jurisdiction—Civil Procedure Code, section 151.*

A judgment-debtor was arrested in execution of a decree, but was released under section 55(4) of the Civil Procedure Code on his expressing an intention to apply for insolvency

\*Second Appeal No. 106 of 1932, from a decree of Sheo Harakh Lal, Additional Subordinate Judge of Ballia, dated the 7th of November, 1931, reversing a decree of Syed Ali Razi, Munsif of Rasra, dated the 1st of August, 1930.

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