REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

HARBHAN DATT AND OTHERS (DEFENDANTS-APPLICANTS) *v.* LADLI SARAN AND ANOTHER, DEFENDANT (OPPOSITE PARTY)* — 1933 *October, 23*

Suits Valuation Act (VII of 1887), section 8—Suit for partition of grove—Jurisdictional value—Jurisdiction—Reference to arbitration made by Munsif—Case transferred to another Munsif—Latter's jurisdiction to deal with objections against award—Civil Procedure Code (Act V of 1908), section 115 and Schedule II, Paragraph 16—Decree passed in terms of award—Lower court acting without jurisdiction—High Court's power to entertain revision—Civil Procedure Code (Act V of 1908), Schedule II, Paragraph 14—Arbitrator holding plaintiff's claim to be within limitation—Objection to the legality of award apparent on the face of it—Remitting of award to arbitrator for reconsideration not justified.

The valuation for purposes of jurisdiction in a suit for partition of a grove is to be determined according to the plaintiff's share and not according to the value of the entire property. *Wajihuddin* v. *Waliullah* (1), and *Motibhai* v. *Haridas* (2), relied on.

A Munsif, to whom a case is transferred, has full jurisdiction to deal with objections against an award and to pass a decree in accordance with it in spite of the fact that the original reference had been made not by him but by another Munsif from whose court the case was transferred.

Although the intention of paragraph 16 of schedule II of the Code of Civil Procedure is to give finality to decrees passed in accordance with the decision of arbitrators, yet it cannot be said that in no possible case can a revision be entertained against such decrees. If for instance it can be shown that the lower court acted altogether without jurisdiction in passing a decree in terms of the award, it can be permissible for a court to entertain a revision under section 115 of the Code of Civil Procedure. *Baldeo Sahai* v. *Abdur Rahim* (3), referred to. *Sheo Paltan* v. *Sukhdeo Singh* (4), distinguished.

An error in law on the face of the award means, that you can find in the award or a document actually incorporated thereto

*Section 115, Application No. 121 of 1932, against the order of Babu Badri Prasad Tandon, Munsif of Tarabganj at Gonda, dated the 25th of October, 1932.

(1) (1902) I.L.R., 24 All., 381.
(2) (1896) I.L.R., 22 Bom., 315.
(3) (1932) I.L.R., 7 Luck., 642.
(4) (1922) 26 O.C., 107.

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as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is, erroneous. *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning and Weaving Company, Ltd.* (1), relied on.

Mr. *S. N. Roy*, for the applicants.

Mr. *Har Dhian Chandra*, for the opposite party.

SRIVASTAVA, J.:—This is an application for revision of the judgment and decree, dated the 25th of October, 1932, of the learned Munsif of Tarabganj at Gonda passed in accordance with an arbitrator's award.

The plaintiffs-respondents instituted a suit in the court of the Munsif of Gonda for possession by partition of a one-third share out of certain groves situate in village Sisaye Joga, pargana Paharpur, tahsil and district Gonda. After the issues had been framed the parties agreed to refer their disputes to an arbitrator for decision. The reference was accordingly made by the Munsif of Gonda. Subsequently while the case was pending before the arbitrator, the suit was transferred from the file of the Munsif of Gonda to that of the Munsif of Tarabganj. The arbitrator filed his award in the court of the Munsif of Tarabganj. The sum and substance of the award was that the plaintiffs should be given a decree for partition in respect of a one-third share in the groves in suit on payment of a sum of Rs.50 to defendants Nos. 1 to 3. The defendants filed a number of objections against the award. The learned Munsif, after recording the evidence produced by the parties in respect of the objections just mentioned, in an elaborate judgment came to the conclusion that the objections were altogether futile. He, therefore, accepted the award and passed a decree in accordance therewith.

It is contended on behalf of the applicants that though ordinarily a decree passed in accordance with the arbitrator's award is final and is not open to appeal or revision, yet in the present case the order of the learned Munsif was altogether without jurisdiction and

(1) (1925) L.R., 50 I.A., 324.

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vitiated by material irregularities of procedure such as to justify interference in revision. I am prepared to agree with the learned Counsel for the applicants that although the intention of paragraph 16 of schedule II of the Code of Civil Procedure is to give finality to decrees passed in accordance with the decision of arbitrators—*Baldeo Sahai* v. *Abdur Rahim* (1), yet it cannot be said that in no possible case can a revision be entertained against such decrees. If for instance it can be shown that the lower court acted altogether without jurisdiction in passing a decree in terms of the award, it would be permissible for a court to entertain a revision under section 115 of the Code of Civil Procedure. It is, therefore, necessary to examine the applicants' contention on its merits. It is contended that the reference having been made by the Munsif of Gonda, the Munsif of Tarabganj had no jurisdiction to entertain the award or to pass a decree in accordance therewith. The contention on the face of it seems to be a startling one. As a rule, in the absence of any provision to the contrary, when a case is transferred from the file of one court to that of another, the court to which the case is so transferred is invested with all the powers possessed by the court which was originally seized of the case and such court can deal with the case in the same manner as the original court. The learned Counsel for the applicants is unable to refer me, and I am not aware of, any provision of law which excludes a court, to which a case is transferred, of jurisdiction to deal with an award based on a reference made by the other court before transfer of the case from its file. Reliance has, however, been placed upon the following observations of a learned Judge of the late Court of the Judicial Commissioner of Oudh in *Sheo Paltan* v. *Sukhdeo Singh* (2):

"I am in entire agreement with the view expressed by the learned CHIEF JUSTICE of the Allahabad

(1) (1932) I.L.R., 7 Luck., 642. (2) (1922) 26 O.C., 107.

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High Court in *Lautawan* v. *Lachya* (1) and approved by Mr. Justice PIGGOTT in *Ajudhia Prasad* v. *Badar-ul-Husain* (2) that it was the clear intention of the Legislature that objections to the award on the ground of invalidity from any cause whatever should be decided by the court which had made the order of reference and by no other court."

It is admitted that there was no question of the transfer of the case from the file of one court to that of another either in this case decided in the late Court of the Judicial Commissioner of Oudh or in any of the two cases of the Allahabad High Court referred to in the extract quoted above. I am clearly of opinion that the words "and by no other court" in the above quoted passage were intended to mean a court of appeal or revision. The interpretation sought to be placed upon those words by the learned Counsel for the applicants, namely that a court to which the case has been transferred is also incompetent to decide objections against the award appears to me to be quite incorrect. I must, therefore, hold that the learned Munsif of Tarabganj had full jurisdiction to deal with the objections against the award and to pass a decree in accordance with it in spite of the fact that the original reference had been made not by him but by the Munsif of Gonda.

The plea of jurisdiction was pressed on one other ground. It was said that the suit in which the agreement for reference was made was beyond the pecuniary jurisdiction of the Munsifs, both of Gonda and Tarabganj. The valuation of the suit as given in paragraph 3 of the plaint is Rs.200. The defendants in their written statement accepted this valuation as correct. But while the case was being dealt with by the arbitrator, an application was made to the learned Munsif of Tarabganj for amendment of the written statement so as to allow the defendants to raise the plea that the suit was beyond the pecuniary jurisdiction of the

(1) (1913) I.L.R., 36 All., 69. (2) (1917) I.L.R., 39 All., 489.

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court inasmuch as the market value of the groves in suit was Rs.4,000. The applicants on being questioned by the Munsif stated that Rs.4,000 was the value of the entire property including the plaintiffs' share. The learned Munsif rejected the application holding that it was frivolous and was evidently designed in order to get rid of the arbitration proceedings. He further remarked that as the plaintiffs claimed only a one-third share in the entire property the suit would still lie in the Munsif's court even if the valuation of the entire property was Rs.4,000. The view adopted by the learned Munsit is supported by the decision in *Wajih-ud-din* v. *Waliullah* (1) and *Motibhai* v. *Haridas* (2). The learned Counsel for the defendants-applicants is unable to refer me to any authority in support of the contention that the valuation for the purposes of jurisdiction in a suit for partition is to be determined according to the value of the entire property and not of the plaintiffs' share. This plea also must, therefore, fail.

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Lastly, it was contended that the learned Munsif was wrong in accepting the award inasmuch as an objection to its legality was apparent on the face of it. Section 14, schedule II of the Code of Civil Procedure allows the court authority to remit an award to the arbitrator for reconsideration on such a ground. We have therefore to examine the scope of the words used in section 14, clause (*c*), namely "where an objection to the legality of the award is apparent on the face of it." In *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning and Weaving Company, Ltd.* (3), their Lordships of the Judicial Committee remarked as follows:

> "The law on the subject has never been more clearly stated than by WILLIAMS, J., in the case of *Hodgkinson* v. *Fernie* (4); 'The law has for many years been settled and remains so at this day, that where a cause or matters in difference are referred

(1) (1902) I.L.R., 24 All., 381.
(2) (1896) I.L.R., 22 Bom., 315.
(3) (1923) L.R., 50 I.A., 324.
(4) 3 C.B., (N.S.), 189.

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to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact . . . The only exceptions to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think, firmly established, viz., where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established."

Their Lordships went on further to observe:

"Now the regret expressed by WILLIAMS, J., in *Hodgkinson* v. *Fernie* (1) has been repeated by more than one learned Judge and it is certainly not to be desired that the exception should be in any way extended. An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party, that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound . . . and the award will stand unless, on the face of it, they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound."

The illegality alleged in the present case is that the arbitrator held the plaintiffs' claim to be within limitation. The arbitrator decided the plea of limitation against the defendants on the ground that if the property continues to be joint, the possession of any

(1) 3 C.B., (N.S.), 189.

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co-sharer will be on behalf of all. It is true that the parties were agreed that they were not members of a joint Hindu family, but the arbitrator having held that there had been no previous partition, the position of the parties was that of tenants-in-common. No exception can be taken to the proposition stated by the arbitrator about the possession of any co-sharer being presumed to be on behalf of all. The plea therefore of an objection to the legality of the award being apparent on the face of it is also without substance, and specially so, in the light of the observations of the Judicial Committee referred to above.

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The result is that the application fails and is dismissed with costs.

Application dismissed.

REVISIONAL CIVIL

Before Mr. Justice Muhammad Raza and Mr. Justice H. G. Smith

DURGA PRASAD AND ANOTHER (DEFENDANTS-APPLICANTS) *v.* BARATI LAL (PLAINTIFF-OPPOSITE PARTY)*

1933 *October*, 25

Civil Procedure Code (Act V of 1908), section 115, Schedule II, paragraph 5(2)—Court appointing fresh arbitrators—Provisions of Schedule II, paragraph 5(2) not complied with—Order without jurisdiction whether liable to be set aside.

In certain circumstances the court is vested with jurisdiction to appoint a fresh arbitrator, but this authority to appoint does not arise unless the necessary conditions precedent have been fulfilled. Where a court appoints an arbitrator without complying with the prescribed formalities, his action is without jurisdiction or at least tainted with material irregularity. If, therefore, the provisions of schedule II, paragraph 5(2) of the Code of Civil Procedure are not properly complied with, an order appointing fresh arbitrators is liable to be set aside under section 115 of the Code of Civil Procedure by reason of irregularity in procedure. *Abdul Ghani* v. *Din Dayal* (1),

*Section 115, Application No. 59 of 1932, against the order of B. Bhagwat Prasad, Subordinate Judge of Mohanlalganj, at Lucknow, dated the 6th of April, 1932.

(1) (1919) I.L.R., 41 All., 578.