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TOLA RAM
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THE CROWN.

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(*vide inter alia Ramzan* v. *Crown* (1), *Emperor* v. *Lachhman* (2), and *Queen-Empress* v. *Kader Nasyer Shah* (3).

I would, therefore, dismiss the appellant's appeal but would, if my learned brother agrees, direct that a copy of this judgment be sent to the Local Government for taking action under section 401, Criminal Procedure Code.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

N. F. E.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Tek Chand.

GURAN DITTA AND OTHERS (DEFENDANTS)
Appellants
versus
POKHAR RAM AND ANOTHER (PLAINTIFFS)
Respondents.

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March 24.

Civil Appeal No. 3003 of 1922.

Civil Procedure Code, Act V of 1908, Schedule II, para. 15 (c), and para. 16 (2)—Arbitration—Award—decree passed in accordance with—Appeal—whether competent—Hindu Law —sons of parties—impleaded during pendency of suit—whether reference by father and award thereon binding on sons.

Held, that under the Civil Procedure Code, 1908, no appeal lies against a decree passed in accordance with an award, even though the award is attacked as being void *ab initio*.

(1) 30 P. R. (Cr.) 1918. (2) (1923) I. L. R. 46 All. 243.
(3) (1896) I. L. R. 23 Cal. 604.

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Hari Shankar v. *Ram Piari* (1), *Mussammat Gulab Khatun* v. *Chaudhri* (2), and *Nidamurthi* v. *Gargiparthi* (3), relied upon.

A suit for possession of land instituted against two adult members of a joint Hindu family was referred to arbitration by them. After the award had been filed, the sons of the defendants applied, as members of the same joint family, to be made parties to the suit and, on being impleaded as defendants, they filed objections to the award, which were considered and overruled by the Court. A decree was passed in accordance with the award against all the defendants, on an appeal against this decree by the defendants.

Held, that the sons must be deemed to have placed themselves in the same position in which they would have been had they been parties to the suit from its commencement; and no appeal lay on their behalf to impeach the decree passed against them in accordance with the award.

Held further, that it was really not necessary to implead the sons as parties, as being members of a joint Hindu family with the original defendants they were effectively represented by the latter and would have been bound by the result of the litigation.

Sheo Shankar Ram v. *Jaddo Kunwar* (4), followed.

Held also, that an award following on a reference made by a Hindu father is binding on his sons unless it be shown that the father's act in referring the suit to arbitration was tainted with fraud or collusion or was otherwise done in bad faith.

Jagan Nath v. *Mannu Lal* (5), and *Dwarka Das* v. *Krishan Kishore* (6), followed.

First appeal from the decree of Sardar *Ali Hussain Khan*, Kazilbash, *Senior Subordinate Judge, Montgomery, dated the 23rd August 1922, awarding the plaintiffs possession of the land in dispute in accordance with the award.*

(1) (1923) I. L. R. 45 All. 441.
(2) 99 P. R. 1915.
(3) (1914) 25 I. C. 583.
(4) (1914) I. L. R. 36 All. 383 (P. C.).
(5) (1894) I. L. R. 16 All. 231.
(6) (1921) I. L. R. 2 Lah. 114.

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SHUJA-UD-DIN and ANANT RAM, KHOSLA, for Appellants.

RAM CHAND, MANCHANDA, and JAGAN NATH, MALHOTRA, for Respondents.

JUDGMENT.

TEK CHAND J. TEK CHAND J.—On the 16th of November 1917, one Hoshnak Rai, purporting to be the agent of one Ladha Ram, executed a sale-deed in respect of the property in suit in favour of Khushal Mal, Mahtab Mal and Maghar Mal. It appears that Ladha Ram died shortly afterwards without delivering possession of the land to the vendees. On the 1st of December 1920, the vendees instituted the suit out of which this appeal has arisen, against Guranditta and Pokhar Das (sons of Ladha Ram), and Hoshnak Rai, for possession of the land sold. The principal defence put forward by defendants 1 and 2 was that Hoshnak Rai had not been properly authorised by Ladha Ram to effect the sale, which was not binding upon Ladha Ram, or, after his death, on his sons.

A number of issues were framed and both parties were given opportunity to produce evidence in support of their respective contentions. After this had been done and when the case was ripe for arguments, an application was filed on the 20th of February 1922, signed by Mahtab Mal and Pokhar Ram, brother of Khushal Mal (who had died in the meantime), plaintiffs, and Guranditta and Pokhar Das, defendants, praying that the whole dispute be referred to the sole arbitration of one *Lala* Anup Chand, Pleader. Maghar Mal, plaintiff, was absent and did not sign this application, but it was stated by Pokhar Ram, plaintiff, that he was responsible for him. The application was also signed by *Lala* Radha Kishen,

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Pleader, who represented all the plaintiffs (including Maghar Mal) and by *Pandit* Daulat Ram, Pleader, for the contesting defendants. This application was granted by the Court and an order was passed referring the dispute to the arbitration of *Lala* Anup Chand. It appears that all the parties appeared before the arbitrator and laid a certain amount of evidence before him. On the 23rd March 1922 the arbitrator gave an award holding that the sale in question was effected by Hoshnak Rai, as the duly authorized agent of Ladha Ram and was binding on the defendants 1 and 2 and that the plaintiffs were entitled to a decree for possession against them.

On the 1st of April 1922 defendants 1 and 2 filed lengthy objections against this award, most of which attacked it on the merits. It was also urged that the appointment of the arbitrator was bad inasmuch as Maghar Mal, plaintiff, had not signed the application for reference to arbitration and also that the arbitrator " was a member of the brotherhood of Hoshnak Rai and was also his relation " and that he had given his award as a result of partiality. The defendants called no evidence to support these objections, but the Court of its own accord, ordered that the arbitrator should be summoned for examination in Court. After several adjournments the arbitrator appeared on the 26th of June 1922 but the defendants expressed no desire to examine him. On the other hand, on that date an application was filed by the sons of defendants 1 and 2, who are appellants 3 to 7 before us, that as the property in suit was joint Hindu family property and Ladha Ram was not the sole owner of it, therefore, the applicants, being interested in it, ought to be impleaded as parties to the pro-

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ceedings before the Court. This application was granted by the Court and these newly impleaded defendants filed a lengthy *jawab dawa* on the 19th of July 1922 repeating, almost word for word, the objections that had been taken by their fathers, defendants 1 and 2, in their written statement filed on the 1st of April 1922. The arbitrator was summoned and he again appeared in Court on the 9th of August 1922, but on this occasion also the defendants took no steps to examine him with regard to their objections as to partiality or the alleged irregularities in the conduct of proceedings before him, nor did they make any attempt to substantiate their allegations, either by going themselves into the witness-box or by any other means. On the other hand, on this date, their sons who had, as stated already, been impleaded as defendants 3 to 7, filed objections against the award, alleging that the award was " ineffectual and unacceptable against them " and imputing misconduct and partiality to the arbitrator. They, however, took no steps to substantiate these objections, and the Court on the 23rd August 1922 passed a decree in accordance with the award against all the defendants except Hoshnak Rai whom the arbitrator had exonerated and against whom the case had, in the meantime, been withdrawn by the plaintiffs.

Against this decree of the learned Subordinate Judge, which was passed in accordance with the award, a first appeal has been preferred by defendants 1 to 7 to this Court. The first question to be decided is whether an appeal is competent, in view of the express provisions of schedule II, paragraph 16 of the Code of Civil Procedure, clause (2) of which lays down that " no appeal shall lie from a decree passed in accordance with the award except in so far

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as the decree is in excess of or not in accordance with the award ". It is contended by Dr. Shuja-ud-Din that defendants 1 and 2 who were admittedly parties to the reference have got a right to appeal because the award in this case was void *ab initio* inasmuch as the application for making the reference to arbitration had not been signed by Maghar Mal, one of the plaintiffs. Even if it be assumed that the application was defective on the ground that Maghar Mal, plaintiff, had not signed it, and it be supposed that the award was for that reason invalid, it is quite clear that the only remedy open to defendants 1 and 2 was to have the award set aside by the Court which had made the reference, under paragraph 15 of the Second Schedule, in which section 521 of the former Code has been re-enacted with the addition in clause (*c*) of the words " being otherwise invalid ". In view of this amendment the rulings under the old Code which laid down that an appeal lay against a decree passed in accordance with an invalid award must be considered to have become obsolete. This is a proposition which is too well established to require an elaborate discussion. Reference may, however, be made to *Hari Shankar* v. *Ram Piari* (1), *Mussammat Ghulab Khatun* v. *Chaudhri* (2), and *Nidamurthi* v. *Gargiparthi* (3) . It must, therefore, be held that no appeal was competent on behalf of defendants 1 and 2.

I am also of opinion that on the merits this objection is devoid of all force. No doubt Maghar Mal was not present when the reference to arbitration was made, nor did he actually sign the application for making the reference, but the Pleader, who was con-

(1) (1923) I. L. R. 45 All. 441. (2) 99 P. R. 1915.
(3) (1914) 25 I. C. 583.

ducting the case on his behalf and who had been specifically authorised in the *vakalatnama* to refer the suit to arbitration, had actually affixed his signature to the application and it appears from the award that all the plaintiffs had appeared before the arbitrator during the proceedings. It must, therefore, be held that Maghar Mal was a party to the reference, or in any case, had submitted to the jurisdiction of the arbitrator. Moreover, it is significant that it is not Maghar Mal or any of the other plaintiffs who is impeaching the award on this ground. The objection comes from the opposite party and in my opinion it does not lie in their mouths to pick holes in the award on this score.

Dr. Shuja-ud-Din argues, however, that the case of the other defendants 3 to 7 stands on a different footing inasmuch as they were not originally parties to the suit and were not on the record either at the time when the reference was made, or when the award was filed in Court. He urges, therefore, that the decree of the lower Court, which was passed against all the defendants, including these persons, must be held to be " not in accordance with or in excess of the award " and for this reason an appeal is competent on their behalf. It must, however, be borne in mind that these defendants themselves applied to be made parties to the proceedings in Court at a time when the objections to the award were under consideration, and having succeeded in having their application granted, they filed detailed objections against the award in the same manner as if they had been parties to the suit and to the arbitration proceedings at an earlier stage of the litigation. In my opinion, by making this application and filing these objections, and by the whole course of

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their conduct they must be deemed to have submitted themselves to the award and placed themselves in the same position in which they would have been, had they been parties to the suit from its commencement. They cannot now be permitted to turn round and repudiate their previous conduct and urge that they are not bound by the decision of the Court on the objections raised by them. I would, therefore, hold that no appeal lies on behalf of these defendants also.

I may further mention that there is no substance in the merits of their "appeal", inasmuch as they base their claim on their being members of a joint Hindu family with their respective fathers, defendants 1 and 2, and as such they are bound by the acts of the latter. Strictly speaking it was not necessary to implead them as defendants at all, as they were effectively represented by their fathers, and would have been bound by the result of the litigation. See *Sheo Shankar Ram* v. *Jaddo Kanwar* (1). Moreover, it is quite clear that a reference to arbitration made by the manager of a joint Hindu family consisting of himself and his sons is binding upon the sons unless the latter can show that the father's act was tainted with fraud or collusion or was otherwise done in bad faith. In this connection reference may be made to *Jagan Nath* versus *Mannu Lal* (2) and *Dwarka Das* versus *Krishan Kishore* (3). No such allegation of fraud or bad faith is made here.

It remains now to examine ground 5 of the memorandum of appeal in which it was urged that Maghar Mal, one of the plaintiffs, had died while the proceedings were still pending in the Court below,

(1) (1914) I. L. R. 36 All. 383 (P. C.). (2) (1894) I. L. R. 16 All. 231.
(3) (1921) I. L. R. 2 Lah. 114.

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i.e., in the interval after the filing of the award and before the passing of the decree and that the decree passed in his favour is a nullity. This matter does not seem to have been brought to the notice of the trial Court before the passing of the decree and though this appeal was preferred on the 22nd of November 1922 no affidavit has up to this day been filed whether Maghar Mal, deceased, left any heirs or legal representatives. As the sale was a joint one in favour of the various vendees we think that his death under such circumstances does not affect the decree of the lower Court in any way.

For the foregoing reasons the appeal fails and I would dismiss it with costs.

FFORDE J.—I agree. FFORDE J.

N. F. E.

Appeal dismissed.