LETTERS PATENT APPEAL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Dunkley.

1939
Nov. 29.

U KELATHA v. U PANNAWA.*

Award, suit on an—Award declaring right to a kyaung—*Value of the claim more than Rs. 100—Award not registered—Award inadmissible in evidence—Registration Act, ss. 17* (1) (e), *49.*

A suit based on an award must fail if a right is claimed thereunder to a *kyaung* of the value of more than Rs. 100, and the award has not been registered. To be admissible in evidence, the award declaring such right must have been registered.

K. C. Sanyal for the appellant.

E Maung for the respondent.

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WRIGHT, J.—The parties are *pongyis* who are litigating with regard to the possession of a *kyaung* and its site. U Kelatha brought a suit against U Pannawa based on his title to the suit property and also, apparently, based on an award concerning the property, given in his favour by the *Thudhamma Sayadaws.* The learned Subdivisional Judge was of the opinion that the award was inadmissible in evidence because it had not been registered, but considered that the plaintiff had made out a satisfactory title to the property and he therefore decreed the suit. U Pannawa went on appeal to the District Court and the learned District Judge came to the conclusion that the award did not require registration, that it was admissible in evidence, and that the plaintiff should succeed on the award and therefore he dismissed the appeal.

U Pannawa comes to this Court in second appeal. On his behalf it is urged that there was no valid submission to arbitration, that the suit should not have been dealt with as one to enforce an award, that the plaintiff had not established his right to possession of the property, and that the documents on which the plaintiff relied were inadmissible, not having been registered.

It is now conceded before me on behalf of the respondent that U Kelatha did not make out his title to possess this *kyaung* and site satisfactorily, except upon the basis of the award. It is,

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* Letters Patent Appeal No. 11 of 1939 arising out of Civil 2nd Appeal No. 49 of 1939 of this Court from the judgment of the District Court of Sagaing in Civil Appeal No. 51 of 1938.

however, contended on behalf of the respondent that there was a valid reference to arbitration and an award which binds the parties was duly passed by the *Thudhamma Sayadaws*. Mr. Chan Htoon on behalf of the Respondent says that the award does not require registration and is admissible in evidence. It seems clear from the issues and the evidence that this suit could not be decreed on the award without a remand and further evidence, because the parties have not had a proper opportunity of producing evidence with regard to the question whether there was a valid reference to arbitration. It is, however, urged before me on behalf of the appellant that the award is clearly inadmissible in evidence and that the appeal should be allowed and the suit dismissed on this ground, coupled with Mr. Chan Htoon's admission that his client has not established his right to the possession of this property apart from the award.

Hence it is necessary for me to determine whether this award requires registration.

Prima facie an award of this kind, if it deals with property valued at Rs. 100 or more requires registration, *vide* section 17 (*1*) (*b*) of the Registration Act and section 10 of the Transfer of Property (Amendment) Supplementry Act, 1929. Mr. Chan Htoon on behalf of the respondent takes three points on which he states that this award does not require registration. In the first place, he says that the *kyaung* and site are not of a value of Rs. 100 or upwards. In the second place, he contends that the award does not " create, declare, assign, limit or extinguish " any right, title or interest in immovable property. In the third place, he argues that in a suit brought for the enforcement of an award there is no need for an award to be registered.

I think that the second and third points are easily disposed of.

With regard to the second point it must be remembered that the plaintiff is out of possession of this property and has admittedly no right to possess it apart from the right which he claims under this award ; hence, if this award does not create or declare his right it is of no use to him and he will not be able to get possession of the *kyaung* by virtue of it.

With regard to the third point Mr. Chan Htoon has not been able to cite any authority in support of his view, which strikes me as being a novel one. In a recently decided case, namely, the case of *Maung Hlay* v. *U Gc* (1), a Full Bench of this Court laid

(1) [1939] Ran. 280.

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down that all the rules regarding arbitration, subject to the proviso contained in section 89 of the Code of Civil Procedure, are contained in the second schedule of the Civil Procedure Code. In view of this decision it is difficult for me to accept Mr. Chan Htoon's unsupported contention that quite different principles apply where a suit is brought on an award as compared with an application which is made to enforce an award.

It is stated before me by both sides that there is no reported authority with regard to the value to be attached to religious properties under section 17 (*1*) (*b*) of the Burma Registration Act.

Mr. Chan Htoon on behalf of the respondent contends that the same principles as have been applied under the Court-fees Act should be followed in this case and he draws attention to the cases of *U Pyinnya and another* v. *U Dipa* (1) and *Rajagopala Naidu* v. *Ramasubramania Ayyar and another* (2).

The position is well settled with regard to the court-fees payable in suits relating to religious property but it seems to me that similar principles are not applicable when the Registration Act is in point. There is a special provision in the Court-fees Act for suits " where it is not possible to estimate at a money-value the subject matter in dispute ", *vide* Schedule II, Article 17 (vi). There is nothing at all similar to this in the Registration Act. Section 17 (*1*) (*b*) of the Registration Act is as follows :

> " Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent *of the value of one hundred rupees and upwards*, to or in immovable property ;".

It is not contended that the property in suit has no value. It is only contended that it has no market value and that it is not possible to assess its value. I am prepared to agree that the property in suit has no market value, in so far as it is not property which can be offered for sale in the ordinary way, but it seems to me that this *kyaung* and the site must have a value. The land is not valueless and the *kyaung* must have cost a good deal of money to erect. Moreover, the plaintiff is fighting strenuously to get possession of this property and it seems that he would be unlikely to do this if it was of no value. The plaintiff has himself, in his plaint valued this property for the purpose of jurisdiction at Rs. 3,000. As he has valued it, for that purpose, at Rs. 3,000 it

(1) (1929) I.L.R. 7 Ran. 245. (2) (1923) I.L.R. 46 Mad. 782.

seems to me difficult for Mr. Chan Htoon to contend now that the property is not worth as much as Rs. 100. I am therefore of the opinion that the suit property must be deemed to have a value of Rs. 3,000 for the purpose of section 17 of the Registration Act.

It follows that this award requires registration and as it has not been registered it is inadmissible in evidence and cannot be made the basis of the plaintiff's case. Hence the plaintiff's suit must fail. I allow this appeal with costs and dismiss the suit with costs throughout.

The plaintiff obtained leave for further appeal.

ROBERTS, C.J.—This appeal must plainly be dismissed. The suit was based upon an award in respect of disputes which arose between different monks in a *kyaungdaik*, and Mr. Sanyal, has, quite wisely and properly, admitted that if he is unable to succeed upon the award then his client, the plaintiff-appellant, must fail. And it was objected that the award by which he sought to prove his case was inadmissible in evidence because it was not registered.

The sole point therefore is: does it require registration? Under section 17 (*1*) (*e*) of the Registration Act, non-testamentary instruments transferring or assigning any decree or order of a Court or any award must be registered, provided, first, that they purport to declare some interest or right—and a number of alternative phrases are provided in this part of the section—and, secondly, that the right is of the value of one hundred rupees and upwards to or in immovable property.

Looking at the award, Mr. Sanyal has been unable to contend, in face of the clear language employed, that it does not purport to declare any interest. It says in the most distinct terms that the *kyaung* and the *garubhan* and *lahubhan* properties therein shall be taken charge of, looked after and occupied by the appellant.

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The only remaining question, therefore, is what the value of this *kyaung* was. And it was pleaded by the plaintiff-appellant himself in his plaint that the value of the said *kyaungdaik,* precincts and site was Rs. 3,000 at the current market price. When the plaintiff came to give evidence he repeated in his evidence, "The *kyaung* in suit is worth about Rs. 3,000." It is indeed difficult to see how he can retire from this position now.

It is plain that the suit has been regarded as of importance. A reference has been made to the learned *sayadaws.* There is evidence that there are three buildings at least in the *kyaungdaik* and it cannot be said that there are no facts from which the learned Judge might legitimately infer that the value of the site of the monastery and the buildings thereon exceeded the comparatively trivial sum of Rs. 100.

Having arrived at this conclusion, it is clear that he was right in saying that the award, which had not been registered pursuant to the Act, was inadmissible as evidence and that the plaintiff must therefore fail in the suit which he brought upon it. Accordingly, as I say, this appeal must be dismissed. No order as to costs.

DUNKLEY, J.—I agree.