

Law. Section 44 of the Punjab Courts Act and section 115 of the Code of Civil Procedure lay down that the " High Court may call for the record of any case which has been decided " in which no appeal lies, and interfere in certain cases. Here in this instance no case has been decided.

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I, therefore, reject this petition for revision with costs.

Mr. Datta also asks that I should extend time to enable the plaintiffs to lodge the additional Court-fee. In my judgment this is an application which should properly have been made before the trial Judge.

P. S.

Revision dismissed.

APPELLATE CIVIL.

Before Bhide J.

RAM LABHAYA AND ANOTHER (PLAINTIFFS)

Appellants

versus

PANNA LAL (DEFENDANT) Respondent.

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 Feb. 8.

Civil First Appeal No. 224 of 1936.

Civil Procedure Code (Act V of 1908), Sch. II, Cl. 17 — Agreement to refer division of deceased father's property to arbitration — Application to file the agreement in Court — whether barred by pending proceedings for Letters of Administration to deceased's will.

Pandit B. died in June 1936, leaving three sons, P. by one wife and two, R. and C., by the other wife and a fortnight later the three sons entered into an agreement to refer their dispute relating to the division of the estate left by their father to arbitration. In July 1937, P. applied for Letters of Administration with respect to a will left by Pandit B. and

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two days later R. and C. presented an application under Schedule II, clause 17 of the Code of Civil Procedure, to the Senior Sub-Judge, Sialkot, for filing the agreement to refer to arbitration.

Held that the pendency of the proceedings on the application for Letters of Administration was no bar to the entertainment of the application under Schedule II, clause 17 of the Code of Civil Procedure, there being no conflict between what had to be decided by the Court and what had to be decided by the arbitrator in the present case.

Shankar Ramchandra v. Ramchandra Annaji (1), relied upon.

Other case law, referred to.

First appeal from the order of Chaudhri Kanwar Singh, Senior Subordinate Judge, Sialkot, dated 21st August, 1936, dismissing the application.

JAGAN NATH AGGARWAL, for Appellants.

MEHR CHAND MAHAJAN and H. R. MAHAJAN, for Respondent.

BHIDE J.

BHIDE J.—This appeal arises out of a dispute relating to the property of one *Pandit* Banshi Ram who died on the 15th of June, 1936. *Pandit* Banshi Ram left three sons, namely Ram Labhaya and Charan Das by one wife and Panna Lal by another wife. On the 29th of June, 1936, these sons entered into an agreement to refer their dispute relating to the division of the estate left by Banshi Ram to the arbitration of *Lala* Amin Chand. Subsequently, however, on the 7th of July, 1937, Panna Lal applied for Letters of Administration with respect to a will left by Banshi Ram. On the 9th of July, 1936, Ram Labhaya and Charan Das presented an application under Schedule II, clause 17 of the Civil Procedure Code, to the Senior Subordinate Judge, Sialkot, for filing the agreement

regarding reference to arbitration. One of the contentions raised by Panna Lal was to the effect that the application could not be entertained as the proceedings on the application for Letters of Administration had already commenced and were pending. The learned Senior Subordinate Judge upheld this contention and dismissed the application. From this decision, the present appeal has been preferred.

The sole point for decision is whether the pendency of the proceedings on the application for Letters of Administration was a bar to the entertainment of the application under Schedule II, clause 17, Civil Procedure Code, referred to above. The learned Senior Subordinate Judge has relied on *Gopi Ram-Guranditta Mal v. Pokhar Das* (1) and *Ghansham Das v. Tek Chand* (2), but in my opinion, these authorities do not support the view taken by him. It is correct that a private tribunal such as an arbitrator cannot oust the jurisdiction of Courts, but the rule applies only when the matter to be decided by the arbitrator is identical with the matter to be decided by the Court. [See *Jai Narain-Babu Lal v. Narain Das-Jaini Mal* (3).] In the present instance, the Court dealing with the application for Letters of Administration had simply to decide whether the will was duly executed by Banshi Ram while the arbitrator had to divide the property according to the *Chundawand* rule as agreed to by the parties. It is true that Panna Lal had raised a plea, that the agreement was not binding on him, as it was entered into under undue influence, and this matter had to be considered by both the Courts. But this does not mean that there was any conflict of jurisdiction between the arbitrator and the Court.

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(1) 1934 A. I. R. (Lah.) 887. (2) 1935 A. I. R. (Lah.) 916.

I. L. R. (1922) 3 Lah. 296.

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The question of the validity of the agreement was to be decided by the Court before the dispute could be referred to arbitration.

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It was conceded by the learned counsel for the respondent that it was open to the parties to enter into an agreement for division of the property by arbitration contrary to the directions in the will and if in fact they had entered into any such agreement, the will would be superseded by the agreement and no Letters of Administration could be granted. All that can be reasonably urged in the circumstances is that an issue arose as regards the validity of the agreement of reference to arbitration, which was to be decided by both the Courts and there was thus a conflict of jurisdiction between the Courts. But there was, I think, no conflict of jurisdiction as between the Courts and the Arbitrator. The proper course for the Court dealing with the application for Letters of Administration in the circumstances would have been, I think, to stay its proceedings until the question of the validity of the agreement to refer the dispute to arbitration was decided in the proceedings under Schedule II, Civil Procedure Code; for this was the main issue in the latter proceedings and it had to be decided before making a reference to arbitration. If the agreement is valid and supersedes the will, the proceedings regarding Letters of Administration would be obviously futile. It appears that an application for stay of proceedings relating to the application for Letters of Administration was made by the present appellants, but was rejected. The appellants did not apparently appeal or apply for revision of this order; but it is still open to them to request the Court to postpone issue of the Letters of Administration at any rate, till

the question of the validity of the agreement to refer the matter to arbitration is decided, in the proceedings under Schedule II, Civil Procedure Code.

The facts of the present case are very similar to those reported in a Division Bench ruling of the Bombay High Court reported as *Shankar Ramchandra v. Ramchandra Annaji* (1), cited for the appellants and that ruling appears to me to support the appellants fully.

In my opinion there was no conflict of jurisdiction as between the arbitrator and the Court in this case and the application under Schedule II, Civil Procedure Code, was maintainable. I, therefore, accept this appeal and setting aside the order of the learned Senior Subordinate Judge remand the case to him for redecision. Costs to follow final decision.

A. N. C.

Appeal accepted;

Case remanded.

(1) (1923) 73 I. C. 415.

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BHIDE J.