APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1884
December 2.

SAMAL NATHU AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, *v.* JAISHANKAR DALSUKRAM (ORIGINAL PLAINTIFF), OPPONENT.*

Award, objections to filing of—Procedure where identity of award is impeached—Civil Procedure Code (Act XIV of 1882), Secs. 520, 521, 525 and 526—Power of Court to inquire into objection to file award—Jurisdiction.

Where an application was made to a Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge after an inquiry with regard to the several objections ordered the award to be filed,

Held, that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed.

The only objections which the Court can inquire into under sections 525 and 526 of the Civil Procedure Code (Act XIV of 1882) are those which are specified in sections 520 and 521, and these relate to cases in which the reference and the award are accepted facts; but where the objection denies the *factum* of the particular award sought to be filed, and the objection does not seem to be frivolous, but one giving rise to inquiry into difficult questions of law and fact, it is not competent for the Court to deal with that objection under sections 525 and 526. In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action wherein the party urging the objection will have the advantage of being a defendant rather than a plaintiff, and of having an appeal open to him in the event of an unfavourable decision.

THIS was an application under the extraordinary jurisdiction of the High Court for the reversal of an order passed by the Joint Subordinate Judge at Ahmedabad for filing an award.

A suit had been instituted in the Assistant Judge's Court at Ahmedabad by the plaintiff against the defendants praying for the winding up of the partnership business alleged to have been carried on by the plaintiff and the defendants, under the style and firm of Samal Nathu & Co., for distribution of assets, and for an account. The suit was subsequently withdrawn by mutual consent of the plaintiff and the defendants, and the subject-matter of the suit was referred to two arbitrators, who gave their award on the 25th September, 1881, by which the plaintiff was awarded Rs. 2,200, of which Rs. 500 were given as costs of the suit and Rs. 1,700 as his share of the profits of the firm.

*Application (under Extraordinary Jurisdiction,) No. 84 of 1884.

The plaintiff applied to the Joint Subordinate Judge of Ahmedabad to have the award filed in Court. The defendants objected to the filing of the award, and stated that the arbitrators had first made an award in March, 1881, but had set it aside, and subsequently made another award in September 1881. They alleged that they had no knowledge of this latter award; that they had given no authority to make it; that it was incomplete; that it dealt with matters not referred to the arbitrators; that it was made with the assistance of a stranger, the arbitrators being illiterate, and that it was not made in good faith.

The Joint Subordinate Judge at Ahmedabad on hearing the parties, and investigating the several objections urged by the defendants, found that the award was duly made in good faith and made an order that the award should be filed.

The defendants made the present application to the High Court for the reversal of that order.

A rule *nisi* was granted on the 3rd July, 1884. The rule now came on for hearing.

Ráv Sáheb *Vásudev Jagannáth* for the plaintiff showed cause.—When the award was presented to be filed in the Court below the defendants were required to show cause against filing it. If no cause was then shown to the satisfaction of the lower Court, it had power to file it. Such power of the Court includes the power to inquire into and deal with any circumstances which in law would make the award illegal or null—*Micharaya Gúruvu* v. *Sadásiva*[1].

In the present case it is sought to put such a construction on sections 520, 521, 522, 525 and 526 of the Civil Procedure Code as will exclude the jurisdiction of the Court where an objection as to the identity of an award is taken; but this would be to introduce an additional clause into the Code, the language of which is plain—*Annáji* v. *Bápuchand*[2]; *Dándekar* v. *Dándekars*[3]; *Dutto Singh* v. *Dosad Báhádur*[4], where *Ichamoyee* v. *Prosunno Nath*[5] is expressly dissented from; see also *Micha-*

(1) I. L. R., 4 Mad., 319.
(2) I. L. R., 7 Bom., 520.
(3) I. L. R., 6 Bom., 663.
(4) I. L. R., 9 Calc., 575.
(5) I. L. R., 9 Calc., 557.

1884

SAMAL NATHU v. JAISHANKAR DALSUKRAM.

raya v. *Sadásiva*[1]; *Pugardin* v. *Moidinsa Ravutan*[2]. This is not a case for the exercise of the High Court's extraordinary jurisdiction under section 622 of the Civil Procedure Code (Act XIV of 1882). The "Court should struggle rather to uphold than to defeat the award"; see *Ardesir Hormasji* v. *The Secretary of State for India in Council*[3].

Ganpat Sadáshiv Rár for the defendants, *contra*.—The Court below had no jurisdiction when once the *factum* of the award itself was called in question. The Court can deal with those objections only which are specifically mentioned in sections 520 and 521. Sections 525 and 526 assume that an award has been made. Here the *factum* of the award is disputed, and the Court has no other alternative but to refer the parties to a separate suit. *Sree Rám Chowdhry* v. *Denobundhoo*[4], followed in *Bijadhur Bhugut* v. *Monohur Bhugut*[5], is on all fours with the present case. *See* also *Hurronath* v. *Nistarini Chowdrani*[6]; *Hussaini Bibi* v. *Mohsin Khan*.[7]

Under section 327 of the former Code (Act VIII of 1859) the power of the Court in award matters was larger than that under the present Code. By the present Code the Court has power to deal with those objections only which are set forth in sections 520 and 521. It is only in a regular suit on the award that the Court can enquire into any reasonable objections that may be urged against an award; but where an objection is raised merely to filing an award, the Court cannot proceed beyond seeing if the objection is one of those stated in sections 520 and 521. Where the Court proceeds to give its decision under section 525 the decision is final—*Sree Rám Chowdhry* v. *Denobundhoo*[8]. Under sections 525 and 526 the Court has no power to amend or modify an award—*R. Ry. Mana Vikrama* v. *Mallichery Kristnan*[9]; *Allárakhia Shivji* v. *Jehángir Hormasji*[10]. The only course open to the Court below was to refuse to file the award, and refer the parties to a regular suit.

(1) I. L. R., 4 Mad., 319.
(2) I. L. R., 6 Mad., 414.
(3) 9 Bom. H. C. Rep. at p. 191.
(4) I. L. R., 7 Calc., 490.
(5) I. L. R., 10 Calc., 11.
(6) I. L. R., 10 Calc., 74.
I. L. R., 1 All., 156.
(8) I. L. R., 7 Calc., 490.
(9) I. L. R., 3 Mad., 68.
(10) 10 Bom. H. C. Rep., 391.

WEST, J.—The construction of sections 525 and 526 of the present Code of Civil Procedure has been the subject of several decisions in the High Courts, which take very different views of the subject. In the case before us, when an application was made to the Subordinate Judge to file the award, an objection, amongst others, was raised on the ground that the arbitrators had made their award several months before the date of the one brought in to be filed, and that as their authority had thus been exhausted, the later so-called award was not really an award, but merely a sham award induced by improper influences. The facts relied on in support of this contention were denied by the party seeking to get the award filed, and the Subordinate Judge, after an investigation, decided against the objections, and ordered that the award should be filed. He did not regard the objection as a frivolous or colourable one, but as of a serious character; but, so regarding it, he thought he was competent to deal with it and dispose of it on the hearing of the application, and acted accordingly.

The first question before us is, whether, under these circumstances, the Subordinate Judge was right, after a serious ground of opposition had been disclosed, in dealing with such a matter of litigation on the application before him, or whether he ought not to have refused to file the contested award and left the applicant to the remedy of a suit on it as a cause of action. Now section 525 makes no provision for the trial of a question of whether the reference has been really made or whether the award is *primâ facie* void. It seems rather to assume that the reference and the award are, as facts, undisputed. The authority, however, to inquire into the reality and validity of the transaction, might, no doubt, be inferred from the direction, that the Court is to cause notice to be served on all parties to the arbitration calling on them to show cause why the award should not be filed. No better cause could be conceived why an award should not be filed than that there had been no submission to arbitration. But, then, an objection of that kind, and especially one not admitting of simple statement and disposal, may well give rise, as in the present instance, to a long inquiry into difficult questions of fact and of law, such as are commonly involved in a contest amongst

1884

SAMAL NATHU v. JAISHANKAR DALSUKRAM.

members and ex-members of a partnership. No provision is made for the trial of such questions; the provision that is made by section 526, which must be read along with 525 as its intended complement, is that the award must be filed, unless one of the objections specified in sections 520 and 521 is established. These objections all relate to a case in which the reference and the award are accepted facts; and thus section 526 points to them as admitted facts under section 525. As to what is to happen if an objection is made good, section 526 is silent, but it is plain that the cause contemplated in section 525 having in such a case been shown, the Court ought to refuse to file the award. It can enter on the inquiry into such objections as are specified, and can finally dispose of them.

This close connexion of sections 525, 526, and the limitation imposed on the inquiry to be made by the Court under the latter section seem to show conclusively that no other inquiry was intended by the Legislature to be made on the application to file an award. The facts *primâ facie* constituting a valid proceeding are assumed just as when a reference has been made by a Court, assumed as a basis for the further proceedings for which provision is made. But as the reference has not been made by a Court, and the submission and award therefore may be disputed, the absence of a provision for dealing with such a dispute, coupled with the express provision for dealing with collateral objections, seems to us to imply that a dispute of the former kind was not meant to be dealt with on the application to file an award. The Legislature, had it contemplated such a cause against filing as one proper for summary and final investigation, would, we think, undoubtedly have said so, and provided a rule for dealing with the case. In the absence of a rule, we think the inquiry cannot properly be made in that way when a serious and material objection is disclosed. That in itself is, we think, a cause why the award should not be filed as contradicting the hypothesis on which the procedure prescribed in sections 525 and 526 is founded. If the objection is obviously unfounded, the Court may well regard it as no cause against the filing; but if it is substantial, then the party urging it ought, we think, not to be deprived of the advantage of being a defendant rather than a plaintiff and of

1884

SAMAL NATHU v. JAISHANKAR DALSUKRAM.

having an appeal open to him in the event of an unfavourable decision. Were the law clear and explicit, and so expressed as to deprive the person likely to be injuriously affected of these advantages, we should have to apply it; but where a rule is defective, as in this case, we should assume a reasonable and consistent line of thought in the Legislature rather than the contrary in our endeavours to give full effect to its meaning.

For these reasons we set aside the order of the Subordinate Judge, and direct that the award be not filed or be deemed not to have been filed. Costs to be paid by the opponent.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1884
December 3.

KALIA'N-DAYA'L AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* KALIA'N NARER AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Small Cause Court suit—Jurisdiction—Suit for declaration of right to moveable property wrongfully taken—Small Cause Court suit instituted in an ordinary Court, effect of—Second appeal—Civil Procedure Code (Act XIV of 1882), Sec. 586.

Where a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI of 1865); and if the property is moveable and of less than Rs. 500 in value, the suit is then a Small Cause.

Accordingly where the plaintiffs, who were co-members with the defendants of a division of a caste, and, as such, tenants-in-common with them of certain cooking vessels of less than rupees five hundred in value, were excluded by the defendants from possession and common use of the vessels, and sought for a declaration that the plaintiffs and the defendants were equally entitled to the use of the said vessels, and for restoration of the same to some third person, who should hold them to the use of the plaintiffs and defendants,

Held that the suit was not a suit for a declaratory decree, but for the recovery of property within the meaning of the Small Cause Court Act (XI of 1865), and, as such, was exclusively triable by a Small Cause Court.

It was contended for the plaintiffs that, though actually a Small Cause, the suit having been instituted and dealt with in the ordinary Civil Court, a second appeal to the High Court would lie.

*Second Appeal, No. 599 of 1883.