

APPELLATE CIVIL.

Before Din Mohammad J.

KANSHI RAM (PLAINTIFF) Appellant,

versus

HARNAM DAS AND OTHERS (DEFENDANTS)

Respondents.

1939

Nov. 17.

First Appeal from Order No. 133 of 1939.

Civil Procedure Code (Act V of 1908), Sch. II, Reference to Arbitration — Debt due to Joint Hindu Family — Only managing member joining the Reference — Whether other members of the family bound by it — No record of proceedings and no public enquiry held by Arbitrator — Whether vitiates the award — Award signed by parties — Whether makes the document a deed of compromise — Whether Arbitrator a proper person to present it for registration.

Held, that a manager of a Joint Hindu Family is competent to make a reference to arbitration so as to bind the other members of the family and the mere fact that the other members of the family did not join the reference does not invalidate it.

Dwarka Das v. Krishan Kishore (1), Guran Ditta v. Pokhar Ram (2), Bishambar Das v. Kanshi Parshad (3), Nawal Kishore-Khairati Lal v. Sardar Singh (4) and Sheo Shankar Ram v. Jaddo Kunwar (5), relied upon.

Gainda Mall v. Nihal Chand-Chhajju Mal (6) and Diwan Chand v. The Punjab National Bank, Ltd., Sialkot (7), referred to.

Held also, that no procedure is laid down for the arbitrator in Sch. II and unless it is proved that the arbitrator refused to examine any evidence tendered by the parties, the mere fact that he did not record any proceedings or did not hold a public enquiry will not be enough to vitiate the award.

(1) I. L. R. (1921) 2 Lah. 114.

(4) 1935 A. I. R. (Lah.) 667.

(2) I. L. R. (1927) 8 Lah. 693.

(5) I. L. R. (1914) 36 All. 383 (P. C.).

(3) I. L. R. (1932) 13 Lah. 483.

(6) 1925 A. I. R. (Lah.) 261.

(7) 1932 A. J. R. (Lah.) 291.

1939

KANSHI RAM
v.
HARNAM DAS.

Held further, that when the parties sign the award with their eyes open they should not be allowed to pick holes in it.

Wazir Ali v. Mahbub Ali (1) and *Gita Ram v. Kesho Ram* (2), relied upon.

The mere fact that the parties have signed the award will not convert the original nature of the document. The award in the present case was written on behalf of the arbitrator and it was he alone who could have presented it for registration. The parties were not executants of the document and therefore could not be the proper persons to present it for registration.

First appeal from the order of Lala Balak Ram, Subordinate Judge, 1st Class, Karnal, dated 28th February, 1939, refusing to file the award and dismissing the application.

JAGAN NATH AGGARWAL and S. M. SIKRI, for Appellant.

ACHHRU RAM, for Respondents.

DIN
MOHAMMAD J.

DIN MOHAMMAD J.—The respondent Harnam Das executed a promissory note for Rs.5,600 in favour of the firm Piare Lal-Kanshi Ram on the 8th December, 1934. On the 5th December, 1937, a payment of Rs.5 was made by him with the object of extending limitation. On the 1st April, 1938, a deed of reference was drawn up between Kanshi Ram and Banwari Lal, sons of Piare Lal, on the one side and Harnam Das on the other by which the dispute between the parties was referred for arbitration to L. Madan Lal *alias* Madan Gopal. On the 4th April 1938, the arbitrator made an award which was signed both by Kanshi Ram and Harnam Das. On the 3rd June, 1938, Kanshi Ram made an application under paragraph 20 of Schedule II, Code of Civil Procedure,

(1) 10 P. R. 1917.

(2) (1931) 32 P. L. R. 754.

for filing the award. This was resisted by Harnam Das on various grounds. The Subordinate Judge remarked that the debt was actually due to the joint Hindu family consisting of Kanshi Ram, Banwari Lal and their sons and grandsons and held the reference to be void on the ground that only two members of the joint family had joined the reference. He further observed that the arbitrator had made no enquiry and even on that ground the award could not be filed. He also found that the arbitrator was guilty of misconduct inasmuch as he was admittedly indebted to a near relation of Kanshi Ram. He also expressed his unwillingness to give effect to the award as a compromise inasmuch as it was not registered despite the fact that it had cast the burden of the sum due on certain immovable property belonging to Harnam Das. Kanshi Ram has appealed.

Counsel for the appellant contends that the award is not open to any legal objection whatever and that the Subordinate Judge has erred in dismissing the application. On the question of the validity of the reference, he urges that a manager of a joint Hindu family is competent to make such a reference without joining other members of the family and that the mere fact that Banwari Lal alone from among the other members of the family joined the reference does not invalidate it in any manner. In *Dwarika Das v. Krishan Kishore* (1), a Division Bench of this Court observed that family arrangements or references to arbitration entered into in good faith by a manager of a joint Hindu family or by a father of such a family bound the other members or the minor sons in the absence of fraud or other good reasons to the contrary.

1939

KANSHI RAM
v.
HARNAM DAS.

DIN
MOHAMMAD J.

1939

KANSHI RAM
v.
HARNAM DAS.
DIN
MOHAMMAD J.

In *Gurun Ditta v. Pokhar Ram* (1), 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 defendant 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. Their objections were overruled and a decree was passed in accordance with the award against all the defendants. On an appeal to this Court, it was 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 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. It was further observed 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. In *Bishambar Das v. Kanshi Parshad* (2), Tek Chand and Johnston JJ. remarked that in a suit for division between the two branches of the family the really necessary parties were the heads of each branch of the family and it was not necessary to implead all the members of the two branches. In *Nawal Kishore-Khairati Lal v. Sardar Singh* (3), Abdul Rashid J. held that where a *karta* of a joint Hindu family authorized one of the co-parceners, who is also a managing member of the joint family firm, to refer certain disputes between the parties to arbitration,

(1) I. L. R. (1927) 8 Lah. 693.

(2) I. L. R. (1932) 13 Lah. 483.

(3) 1935 A. I. R. (Lab.) 667.

such co-parcener could make a valid reference so as to bind the other co-parceners.

The *ratio decidendi* of these judgments was really based on the dictum of their Lordships of the Privy Council in *Sheo Shankar Ram v. Jaddo Kunwar* (1). It was observed there that the appellants who sued to redeem a mortgage after foreclosure on the plea that they had not been parties to the mortgage suit were properly and effectively represented in the suit by the managing members of the joint Hindu family of which the plaintiffs were also members and that merely because every existing member of the family was not formerly a party to the suit, the execution proceedings could not be set aside.

Counsel for the contesting respondent on the other hand relied on *Gainda Mall v. Nihal Chand-Chhajju Mal* (2) and *Diwan Chand v. The Punjab National Bank, Ltd., Sialkot* (3). These judgments were considered by Abdul Rashid J. in *Nawal Kishore-Khairati Lal v. Sardar Singh* (4), and were distinguished and explained. With all respect to the learned Judges who delivered those judgments, I am of opinion that if they intended to lay down that a *karta* of a joint Hindu family could not make a valid reference to arbitration without joining other members of the family, their decision comes into conflict with the principle enunciated in the Privy Council judgment as well as the other judgments referred to above. I accordingly hold that the reference cannot be attacked on this score.

Similarly, the Subordinate Judge has erred in holding that as no enquiry was made, the award could

1939

KANSHI RAM
v.
HARNAM DAS.
—
DIN
MOHAMMAD J.

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1939

KANSHI RAM
v.
HARNAM DAS.
DIN
MOHAMMAD J.

not be filed. No procedure is laid down for the arbitrator in Schedule II and unless it is proved that the arbitrator refused to examine any evidence tendered by the parties, the mere fact that he did not record any proceedings or did not hold a public enquiry will not be enough to vitiate the award.

The matter of the arbitrator's misconduct does not require any serious consideration. Both the appellant and the respondent placed their confidence in the arbitrator and it cannot be believed that the respondent was at that time unaware of the fact that the arbitrator was indebted to some extent to a near relation of Kanshi Ram. In fact, the respondent is not competent to raise these objections inasmuch as he had with his eyes open signed the award made by the arbitrator. As observed in *Wazir Ali v. Mahbub Ali* (1) and *Gita Ram v. Kesho Ram* (2), parties signing the award should not be allowed to pick holes in it.

The objection on the ground of the non-registration of the award is obviously futile. The award is registered and no question of its invalidity therefore arises on that score. The Subordinate Judge has by a queer sort of reasoning declared the award to be invalid for want of registration taking it to be a deed of compromise but it is clear that it is not a deed of compromise at all. The mere fact that the parties signed it will not convert the original nature of the document. It was written on behalf of the arbitrator and it was he alone who could have presented it for registration. The parties were not the executants of the document and could therefore not be the proper persons to present it in any circumstances.

(1) 10 P. R. 1917.

(2) (1931) 32 P. L. R. 754.

I accordingly accept this appeal, set aside the order of the Commercial Subordinate Judge and order the award to be filed in accordance with law. The appellant will get his costs of both the Courts from the respondent Harnam Das.

A. K. C.

Appeal accepted.

APPELLATE CIVIL.

Before Din Mohammad J.

AHMAD KHAN (DEFENDANT) Appellant,

versus

MIRAJ DIN (PLAINTIFF)
ALLAH DITTA AND ANOTHER } Respondents.
(DEFENDANTS)

Regular Second Appeal No. 517 of 1939,

Muhammadan Law — Mortgage of minor's property by his mother — Decree obtained by mortgagee and property sold to auction purchaser in execution of decree — Suit by quondam minor claiming property on the ground that mortgage was void — Sale in favour of auction purchaser — Whether can be challenged — Legal position of bonâ fide auction purchaser — Discretionary power of Court to order refund of the amount by which minor was benefited — Specific Relief Act (1 of 1877), S. 41.

A Muhammadan minor's property was mortgaged by his mother. The mortgagee obtained a decree on foot of the mortgage, the minor being represented by his brother who admitted the claim and the property was sold in execution of the decree in favour of an auction purchaser. The minor instituted the present suit against the auction purchaser, claiming the property on the ground that as he was a minor at the time of the mortgage, his mother had no right to alienate his share of the property and as the mortgage was void, all subsequent proceedings were invalid and that the admission of the claim by his brother was not binding on

1939

KANSHU RAM
v.

HARNAM DAS.

DIN

MOHAMMAD J.

1939

Nov. 17.