

1891.

NEMANA

v.

DEVAN-
DRAPPA.

in the litigation in question and reject the other prayer contained in the present application. Each party to bear her and his own costs of this application.

Order as to costs reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891,
August 30.

RÁMCHANDRA HARI, PLAINTIFF, v. BĀ'PU, DEFENDANT.*

Succession certificate Act VII of 1889—Undivided Hindu family—Death of one of two undivided brothers—Debt due to family—Suit by surviving brother and manager—Arbitration—Award—Filing award—Certificate under [Act VII of 1889 not necessary.

Rámchandra and Náráyan were undivided brothers; Náráyan was the elder, but Rámchandra was the manager of the family property. Náráyan died leaving a widow and three sons, and after his death Rámchandra sued the defendant to recover certain debts due to the family.

The parties referred the dispute to three arbitrators appointed by them without the intervention of the Court and applied to the Court to have the arbitrators' award filed.

A question having arisen whether the award could be filed without a succession certificate under Act VII of 1889,

Held that there was nothing in Act VII of 1889 to prevent the award being filed without a certificate.

THIS was a reference made by Ráo Sálieb Dinánáth Atmárám Dalvi, Subordinate Judge of Kada and Karjat in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued the defendant on two mortgage-bonds and on certain khatas. One of the mortgage-bonds was executed to the plaintiff and to his deceased brother Náráyan, and the other bond was executed to the deceased Náráyan alone. The khatas were in the plaintiff's name.

The plaintiff and Náráyan lived together as undivided brothers, Náráyan being the elder, but the plaintiff being the manager of the family property after Náráyan's death, his family and the plaintiff continued to live together as an undivided family, the plaintiff continuing to manage the property. Disputes arose

* Civil Reference, No. 3 of 1891.

between the plaintiff and the defendant and the suit brought by the plaintiff on the aforesaid bonds and khata was referred to arbitration without the intervention of the Court and an award was made.

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RÁMCHANDRA
HARI
c.
BÁRU.

The plaintiff and the defendant applied to have the award filed in Court. The Subordinate Judge doubting whether it could be filed without a succession certificate under Act VII of 1889 submitted the following question to the High Court:—

“ Shall the award in this case be filed without a succession certificate under Act VII of 1889 ? ”

The opinion of the Subordinate Judge was that a succession certificate was not necessary.

There was no appearance for the parties in the High Court.

SARGENT, C. J.—There is nothing in Act VII of 1889 to prevent the award in the present case being filed.

Order accordingly.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

VA'SUDEV RA'MCHANDRA (ORIGINAL PLAINTIFF), APPELLANT, c.
BHAVAN JIVRA'J (ORIGINAL DEFENDANT), RESPONDENT.*

1891.

May 5.

Appeal—Appeal on the question of costs—Costs—Practice—Procedure.

The plaintiff sued for possession of certain land in the Court of a Subordinate Judge of the second class. The Subordinate Judge returned the plaint for want of jurisdiction and ordered the plaintiff to pay a separate set of costs to each of the defendants. The plaintiff appealed to the District Judge on the grounds first, that the Subordinate Judge had jurisdiction to entertain the plaint; and secondly, that the order as to costs was improper. At the hearing of the appeal the plaintiff's pleader abandoned the point of jurisdiction. Thereupon the District Judge held that the appeal would not lie simply on the question of costs. He therefore confirmed the Subordinate Judge's order.

Held that the District Judge had jurisdiction to hear the appeal on the question of costs.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant filed a suit in the Court of the Second Class Subordinate Judge at Bhivdi to recover possession of certain property mortgaged to him. The property was valued in the plaint

* Application under Extraordinary Jurisdiction, No. 30 of 1891.