

"I wish the award of the Assistant Collector to stand and that of the Court on the reference under section 18 to be set aside," we should be crediting the Legislature with such an intention.

For these reasons we restore the award of the Court and direct the District Judge not to act on the certificate of the Collector.

1910.

LADDHA
EBRAHIM
& Co.
v.
ASSISTANT
COLLECTOR,
POONA.

The Government must pay the costs of the appellant.

Laddha Ebrahim and Co.'s Appeal No. 15 of 1908, as to the amount of compensation, is dismissed with costs.

Award of the District Court restored.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

SAKRAPPA BIN LINGAPPA HESUR (ORIGINAL DEFENDANT No. 1),
APPELLANT, v. SHIVAPPA *alias* ISHWARAPPA BIN BASAPPA AND
OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 2, 3, 4), RESPONDENTS.*

1910.

August 23.

*Arbitration—Award—Bonâ fide mistake of law committed by arbitrator—
Minor party receiving a smaller share—Award binding upon the minor.*

The arbitrators to whom a dispute was referred by parties, one of whom was a minor, took *bonâ fide* an erroneous view of law and ordered an unequal division of the property in dispute, awarding the smaller share to the minor. The lower Court set aside the award on the grounds that the arbitrators had taken an erroneous view of the law, and that as the minor had received a smaller share under the award it was not to his benefit, and therefore not binding upon him:—

Held, that the award was valid and binding upon the minor. The validity of the award must be determined according to the circumstances as they existed at its date; and not by what transpired some years after it had been passed by the arbitrators.

Rajunder Narain Rae v. Bijai Govind Singh⁽¹⁾, followed.

SECOND appeal from the decision of T. D. Fry, District Judge of Dharwar, confirming the decree passed by T. V. Kalsulkar, Subordinate Judge at Hubli.

* Second Appeal No. 285 of 1909

(1) (1839) 2 M. I. A. 181, 249, 251.

1910.

SAKRAPPA
BIN
LINGAPPA
HEBSUR
v.
SHIVAPPA.

Suit to recover possession of property.

The property in dispute originally belonged to one Neelappa, who had a brother Ningappa (father of Sakrappa, defendant No. 1). Neelappa died leaving him surviving his widow Gangawa and three daughters: Chanvirawa, Basawa and Somawa. Both Chanvirawa and Basawa died before Gangawa, the former leaving no issue, but the latter leaving behind her a son Shivappa (the plaintiff).

Gangawa died on the 11th September 1903, and Somawa died the next day.

At Somawa's death, disputes arose between Shivappa (plaintiff) and Sakrappa (defendant No. 1) as to the property left by her. Shivappa was represented by his father as his guardian. The disputes were referred to the arbitration of two persons, who being of the opinion that Sakrappa was the heir to the property, made an unequal division of the property, giving to the minor Shivappa, the smaller share.

Later on, Shivappa filed a suit against Sakrappa to recover possession of the whole of the property belonging to Somawa, alleging that he was the preferential heir.

Sakrappa (defendant No. 1) relied on the award as barring the suit.

The Subordinate Judge decreed the plaintiff's suit. He held that the plaintiff was the preferential heir to Somawa's estate and that the award was not binding upon him.

This decree was on appeal confirmed by the District Judge.

Jayakar (with him *Nilkant Atmaram*), for the appellant (defendant No. 1) :—

It has been found that there was reference to arbitration and that there was no fraud or collusion. But the lower appellate Court has set aside the award on the ground that it was not for the minor plaintiff's benefit. The Court so held, for it found that the arbitrators had taken a mistaken view of the law and had awarded to the plaintiff much less than what he was entitled to. The following cases were referred to: *Balaji v. Nana*⁽¹⁾;

(1) (1903) 27 Bom. 287,

Subba Reddi v. Kotamma⁽¹⁾; *Mala Reddi v. Ashvaratha Reddi*⁽²⁾; and *Bhau Rao v. Radhabai*⁽³⁾.

Branson (with him *D. A. Khare*), for the respondent (plaintiff):—

We say that the award is a fraud upon the minor. The Subordinate Judge found that there was no reference to arbitrators and no award by them. It has also found that the partition-deed executed in consequence of the alleged award was fraudulent. The District Judge has also recorded findings to the same effect.

CHANDAVARKAR, J.:—The appellant must succeed upon the point argued in the second appeal as to the validity of the award. The learned District Judge has found that there was no *mala fides* in the reference to the arbitration, but he holds that the award made by the arbitrators does not bind the first respondent (plaintiff), because of the inequality of the benefit he derived from it and the erroneous view of the difficult point of Hindu law, which led the arbitrators to make the award. In other words, the learned Judge has declined to treat the award as valid, not because of the circumstances as they existed at its date, but by what transpired some years after it had been passed by the arbitrators. That, however, is not the test by which the validity of an award is to be determined. The law applicable to this case is very clearly laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh*⁽⁴⁾, where their Lordships say, dealing with the compromise there in dispute:—"To judge properly of the objection whether the compromise is valid or not, we must look at the circumstances as they stood at the time when the *solehnamah* was executed. The appellants are not entitled to avail themselves of all the light which subsequent investigation in the course of the suit has thrown upon their claim. If the nature or the extent of the rights of the respective parties could be considered as the fair subject of doubt at the time of the deed, and if, to avoid expense and delay by legal inquiry, they agreed to settle the contest by an amicable arrangement, such transaction is not to be disturbed on the

1910.
 SAKRAPPA
 BIN
 LINGAPPA
 HESUR
 v.
 SHIVAPPA

(1) (1904) 14 M. L. J. R. 442.

(2) (1909) 33 Bom. 401.

(3) (1905) 15 M. L. J. R. 494.

(4) (1839) 2 M. I. A. 181, 249, 251.

1910.

SAKRAPPA
BIN
LINGAPPA
HEESUR
v.
SHIVAPPA.

ground of the inequality of benefit which either party may eventually have received from it." Having dealt with the question from that point of view, their Lordships go on to say:—"Under all these circumstances, the true amount of the relative rights of the litigant parties must be considered as having been doubtful, whether the law or the fact be regarded." And merely because the view which the arbitrators took of the law differs from that which a Court would take after a more careful investigation of the rights of the parties, it cannot be said that the agreement when it was entered into was not a fair subject of compromise of disputed and doubtful rights.

As the present case falls within the principle above quoted, the decree of the learned District Judge must be reversed and the suit dismissed with costs throughout upon the respondents.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

1910.

October 4.

DASSA KAMCHANDRA PRABHU (ORIGINAL PLAINTIFF), APPELLANT, v.
NARSINHA AND ANOTHER (SONS AND HEIRS OF ORIGINAL DEFENDANT 1),
RESPONDENTS.*

*Gift burdened with an obligation—Alienation by donee—Restrictions
on alienation.*

When it is doubtful, whether a deed embodies a complete dedication of property to a religious trust or merely creates a gift of that property, subject to an obligation to perform certain services, the question should be decided by reference to the deed itself. In the former case the property would be inalienable and in the latter alienable, subject to the obligation, and notwithstanding restrictions as to selling or mortgaging the said property.

APPEAL under section 15 of the Letters Patent against the decision of Scott, C. J., in Second Appeal No. 355 of 1908.

Suit for a declaration that the property in question was not liable to sale in execution of a decree.

* Appeal No. 14 of 1909 under the Letters Patent.