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defence at all. We must, therefore, reverse the decree under appeal and restore the decree of the Court of first instance with costs throughout.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr Justice Heaton and Mr. Justice Rao.

1913. *January* 24.

RAGHAWENDRA AYYAJI DESAI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* GURURAO RAGHAWENDRA DESAI (ORIGINAL PLAINTIFF), RESPONDENT.[*]

Civil Procedure Code (Act V of 1908), section 9, Schedule II, section 20—Dispute as to mánpán*—Suit of civil nature—Award by arbitrators settling dispute out of Court—Application to file award—Award can be filed though referring to* mánpán*—Agreement to distribute cash allowance—Pensions Act (XXIII of 1871).*

Section 20 of the second schedule to the Civil Procedure Code (Act V of 1908) is devised for the purpose of enabling, where the subject-matter of the award lies within more than one jurisdiction, any Court within whose jurisdiction a part of the subject-matter lies to direct that the award be filed. It does not contemplate that the Court has no jurisdiction to order an award to be filed, only because it deals with *mánpán*, that is, matters relating to a compliment or dignity about which the Courts would have no jurisdiction to entertain suits.

It is the policy of law to enable parties who by private arrangement settle a dispute to have that settlement made legally effective. If there is something to arbitrate on, and there is a reference and an award, the policy of the law is that that award should be given effect to without minute inquiry by the Court. Disputes about *mánpán* which cannot be settled in the Courts can often only be effectively settled by arbitration.

[*] Appeal No. 10 of 1912 from order.

The parties are at liberty without in any way going against the words or the spirit of the Pensions Act (XXIII of 1871) to agree amongst themselves that when the cash allowance is received from Government it shall be distributed among them in a certain way.

APPEAL from order passed by D. S. Sapre, First Class Subordinate Judge at Bijapur.

Application to file an award.

The parties had some disputes between themselves which they referred to arbitration out of Court. The arbitrators delivered their award whereby they settled disputes existing between the parties as to *mánpáns*, that is, the performance of certain religious rites and ceremonies at the Temple of Shri Maruti and the conduct of religious processions on certain days of the month. The award also provided for distribution among the parties of certain cash allowances which they received from Government.

An application was made to the Court to file the award. One of the parties objected to the award on the grounds *inter alia* that it was invalid and bad in law and that it was so indefinite as to be incapable of execution. The Subordinate Judge overruled these objections and ordered the award to be filed.

The applicant appealed to the High Court.

Coyajee, with *K. H. Kelkar*, for the appellants.

N. V. Gokhale, for the respondents.

HEATON, J. :—The first question which was raised in this appeal was that no appeal lay because it was, it is urged, an appeal against a decree and such appeal is barred by clause (2) of section 21 of the second Schedule of the Civil Procedure Code. But we think that the proceedings, and the Judge's order, and the Memorandum of Appeal make it quite clear that the appeal is not against a decree but is against the order

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directing that the award be filed. And that is an appeal which is specifically allowed by clause (*f*) of section 104 of the Code. There is, therefore, nothing in that question which was raised as a preliminary point by the respondent.

Three separate objections have been taken by the appellant. The first is that the award is so indefinite as to be incapable of execution. This objection can be taken under section 14 of the second Schedule. A careful reading of the award itself discloses that the objection to it, if any, is rather that it is too definite and not indefinite. In one or two matters it was argued, even after this conclusion had been arrived at, that there was indefiniteness. Without going into details it will suffice to say that we are not satisfied that the incapacity to execute any part of the decree to be made on the award will arise from indefiniteness. The only incapacity that will arise will be from the circumstance that a portion of the decree will be declaratory. That of course is not an objection of the kind urged. We think, therefore, that there is no substance in the objection taken under section 14 of the second Schedule.

Then it was objected that the Court had no jurisdiction to order the award to be filed. This objection in the first instance was based on section 20 of the second Schedule, and it took this form. The award deals amongst other things with *mánpán*, matters relating to a compliment or dignity and so forth : matters of a kind such that the civil Courts have no jurisdiction to entertain suits arising out of disputes regarding them. Therefore, it was argued that in respect of part of the subject-matter of the award the Court has no jurisdiction, and that as the Court is bound to take the award as a whole and to accept or reject it as a whole, it must in this case reject it. But I do not think that this

objection can be upheld under section 20 of the second Schedule.

That section, I think, is devised for the purpose of enabling, where the subject-matter of the award lies within more than one jurisdiction, any Court within whose jurisdiction a part of the subject-matter lies to direct that the award be filed; and I do not think that the section contemplates an objection of the kind here taken.

Nevertheless, although the purpose of section 20 of the second Schedule is plain enough and does not support this objection, it is maintained on general grounds. It is said that apart from section 20 of the second Schedule altogether, as a matter of fundamental principles, if the Court is without jurisdiction in respect of a portion of the subject-matter of the award it cannot order the award to be filed. Now the difficulty about suits relating to what is called *mánpán* arises out of section 9 of the Code, and it arises when disputes relating to *mánpán* prove to be disputes which are not of a civil nature within the meaning of those words as used in section 9; the disability of the Court to try these [illegible] arises out of the circumstance that jurisdiction is conferred by section 9. The jurisdiction to file an award is not conferred by section 9 at all but by section 20 of the second Schedule. Section 20 does not suggest any disability of the kind that arises on a consideration of section 9 of the Code. So that the words of the law do not suggest such a disability. Then do the underlying principles, does the policy of the law, suggest it? It seems to me that it does not. The policy of the law is to enable parties who by private arrangement settle a dispute to have that settlement made legally effective. And provided that there is something to arbitrate on, that there is a reference and an award, then the policy of the law is that that

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award should be given effect to without minute inquiry by the Court. Disputes about *mánpán* which cannot be settled in the Courts can often only be effectively settled by arbitration. Surely, the policy of the law is to encourage the possibility of an effective settlement rather than to make such a thing impossible. If, because an arbitration had decided a dispute as to *mánpan*, therefore the Civil Court were to refuse to order the award to be filed, it would be equivalent to denying any effective settlement of disputes of this character. It seems to me that the policy of the law cannot possibly mean this. We find, therefore, that the words of the law do not support this objection and the policy of the law is against it. Therefore that objection cannot prevail.

The last objection was one taken under the Pensions Act. The award provides:—"As to cash allowances becoming due from Government in respect of the two villages of Murmath and Muttatta, Raghavendra Ayaji and Bhimaji Ayaji should conjointly take an eight annas share from Government and Gururao Raghavendra the other eight annas share." It is said that if this term finds a place in the decree then we are entertaining a suit relating to a pension within the meaning of the Pensions Act of 1871. In answer to this it may be said that we are not entertaining a suit at all. But there is another answer. The parties are quite at liberty, without in any way contravening against the words or the spirit of the Pensions Act, to agree amongst themselves that when the cash allowances is received from Government it shall be distributed amongst them in a certain way. This, as I read the passage in the award, is exactly what the arbitrators have done for the parties; and the decree when passed will be no more in effect than a declaration that the money when received from Government by the pensioner

appointed by the Government shall be distributed in a certain way. That is not against the provisions of the Pensions Act. If that distribution is not in any particular instance made, it may be that the injured claimant will have to bring a suit. Whether in that suit he would need a certificate under the Pensions Act it is not for us to determine.

All the objections that have been urged against the order having failed we must dismiss the appeal with costs.

Appeal dismissed.

R. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Chandavarkar.

MAHOMED IBRAHIM BIN HAJI GOOLAM SAHEB LONDAY, APPELLANT AND PLAINTIFF, *v.* ABDUL LATIFF HAJI MAHOMED IBRAHIM JITAYKER AND OTHERS, RESPONDENTS AND DEFENDANTS.*

1912. *August* 8.

Wakf—Possession—Relations of Mutawali with beneficiaries—Invalidity of wakf—Evidence Act (I of 1872), sections 115 and 116—Estoppel—Resulting trust—Limitation Act (IX of 1908), section 10—Life estate—Shaffei Mahomedans.

In June 1851 F., a Shaffei Mahomedan lady, executed a deed in the form of a wakf, whereby she settled certain immoveable property in trust for her grand-daughter M. for life and thereafter on her descendants from generation to generation, and in default thereof on the settlor's husband's relatives and their descendants from generation to generation in perpetuity, and in default with an ultimate trust for the education of Mahomedan youths. The settlor's husband was appointed first trustee or Mutawali, and provision was made in the deed for a due succession of Mutawalis. The first Mutawali, and after his death his executors acting as Mutawalis during the minority of his eldest son S. A., paid the rents and profits to M. and after her death to her son

* Appeal No. 41 of 1911. Suit No. 813 of 1910.