Appellate Jurisdiction.(a)

Special Appeal No. 217 *of* 1875.

KOTA SEETAMMA.....*(Plaintiff) Special Appellant.*

KOLLIPURLA SOOBBIAH.. *(1st Defendant) Special Respondent.*

Rights arising under an award are on the same footing as other rights except in so far as the legislature has otherwise provided ; and the provision in the Civil Procedure Code, enabling a summary enforcement of such rights, contains nothing indicating an intention to bar the ordinary remedy by suit where an application for the summary enforcement has been made and refused.

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THIS was a Special Appeal against the decision of Mr. J. R. Daniel, the Acting District Judge of Nellore in Regular Appeal No. 82 of 1874, reversing the decree of the Court of the District Munsif of Ongole in Original Suit No. 1017 of 1873.

The plaintiff, who is the sister of defendants, sued to recover moveable property valued at Rupees 278-7-0 and a portion of a house situated at Ongole, valuing that portion at Rupees 44.

The plaintiff alleged that she and defendants referred their differences to certain arbitrators for their decision ; that by the decision of the said arbitrators plaintiff was entitled to $\frac{1}{5}$th share of the property with the condition that the same should revert to the defendants in case the plaintiff should die without adopting a son ; that a division of the greater portion of the assets was made in accordance with the award when plaintiff obtained possession of some property ; that the moveable property now sued for having been also allotted to plaintiff's share was left with the 1st defendant to be held by him until plaintiff should deliver him a kararnamah, as required by him, for the reversion of her share to the first and second defendants in case she should die without adopting a son, and that plaintiff subsequently offered to execute the requisite kararnamah, but the defendants neither returned her property, left with the 1st defendant, nor gave her a share in the family house which was left undivided. Hence this suit.

(a) Present :—Sir W. Morgan, C. J., and Innes, J

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The 1st defendant pleaded that the plaintiff's application to file the award was dismissed by the Court; that that dismissal was a bar to plaintiff's suit; that plaintiff's claim was also barred by lapse of time. He further denied the alleged division and plaintiff's right to share any property.

The 2nd defendant admitted the plaintiff's claim.

The District Munsif of Ongole adjudged that plaintiff should receive the moveable property claimed or its value, and plaintiff's share of the house, and that 1st defendant should pay plaintiff her costs. The defendants were ordered to bear their own costs.

Against this decree, the 1st defendant appealed.

The Acting District Judge of Nellore decided as follows :—

" The objection that this is a suit already heard and determined is fatal to the plaintiff's suit.

" The plaintiff is the sister of the 2nd defendant, they referred their dispute to certain arbitrators. The arbitrators gave their award and the plaintiff applied under the provisions of Section 327 to have this award filed and a decree passed in her favor in accordance with its terms. Notice was given to the defendant and the application was registered as a suit between the parties.

" The 1st defendant then opposed the claim in the same way that he does now. He raised three objections, First, that the award was not stamped, this was removed by the payment of the penalty; secondly, that the award did not specify to what definite property the plaintiff was entitled and consequently was not capable of execution; and thirdly, that the award was illegal because plaintiff had no right under Hindu Law to a share.

" The Munsif found that sufficient cause was shown against the award and declined to file it: an appeal was preferred against this decision but was dismissed on the ground that no appeal lies against an order under Section 327 refusing to file an award.

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"The plaintiff has now brought a regular suit to enforce the award.

"The Munsif now has entertained the suit considering that the former refusal of the Munsif to file the award is not a decision upon the merits, and there was no adjudication upon the validity of the award, that the judgment was based upon technical grounds not vitiating the award.

"It seems however clear that the application under Section 327 is a regular suit to enforce the award. It is not as if there was an application to file the award simply without any determination whether the award was valid or not. The suit was a regular suit, and the Munsif found that there was sufficient cause against the award; that is, that it was an award which could not be enforced as a decree of Court. It is a judgment on the validity of the award. A Court could grant or refuse a decree in accordance with an award in an application under Section 327 for the same reasons as in a regular suit brought after the 6 months. Section 327 merely provides a method of enforcing an award on a mere application instead of on a stamp required in a regular suit if such application be made within 6 months. But it is equally a suit upon the award whether brought under Section 327 or subsequently by a regular suit. The same Judge who considered there were sufficient grounds against the award under Section 327 would consider the same grounds as sufficient to disallow the suit upon the award.

"In the present case the two cases have been decided by different Munsifs who have taken different views, and although I am of opinion that the refusal of the Munsif to file the award was wrong, that there was not sufficient cause against the award, still the case is *res judicata* and cannot be tried again.

"The Munsif rejected the application not on any particular or technical grounds, but because he was of opinion that all the reasons brought against the award were sufficient for a refusal to file the award, and gave decree accordingly.

"The same reasons, if valid there, would be equally valid against the present decree. The plaintiff no doubt loses the

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advantage of the award by, what I consider, an erroneous decision on the first application, and as the Appellate Court determined that there was no appeal, the plaintiff has no remedy. The decree of the Munsif is therefore reversed and the plaintiff's suit dismissed; each party to bear their own costs."

From this decision the plaintiff appealed.

Nullathumby Mudaliar, for the special appellant, the plaintiff.

Anundacharlu and *Kamasam*, for the special respondent, the 1st defendant.

The Court delivered the following judgments:—

SIR W. MORGAN, C. J.—The Lower Appellate Court has misapprehended the nature of the proceeding under Section 327 of the Code of Civil Procedure. The Court is, by that section, empowered to give to a private award the effect of a decree of Court by an order that the award be filed; but such an order must be applied for within six months from the date of the award.

In this case an application, under the section, having in due time, been made and refused, the order of refusal has been regarded by the Judge as an adjudication, which bars the suit. But the order adjudged nothing except that the award should not be filed and enforced under Section 327.

It has been decided that a suit lies to enforce an award, made on a reference to arbitration without the intervention of a Court of Justice, *Palaniappa Chetty* v. *Rayappa Chetty*.(1) It is suggested on behalf of the respondent that there had not been in that case any such previous application and refusal as here appears. This may be true, but it does not affect the question. Rights arising under an award are on the same footing as other rights except in so far as the legislature has otherwise provided; and the provision in the Code, enabling a summary enforcement of such rights, con-

(1) 4 Madras H. C. Rep., p. 119.

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tains nothing indicating an intention to bar the ordinary remedy by suit where an application for the summary enforcement has been made and refused.

INNES, J.:—The point of *res judicata* was wrongly taken. The refusal of the application under Section 327 was no determination of the present matter. It was merely a refusal, right or wrong, to register the award as a decree of the Court; the matter now sought to be determined is the plaintiff's right to recover upon the award.

Appeal allowed.

Appellate Jurisdiction.(*a*)

Criminal Petitions Nos. 255 *and* 267 *of* 1875.

WILLIAM JOHN REARDON ... ... *Petitioner.*

The Merchant Shipping Act, 1854, 17 and 18 Vict., Cap. 104, s. 243(*b*) has no application to British India. The Act applicable to cases of continued wilful disobedience of lawful commands by sailors is Act No. I of 1859, s. 83, clause 5(*c*)

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& 267 of 1875.

THESE were Petitions praying the High Court to revise the sentences of Mr. J. Cameron, the Joint Magistrate of Tanjore in Cases Nos. 30 and 24 of 1875 respectively.

The petitioner was one of seven seamen convicted of continued wilful disobedience of lawful commands and sentenced to one month's rigorous imprisonment under clause 5, Section 243 of the Merchant Shipping Act of 1854.(*b*)

No Counsel were instructed.

(*a*) Present:—Innes and Forbes, JJ.

(*b*) This section has been literally copied in the Merchant Seamen's Act, No. 1 of 1859, s. 83, for which, so far as it is material to the present case, see next note (*c*).

(*c*) Section 83 is as follows:—"Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offences, he shall be liable to be punished summarily as follows (that is to say):—

"*Clause* 5." For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labor, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute."