Appellate Jurisdiction(a)

Regular Appeal No. 118 *of* 1872.

IMMEDY KANUGA RA'MA'YA GAUNDAN.....*Appellant.*

RA'MASWA'MI AMBALAM.....*Respondent.*

Plaintiff brought this suit to obtain a decree dismissing defendants, Committee and Manager of a certain Pagoda, from their offices on the ground of malversation. The Court made an order expressed to be by consent of the parties concerned, and in exercise of the Court's discretionary power under Section 16 of Act XX of 1863, referring the matters in difference to three arbitrators for final determination, said arbitrators "to make their award in writing and submit the same" within a certain period. Each arbitrator delivered a separate award in writing, two arbitrators finding for the plaintiff. The Civil Judge made a decree in accordance with the award of the majority of the arbitrators. The 1st defendant appealed on the grounds; (1), that he had not consented to the arbitration; and (2), that there being no provision in the order of reference to the effect that the finding of a majority of the arbitrators should prevail, there was no valid award. *Held*, that, in this case, the order of the Judge was valid without the assent of the persons to be bound. That he might, when he made the order, have inserted as a provision that the decision of the majority should be that of the body, and that there was no reason why his ratification of that mode of decision, wholly within his discretion, should not be equivalent to a previous command.

1872. *December* 20. *R. A. No.* 118 *of* 1872.

THIS was a Regular Appeal against the decree of J. D. Goldingham, the Civil Judge of Madura, in Original Suit No. 27 of 1870.

The plaintiff, as a person interested in the Kullalagur dévastánam, brought the suit, having obtained the leave of the Court as required by Section 18, Act XX of 1863, to obtain a decree dismissing the defendants from their offices as members of the Committee and Manager, respectively, and further adjudging them to pay to the dévastánam Rupees 16,124-8-0, being loss sustained on account of their illegal and unwarranted acts, such as increasing the establishment unnecessarily, and to benefit their dependents usurping the jewels and the money belonging to the pagoda, and misappropriating to themselves the pagoda funds under pretence of making loans to insolvents, of which the plaintiff became aware in 1869.

The defendants, generally, denied the allegations in the plaint. The Civil Court, by the following order of the 29th

(a) Present: Holloway and Kindersley, JJ.

1872. *December* 20. *R. A. No.* 118 *of* 1872.

September 1871, referred the matters in difference between the parties to arbitration :—

"Upon reading the Petition presented by the plaintiff and his Vakil, and by 2nd, 3rd and 5th defendants, and Mr. J. French, Vakil for the said 2nd and 5th defendants and for 1st and 4th defendants, who, he says, concur in the said Petition. It is ordered by and with the consent of the parties present and in the exercise of the Court's discretionary power under Section 16 of Act XX of 1863 that all matters in difference in this suit be referred to the final determination of (1), Nilakunta Shastri; (2), Mr. G. Hickey; and (3), S. Subramania A'yyar, who are to make their award in writing and submit the same to this Court, together with all proceedings, depositions and exhibits in this suit within two months from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrators are to be at liberty to examine the parties and their witnesses upon oath or affirmation, which they are empowered to administer, and that the said arbitrators shall have all such powers or authorities as are vested in arbitrators under Act VIII of 1859, including therein power to call for all books of account that they may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrators, do abide the result of the finding of the said arbitrators."

In accordance with this reference the arbitrators, on or about the 5th March 1872, delivered their opinions, separately, in writing. Objections to the award were raised by several of the parties to the suit, among others by the 1st defendant, who alleged that he had not agreed to the submission to arbitration, and refused to be bound by the award.

The Civil Judge delivered a judgment from which the following is taken :—

Objections have been raised against the award of the arbitrators by plaintiff, 1st, 2nd and 4th defendants, respectively. No award can be set aside under Section 324 of the

1872. *December* 20. *R. A. No.* 118 *of* 1872.

Code, unless corruption or misconduct be proved against the arbitrators, or umpire. None such being even imputed, it follows that the Court must decree in each item, or matter in dispute, in accordance with the opinion expressed by the majority of the arbitrators."

The 1st defendant appealed on the following grounds :—

1. The reference to arbitration in the suit and the award purporting to be made thereunder are invalid.

2. The reference to arbitration was made upon the application of the plaintiff and some of the defendants under Act VIII of 1859, and the arbitrators were nominated by the applicants. The 1st defendant did not join in that application, and is, therefore, not bound by the award.

3. The order of reference contained no provision that the arbitrator should deliver separate awards, or that the decision of the majority should prevail. The arbitrators not having agreed, there is, therefore, no valid award.

4. The findings of the majority of the arbitrators do not disclose such conduct on the part of the 1st defendant as warrants his removal from office under Act XX of 1863.

Handley, for the appellant, the 1st defendant.

The Court delivered the following

JUDGMENT :—In this case, as in all such cases, it is to be regretted that the order to refer did not embody the mode in which the decision should be arrived at; whether a majority should decide, or, in case of difference, an umpire. It is unnecessary to determine in this particular case whether into such a submission by agreement, the principle should be imported that where an act is to be done by a body, the act of the majority of the units of that body is the act of the body. Here the order of the Judge was valid without the assent of the persons to be bound. There can be no doubt that he might, when he made the order, have inserted as a provision that the decision of the majority should be that of the body, and there is no reason why his ratification of that mode of decision, wholly within his discretion, should not be equivalent to a previous

1872. December 20. R. A. No. 118 of 1872.

command. Without, therefore, at all saying that the argument in appeal ought in any case to prevail, we are clear that it ought not in this case. The appeal will be dismissed.

Appeal dismissed.

Appellate Jurisdiction(a)

Special Appeal No. 251 *of* 1871.

SAMI A'YYANGA'R.....*Special Appellant.*

GOPA'L A'YYANGA'R.....*Special Respondent.*

Defendant executed in favor of plaintiff at Combaconum, in the Zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalúr, in the Trichinopoly Zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalúr. Plaintiff appeared at the registry office, but defendant did not. In consequence the Sub-Registrar refused to register the deed. The present suit was brought to compel defendant to join in registering it. The District Munsif of Perambalúr dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the defendant was a permanent resident of Combaconum. Upon Special Appeal, *Held*, reversing the decree of the Civil Judge, that as Section 21 of the Registration Act (XVI of 1864) which governed this case, rendered it necessary that the deed should be registered in Perambalúr, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of this obligation was the cause of action, and that, consequently, the Court at Perambalúr had jurisdiction, as it was the place of the fulfilment of the obligation.

1873. January 6. S. A. No. 251 of 1871.

THIS was a Special Appeal against the decision of R. Davidson, the District Judge of Trichinopoly, in Regular Appeal No. 32 of 1869, confirming the revised decree of the Court of the District Munsif of Perambalúr, in Original Suit No. 156 of 1866.

The facts appear in the following judgment of the Lower Appellate Court:—

"Plaintiff brought this suit to compel registration of a certain document.

The plaint set forth that on the 2nd January 1866, the defendant, a resident of Combaconum, executed a deed of mortgage to him at Combaconum for certain lands situated within the jurisdiction of the Perambalúr Munsif's Court,

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