
(1950) 08 MAD CK 0026

In the Madras High Court

Case No : Second Appeal No. 640 of 1947

Bhimavarapu Venkatasubbayya

APPELLANT

Vs

Addanki Bapadu and Others

RESPONDENT

Date of Decision : 24-08-1950

Acts Referred:

Arbitration Act, 1940 — Section 14, 17

Citation : AIR 1951 Mad 458 : (1950) 2 MLJ 672

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : K. Krishnamurthy and G. Suryanarayana, for the Appellant; B.V. Ramanarasu, for the Respondent

Final Decision : Dismissed

Judgement

Raghava Rao, J.—An interesting point has been raised by Mr. Krishnamurthi for the appellant in this case. The suit was laid by the

respondent before me for a declaration of his title and for an injunction to restrain the defendant from interfering with his possession. The plaintiff

rested his title upon a certain sale deed dated 11-10-1930 and also upon a prescriptive title by enjoyment had by him all along from the date of

that sale deed. The defence, so far as material to the disposal of the present second appeal, is that there was an award on a reference to arbitration

which is binding upon the plaintiff and precludes him from filing this action. The learned District Munsif of Ongole dismissed the suit giving effect to

the defence above referred to.

2. The award was pronounced on 12-1-1944 and registered on 24-3-1944. On 9-3-1944 it was that the suit, out of which this second appeal

arises, was instituted.

3. The learned District Munsif at the end of his judgment says :

As the award was pronounced before the suit, it is not possible to accept the plaintiff's contention that in spite of it the Court can adjudicate on the rights of the parties.

On appeal the learned Subordinate Judge of Bapatla reversed the judgment and decree of the learned District Munsif dismissing the suit, observing thus in para. 9 of his judgment under appeal :

In dismissing the suit the lower Court seems to have been considerably influenced by the award, Ex. D-3, alleged to have been given by D. W. 3,

Kotayya. The case for the defendant is that the disputes between him and the plaintiff, including the dispute with reference to the suit property,

were referred to the arbitration of D. W. 3 under the arbitration agreement, Ex. D-1, that the arbitrator gave the award, Ex. D-3, holding that he

and the plaintiff were entitled to the suit property in equal shares, that this award is binding both on himself and the plaintiff and that, consequently,

the plaintiff cannot be entitled to the reliefs prayed for by him in the suit. The case for the plaintiff is that the arbitration agreement, Ex. D-1, does

not refer to the suit property at all, that even otherwise it is not binding on him and that the award, Ex. D-3 is invalid in law and not binding on him.

And, I do not think it is open to the defendant to rely on the arbitration agreement, Ex. D-1, or on the award, Ex. D-3, in support of his case in the

present litigation. The arbitration agreement was admittedly executed only in the year 1943, i. e., after the Arbitration Act of 1940 came into force;

and, it is clear from the recent ruling of our High Court in Rashid Jamshed Sons and Co. Vs. Moolchand Jothajee, , that if a party to an arbitration

wants to rely on the arbitration agreement or upon the award passed by the arbitrator, in support of his case, he must have taken steps to have a

decree passed on the award as provided for in the Arbitration Act, and, in the absence of any such, decree, it is not open to him to ask the Court,

in another litigation, to rely on the arbitration agreement or on the award, in support of his case.

The learned advocate for the appellant has, as against this reasoning of the learned Subordinate Judge, founded upon the case in Rashid Jamshed

Sons and Co. Vs. Moolchand Jothajee, , drawn my attention to a Divisional Bench ruling of this Court in Suryanarayana Reddi v Venkatareddi,

ILR (1949) Mad. 111 : (A.i.r. (35) 1948 Mad. 436). The question which arose in that case, as formulated by Govindarajachari J. who delivered

the judgment of the Court consisting of Happell J. and himself is, whether, by reason of the provisions of the Arbitration Act, 1940, a defendant is

precluded from putting forward an award which has been fully performed by him but which was not filed u/s 14 and according to which a judgment

was not pronounced or a decree given u/s 17 of the Act in answer to the plaintiff's claim which was the subject-matter of the reference and the

award. The answer was that the defendant was not so precluded. So, says Mr. Krishnamurthi, the defendant is not precluded in the present case

either. But the question which one has to consider here is, whether when the award has not been subjected to the treatment prescribed for it by the

Arbitration Act it can be relied upon in the absence of anything to show that the award became completely performed by the defendant. And if it is

to be said that there was nothing to be performed by the defendant in the present case under the agreement, it has still to be shown how the

present suit is really not maintainable under the provisions of the Arbitration Act.

4. Mr. Krishnamurthi says that under and by virtue of the award his client went into possession of 1/3rd of the property. But the finding of the

lower appellate Court in regard to this is that the defendant has never been in possession of the property whether, before the award or after, and

that the possession has all along been, down to the date of the suit, with the plaintiff himself. In regard to Mr. Krishnamurthi's contention that the

suit falls within the mischief of the Arbitration Act, the sections which one has to consider are Sections 31 to 33. Section 31 is devoted essentially

to the question, which Court has jurisdiction in the matter of an arbitration. There is nothing in it that really bears upon the maintainability or

otherwise of the present suit. Section 32 provides that notwithstanding any law for the time being in force, no suit shall lie on any ground

whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award

be set aside, amended, modified or in any way affected otherwise than as provided in this Act. This section, it had to be seen, is not relevant to the

present case because the suit here is not for a decision upon the existence, effect or validity of an arbitration agreement or award. Section 33 of the

Act provides that any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits; provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit. This section too, in my opinion, is not relevant to the matter on hand. The plaintiff is not challenging the existence or validity of the arbitration agreement or the award, nor is he anxious to have the effect of an arbitration agreement or award determined. If he were anxious to have that done, no doubt he would have to apply to the Court. The question here plainly and simply, is whether the defendants can rely upon an unfiled award in answer to the present action? That he might be entitled to do if the award happened to be acted upon by the parties and if the part of it which had to be performed by the defendant was actually performed as in the case in *Suryanarayana Reddi v. Venkatareddi*, ILR 1949 Mad. 111 : A. I. R.,(35) 1948 Mad. 436.

5. It seems to me that no valid bar to the maintainability of the present action has been made out, and since the defendant, who is himself relying upon the award, did not take steps to have it filed and dealt with under the appropriate provisions of the Arbitration Act, it is not competent to him to rely upon it in answer to the action That being so, this second appeal fails and it must be dismissed with costs.

6. No leave.