

(1906) 02 CAL CK 0015
In the Calcutta High Court

Chairman of the Purnea Municipality	Vs	APPELLANT
Siva Sankar Ram		RESPONDENT

Date of Decision : 16-02-1906

Acts Referred:

Citation : (1906) ILR (Cal) 899

Hon'ble Judges : Mookerjee, J; Francis W. Maclean, J

Bench : Division Bench

Judgement

Francis W. Maclean, K.C.I.E., C.J.—This suit was instituted on the 9th September 1903, and the object of it was to restrain the defendant Municipality from interfering with a small strip of land, which the plaintiff claimed to be his and to obtain an injunction restraining the Municipality from pulling down a verandah, which he had built on this piece of land.

2. The defendant No. 1 was the Municipality and the other defendants Nos. 2, 3, 4 and 5 are apparently the zemindars of this piece of land. It is a little difficult to see why they were at all made parties to the suit. However, they did not enter appearance and took no part in the suit.

3. On the 30th March 1904, on an application of the plaintiff and defendant No. 1 the case was referred to the arbitration of three gentlemen, and they made their award in due time and, by that award, they dismissed the suit of the plaintiff. That award was filed in Court on the 29th April of the same year, and the parties were directed to put in their objections within 10 days. The plaintiff and defendant No. 5 alone put in objections to this award, which were overruled by the Munsiff on the 30th June 1904 and the Munsiff made a decree dismissing the plaintiff's suit in accordance with the award.

4. The plaintiff and defendant No. 5 appealed against that decree and the learned District Judge allowed the appeal and sent back the case to be retried on the merits. The question we have to decide upon the present appeal is whether any appeal lay from the decree of the Munsiff to the District Judge.

5. We think that that point is determined by the decision of the Judicial Committee of the Privy Council in the case of Ghulam Khan Muhammad Hassan I.L.R.(1901) Cal. 167 : L.R. 29 IndAp 51. The Judicial Committee there held that no appeal lay where a decree had been passed u/s 522 of the CPC in accordance with an award., except in so far as the decree might be in excess of, or not in accordance with, the award, which is not the case before us. No doubt, before that decision of the Judicial Committee, there were a series of cases in most, if not in all, the High Courts of India, which held in effect that, where a decree was passed upon an award, which is not valid or legal, an appeal would lie. I need not refer to those cases, because I think it must be taken that those cases were practically overruled by the decision of the Judicial Committee, to which I have referred. This latter view was also taken by a Division Bench of this Court in the case of Chintamani Aditya v. Hahdhar Maiti (1905) 2 C.L.J. 153, in which Mr. Justice Mookerjee says--and that was substantially the view taken by Mr. Justice Stephen, who sat with him--"After a careful examination of the grounds upon, which the decisions just referred to were based, as also the judgment of their Lordships of the Judicial Committee, I am of opinion that these cases, in so far as they decided that a decree made in accordance with an award may be challenged by way of appeal on the ground that there is no valid and legal award, have been overruled by the Judicial Committee and can no longer be treated, as regards this particular proposition, as authorities binding on this Court." I agree in that observation and, in that view, it becomes unnecessary for us to go into the question whether the award in the case now before us was or was not a legal and valid award, it being suggested that it was not, by reason of the fact that the defendants Nos. 2, 3, 4 and 5 were not parties to the reference. It is true that, since that decision of the Judicial Committee, there is a decision of a Division Bench of this Court in the case of Parsidh Nurain Singh v. Ghanshyam Narain Singh (1905) 9 C.W.N. 873, which seems to conflict with the view of the Judicial Committee. It does not appear from the report whether the decision of the Judicial Committee was cited. But that decision, Parsidh Narain Singh v. Ghanshyam Narain Singh (1905) 9 C.W.N. 873, seems to clash with an earlier case, to which one of the learned Judges in the later case was a party, in Haranund Naskar v. Doyal Chand Naskar (1902) 2 C.L.J. 142, which took the same view as we are taking in the present case. On these grounds it is unnecessary to go into the cases which have been cited. I do not think any object will be gained in reviewing them. I think we are bound by the view taken by the Judicial Committee in the case cited, and consequently that this appeal must succeed and be allowed with costs in this Court and in the lower Appellate Court.

Mookerjee, J.

6. I am of the same opinion.