
(1912) 11 AHC CK 0006
In the Allahabad High Court

Dharam Kirti Saran and Others

APPELLANT

Vs

Sabta Prasad and Another

RESPONDENT

Date of Decision : 18-11-1912

Acts Referred:

Citation : (1913) ILR (All) 107

Hon'ble Judges : Henry Richards, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Henry Richards, Kt., C.J. and Banerji, J.—This and the connected appeal No. 20 of 1911 arise out of two suits brought for partition of certain property which originally belonged to Sahu Radha Kishan.

2. The plaintiffs to the two suits are the descendants of Sahu Ganga Sahai and Sahu Gokal Prasad, two of the sons of Sahu Radha Kishan. One Musammat Janki was made a defendant to the suit: she is the widow of Sahu Shiam Saran, one of the sons of Sahu Ganga Sahai. All the parties to the two suits referred their disputes to arbitration, save and except Musammat Janki, who did not join in the submission. A decree was made by the arbitrator, who was the Subordinate Judge in whose court the suits were filed, and who was appointed arbitrator not only with the consent of the parties but also with the sanction of the Government. Decrees have been passed in both the suits in accordance with the award, and it is against these decrees that the two appeals before us have been preferred as also the appeal No. 21 of 1911 in which Musammat Janki is the appellant. The decree having been made in accordance with the award, a preliminary objection has been taken on behalf of the respondents that no appeal lies. If the award is legally valid, the decree being in accordance with the award no appeal can be preferred from the decree and the objection must prevail. We have therefore to determine whether the award is a legally valid award.

3. Mr. O'Connor, who appears for the appellants, challenges the validity of the

award on the sole ground that Musammat Janki was not a party to the submission. If Musammat Janki was not a necessary party to the suit, the fact of her not joining in the submission would not in our opinion affect the validity of the award. As regards Musammat Janki the allegation of the plaintiff was that she was in possession of some villages in lieu of maintenance. Her statement was also to the same effect, and what she claimed was that her right of maintenance should not in any way be affected by the partition claimed in the two suits. It thus appears that all parties were agreed that she was not a necessary party having regard to the nature of her rights. Had the case gone to trial no question of her rights could have been determined in a partition suit. So that it is manifest that she was not, as the parties themselves also practically admitted, a necessary party to the suit. The fact that she did not join in the submission did not therefore in our opinion vitiate the award. The decree having been passed in accordance with the award, no appeal lies and these two appeals must fail.

4. We accordingly dismiss this appeal with two sets of costs, one set to be obtained by Parsotam Saran respondent and the other by Sahu Dharam Kirti respondent. The objections under Order XLI, Rule 22, fail and are dismissed with costs.