

**(1952) 03 MAD CK 0002**  
**In the Madras High Court**  
**Case No : Appeal No. 726 of 1947**

Gadipudi Seethamma

APPELLANT

Vs

Gudipudi Annapurnamma and Others

RESPONDENT

**Date of Decision :** 14-03-1952

**Acts Referred:**

Arbitration Act, 1940 — Section 31, 32, 33  
Civil Procedure Code, 1908 (CPC) — Section 9

**Citation :** AIR 1953 Mad 544 : (1952) 1 MLJ 744

**Hon'ble Judges :** Krishnaswami Nayudu, J; Govinda Menon, J

**Bench :** Division Bench

**Advocate :** P. Somasundaram and P. Suryanarayana, for the Appellant; M.S. Ramachandra Rao and A.L. Narayana Rao, for the Respondent

**Final Decision :** Dismissed

## Judgement

Govinda Menon, J.—While not disagreeing with the lower court regarding its conclusion on issues 1 and 2 decided in favour of the

respondents, we think that this appeal can be disposed of on a much shorter ground. The learned Subordinate Judge framed an additional issue as

to whether the plaintiff was entitled to maintain the suit pleading the illegality and invalidity of the awards and decrees in O. S. No. 30 of 1942, O.

S. No. 297 of 1942 and O. S. No. 701 of 1943. On that issue, the learned Judge after a consideration of Ss. 31, 32 & 33, Arbitration Act of

1940 concluded that the suit was not maintainable. In the view of the learned Judge, the plaintiff was agitating a question which she ought to have

agitated by means of the procedure laid down under the provisions of the Arbitration Act. In fact, she is agitating the existence and validity of the

reference to the arbitration and the award passed in pursuance of such arbitration. The lower court relied upon the decision in - Rashid Jamshed

Sons and Co. Vs. Moolchand Jothajee, which has been confirmed in Letters Patent Appeal by a Bench of this Court in Moolchand Jothajee Vs.

Rashid Jamshed Sons and Co., . In delivering the judgment of the Bench the learned Chief Justice observes as follows at page 348:

The Act of 1940 was intended to consolidate and amend the law of India relating to arbitration matters. The scheme of the Act is to prevent the

parties to an arbitration from agitating questions relating to the arbitration in any manner other than that provided by the Act. The suit which the

appellants filed clearly raised the question with regard to the existence and validity of the award, and such a suit is expressly barred by Section 32.

We find other decisions of this Court also to a similar effect such as - Pamudurthi Suryanarayana Reddi and Others Vs. Pamudurthi Venkata

Reddi and Others, and - Sayyaparaju Surayya Vs. Nekkanti Anandayya and Others, .

2. But Mr. Somasundaram for the appellant contends that what the plaintiff relies upon in support of her claim is that the arbitration and the award

thereto were based upon fraud, and therefore it should be deemed as if there was no award at all. In such a case the decisions of this court above

referred to would not be relied upon. But we find on a reading of the plaint that the plaintiff's case was that she was induced to agree to the

reference to the award of the arbitrator, Venkatarao, on the persuasion of S. Janskiramiah that the proposed arbitrator would uphold the validity of

the will dated 7-3 1942 alleged to have been executed by her deceased husband, G. Janakiramiah. It was on that persuasion that she agreed to the

reference to the arbitration. Such being the case, we do not think that she has alleged any fraud in the passing of the award or any act on the part

of the arbitrator. Even if she was induced by fraud to agree to the award, we do not think that she has a right of suit separately apart from the

provisions of the Arbitration Act. What she ought to have done was when she found that the will in her favour was not upheld and that the hopes

and aspirations held out to her had not been fulfilled, to have moved the court by means of an application to set aside the award, if such an

application would have lain under the provisions of the Act. That a party to reference to arbitration was induced to agree by means of fraud or by

some other party is a matter which could have been and should have been taken in proceedings under the Arbitration Act. We find observations of

a nature akin to this in the judgment of a single Judge of the Calcutta High Court in - "Chatur-bhuj Mohanlal v. Bhicamchand", 53 Cal W N 410

(E).

3. Apart from these decisions, on the facts of this case we are satisfied that what the plaintiff now alleges is with regard to existence and validity of

the award. We have no doubt whatever-that taking the allegations in the plaint as they are, the sole question for consideration was with regard to

the existence and the validity of the award, and if that is so, the remedy is not by filing a fresh suit as she has now done, and she ought to have

moved the court under the sections of the Arbitration Act. In this view we are of opinion that the decision of the lower court is right.

4. The appeal is dismissed but in the circumstances without costs.