

(1906) 09 BOM CK 0019
In the Bombay High Court
Case No : Civil Reference No. 3 of 1986

Kalidas Lalbhai

APPELLANT

Vs

Tribhuwandas Bhagwandas

RESPONDENT

Date of Decision : 28-09-1906

Acts Referred:

Stamp Act, 1899 — Section 2(15)

Citation : (1906) 8 BOMLR 869

Hon'ble Judges : Louis P. Russell, Acting C.J.;Heaton, J;Beaman, J

Bench : Full Bench

Judgement

Louis P. Russell, Acting C.J.

1. We have no doubt whatever in this case that the question, whether the document should have been stamped as an instrument of partition as defined in Section 2, Clause (15) of the Stamp Act, must be answered in the affirmative.

2. It appears that one Bhagwandas Tapidas died in 1900 after having made a will and a codicil. He left behind him a son and two grandsons by a predeceased son. Then it appears that there were disputes between the son and the grandsons, and by a submission paper, the disputes were referred to arbitration, and it appears from that submission paper that Balvantrao Tripurshankar and Thakorram Kapilram were not to divide the property but to make an award.

3. Accordingly they made their award; and the question that arises is, whether that award directs a partition or not.

4. Now with regard to that we have only to refer to the terms of the award itself.

5. It begins by saying "we divide as below. The parties should act accordingly." It further goes on "Tribhuvandas should take into his possession as below after passing a legal release." It adds other directions with regard to the action of Tribhuvandas, and in Clause II, it says. In connection with whatever is settled to be given to Tribhuvandas and to be taken by him, we direct that Mr.

Tribhuvandas should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered to his nephew Bhulabhai Nathabhai and Kalidas Lalbhai."

6. It is plain, therefore, in our opinion, that this award comes directly within the meaning of the words "an award by an arbitrator directing a partition."

Beaman, J.—I should like to add that, in my opinion, the words "an award by an arbitrator directing a partition" precisely fit the case. In ordinary cases, arbitrators have no power to do more than direct a partition. The terms of Section 2, Clause 15, provide for all the cases, for parties having divided or agreed to divide, for arbitrators, to whom reference has been made, directing a partition, and last for the Courts effecting a partition. It lies with the parties themselves to agree to make or actually to make a partition. But it is not competent to arbitrators to do more than direct a partition. It is the same for all practical purposes, whether they merely direct a partition to be made, or go further and define the manner in which to the best of their judgment it should be made, nor in the latter case does it seem to me to matter in the least, whether after having carefully set forth the precise way in which they think the parties should make the partition, they do or do not add a further direction to them to make it so. The latter would in no case have any legal effect, per se. But, whether with or without a previous reference to arbitration, parties may be obliged to have recourse to the Courts, and in that case the Court either by adopting the award of arbitrators, which one party disputes, or where there has been no award, by its own decree, makes an effectual partition, the question referred must, I think, plainly be answered in the affirmative.

Heaton, J.—I concur.