

(1934) 03 AHC CK 0056
In the Allahabad High Court

Lalji Sahai and Another

APPELLANT

Vs

Parsottam Ahir and Others

RESPONDENT

Date of Decision : 07-03-1934

Acts Referred:

Citation : AIR 1934 All 687 : 153 Ind. Cas. 678

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a second appeal by defendants 1 and 2 against a decree of the lower appellate Court in favour of the plaintiff. The plaintiff brought a suit for declaration that he was the sole owner of a certain shop and that defendants second set, that is, defendants 3 and 4 had no concern with it and that no portion of the shop was liable to sale in execution of the decree of defendants first set against defendants second set. The plaintiff Parsottam Ahir had a brother Gaya Earn and Gaya Ram had two sons Sheomangal Ram defendant 3 aged 22 and Parmeshar Ram defendant 4 aged 20, the ages being taken from the plaint. These persons formerly formed a joint family and on the 9th of May 1916 there was a deed of agreement to partition the property of the joint family which was signed by certain members of the joint family Parmeshar Earn, Gaya Earn and Bhawanidin and one Mt. Khushali. Sheomangal Earn and Parmeshar being minors at that time did not sign the agreement to refer to arbitration, but their father Gaya Ram signed it. An award followed dated the 13th February 1917 and by this award the shop in question was allotted to the plaintiff and has been in his possession ever since. The present suit was brought on the 28th of June 1930, that is, more than 12 years after the award. The defence which is set up by the appellants is that the award was invalid because Sheomangal Earn and Parmeshar Earn who were then minors were, not parties to the reference to arbitration. It appears to me that whether there might be any merit in such a claim a point on which the ruling quoted of this Court in the Court below is

against the appellant; the question cannot arise in, this case. This is not a case in which the minor members have come forward claiming their rights in the family property and claiming to set aside an award on the ground that they were not parties to the reference to arbitration. On the contrary, the claim now is put forward on behalf of the defendants 1 and 2 who are not members of the family but who have acquired as they allege the rights of defendants 3 and 4 by auction-purchase. The claim as it is put forward now by the defendants 1 and 2 is put forward after a period of more than 12 years" has elapsed from the date of the award on the 13th February 1917. During that period the finding of fact is that the plaintiff has all along been in possession of the whole of this shop. The defendants 3 and 4 have acquiesced when they came of age in the partition of the family property and they did not challenge that partition, if they had any legal right to do so.

2. Under these circumstances I consider that it is not open to defendants 1 and 2 to challenge the title of the plaintiff on the ground put forward in the memorandum of second appeal. Accordingly I dismiss this second appeal with costs.