

(1991) 05 MAD CK 0002
In the Madras High Court

M. Parasmull Chordia, (Chairman/Arbitrator) and Others	APPELLANT
Vs	
Mahendra Dadha and Others	RESPONDENT

Date of Decision : 07-05-1991

Acts Referred:

Arbitration Act, 1940 — Section 33
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17
Succession Act, 1925 — Section 211

Citation : (1991) 1 MLJ 538

Hon'ble Judges : Lakshmanan, J

Bench : Division Bench

Judgement

Lakshmanan, J.—Original Petition No 205 of 1990 was filed by the three arbitrators u/s 14, Sub-clause (2) of the Indian Arbitration Act to

receive the award dated 10.1.1990, the copy of the arbitration agreement, dated 12th September, 1989, and the documents filed as per the

schedule attached to the said original petition and to order notice to the respondents. The respondents 1 to 3 are the sons of late L. Milapchand

Dadha. The arbitrators were appointed under an agreement, dated 12th September, 1989, entered into between the respondents herein and in the

dispute between them. The disputes arose between the respondents, who are the sons of late L. Milapchand Dadha, following the death of their

father on 11th October, 1976. The three arbitrators/petitioners in Original Petition No. 205 of 1990 were appointed to decide the disputes arose

between the respondents. The arbitration proceedings commenced on 12th September, 1989, and concluded on 10th January, 1990, when the

award was pronounced. According to the petitioners, all the respondents were heard during the enquiry and a number of documents were filed by

both the parties. The third respondent, Mahipal Dadha in O.P. No. 205 of 1990 filed a counter statement, dated 27th March, 1991. In paragraph

5 of the counter statement, the third respondent has raised a preliminary objection to the effect that the award in question relates to creation and

extinguishment of interest in immovable property and hence should have been registered in accordance with the provisions of the Indian

Registration Act.

2. The respondents 1 and 2 have filed a separate counter-affidavit, dated 2nd April, 1991. They have denied that the award creates or

extinguishes any interest in immovable property. According to them, the award in question does not create, declare, assign, limit or extinguish any

right or interest in immovable property and that therefore, the award does not require registration under the Indian Registration Act.

3. Respondent 3 in O.P. No. 205 of 1990 has also filed O.P. No. 552 of 1990, impleading the respondents 1 and 2 in O.P. No. 205 of 1990 as

respondents 4 and 5 and the arbitrators as respondents 1 to 3 under Sections 15, 30 and 33 of the Indian Arbitration Act to set aside or modify the

award dated 10.1.1990 filed in O.P. No. 205 of 1990. He has challenged the award in question on various grounds. The said original petition is

resisted by the respondents 1 and 2 in O.P. No. 205 of 1990 on various points. Since in O.P. No. 205 of 1990, we are concerned with regard to

the preliminary objection raised by the third respondent, this Court is not considering any of the challenges made against the award. Hence,

Original Petition No. 205 of 1990 is disposed of only on the preliminary objection raised by the third respondent to the effect that the award in

question relates to creation and extinguishment of interest in immovable property and hence should have been registered in accordance with the

provisions of the Indian Registration Act and that the award not being registered, the award cannot be received and looked into by this Court for

want of registration. At the request of both parties, the preliminary objection alone was taken into consideration.

4.1 have heard the elaborate arguments advanced on behalf of the respondents. Mr. V. Ramachandran was heard on behalf of the respondents 1

and 2 and Mr. M.R. Narasimhan was heard on behalf of the third respondent.

5. In order to appreciate the rival contentions of the parties, it is necessary for

me to refer to certain facts. The respondents have entered into an agreement on 12.9.1989, referring the questions and matters referred to therein to the final determination of Mr Parasmal Choradia, S.

Mohanchand Dadha, M. Motichand Golechha. This agreement contains the points raised by Mahipal Dadha, the third respondent in O.P. No. 205 of 1990 and Mr. Mahendra Dadha and Mr. Maher Dadha. Point No. 5 raised by the third respondent concerns of matters concerning Dadha complex. This building bears Corporation Door No. 365, Mint Street, old Door No. 133, which was received by late Milapchand Dadha, the father of the respondents in a family partition in the year 1941. The building was a H.U.F. property of late Milapchand Dadha. During his lifetime, late Milapchand Dadha decided to make his three sons, the respondents herein the owners of the property by giving them one third share by a partial partition. Accordingly, three deeds have been registered and the property now belongs to all the three having one third equal share. After evicting the tenants, the property has been reconstructed and "Dadha complex" has been put up. The arbitrators in the award refer to the fact that they had gone through the account books relating to distribution of assets as per the directions of late Milapchand Dadha in his Will made on 1.1.1974 and they were convinced that the distribution was done in accordance with the directions of late Milapchand and this has been accepted by the parties. Therefore, it is clear that the arbitrators as of fact find that the distribution of assets took place in accordance with the directions of late Milapchand Dadha. In other words, the arbitrators have not distributed the assets, but the parties herein have themselves distributed the assets with regard to the question raised by the third respondent relating to "Dadha complex". The arbitrators find as follows:

Point No. 5 of second party:

365, Mint Street, is a property jointly belonging to Sri Mahendra Dadha, Sri Mahipal Dadha and Sri Maher Dadha. This property was a H.U.F. property of L. Milapchand Dadha and the property had been allotted to his sons during the partial partition done by him. The three brothers jointly decided to demolish the old building and develop the property. Considering the requirements of finance and other conveniences they decided to lease this property for development to M/s. Dadha Estates (P) Ltd. [Emphasis

supplied by me]

After recording the above facts, the arbitrators had decided that the three respondents are entitled to certain amounts during the tenure of the lease

deed. As a matter of fact, the arbitrators have verified and found that Form No. 34-A, which is a declaration filed before the Income Tax

Authorities for tax clearance certificate was signed by all the three brothers individually. This is again a reaffirmation of what had already taken

place. In view of the above, it is not possible to accept the contention that the award of the arbitrators in so far as it relates to this item of property

requires registration under the Indian Registration Act. As mentioned already, the arbitrators have only directed the entitlement of the respondents

to various sums of money during the tenure of the lease deed and they have not created or extinguished any right or interest in Dadha Complex.

6. On point No. 5 raised by Mahendra Dadha and Maher Dadha and point No. 7 raised by Mahipal Dadha, the arbitrators had found that the

lands at Chithathur were sold and the amounts realised were credited in the account books of late L. Milapchand Dadha and they were dealt with

as per his directions in the Will. So far as the buildings at Phalodi, the arbitrators found that the property belonged to late S. Lalchand Dadha and

the same was given to late L. Milapchand Dadha under a Will. The arbitrators have found that as per the Will of late L. Milapchand Dadha each of

the respondents have been bequeathed with an equal share. Here again, the award of the arbitrators does not create any interest in immovable

property, but it merely recognises the pre-existing rights of the three respondents.

7. A faint attempt was made on behalf of the third respondent doubting the genuineness of the Will. First of all, it is not open to me to go into that

question, because all the parties have accepted the genuineness, truth and validity of the Will of late L. Milapchand Dadha and have also acted on

the same. This was found so by the arbitrators in the beginning of the award itself. It is useful to reproduce the relevant portions from the award:

Point No. 1 of second party:

Late L. Milapchand Dadha met with a tragic end in an air crash on the night of 11th October, 1976. He left behind his wife, three sons and two

daughters. He had written a Will on 1st January, 1974. After his death his

executors have got his Estate Duty Assessment completed and the tax was duly paid from his account. The Executors also inform that the application of Madras High Court was made for probate of Will. We the arbitrators have gone through the account books relating to distribution of assets as per the directions as given in his Will and are convinced that the distribution was done in accordance with his directions. This has been duly accepted by both the parties. The Will hereinafter referred to is this Will of late L. Milapchand Dadha.

Thus, it is seen how the arbitrators have distributed the assets as per the directions contained in the Will of late L. Milapchand Dadha and the said distribution was accepted by the parties herein. That apart all the parties herein have also relied on the Will of late L. Milapchand Dadha to evict

Bank of Baroda, the erstwhile tenant of premises No. 363, Mint Street, which is now known as Dadha Complex. It is relevant at this stage to refer

to the decision rendered by this Court in Bank of Baroda v. Mahendra Dadha C.R.P. No. 220 of 1982, dated 18th June, 1982. The civil revision

petition was preferred by Bank of Baroda against Mahendra Dadha and two others (respondents 1 to 3 in O.P. No. 205 of 1990). The

respondents herein filed a petition for eviction of Bank of Baroda from a non-residential building let out to it on the ground of bona fide

requirements for their own purpose. They claimed to be the owners of the building as heirs of the deceased owner, their father. The tenant relying

on a reference in the correspondence between the parties to a Will left by the deceased under which the respondents claimed to be entitled to the

properly pleaded that without probating the Will the respondent could not evict the petitioner/tenant. It was also found that the Bank had all along

been paying rent to one of the several heirs-respondents under authorisation by all the heirs. Ratnavel Pandian, J. (as he then was) overruling the

objections of the tenant, Bank of Baroda in regard to its objections to the maintainability of the petition for eviction based on Section 211 of the

Indian Succession Act, dismissed the civil revision petition by holding that the tenant was not justified in contending that the eviction petition filed by

the landlords was not maintainable. In fact, the learned Judge has found as under:

Admittedly, in the present case also the genuineness or validity of the Will is not

in question. But, the tenants has raised only a technical objection that the Will has not been probated.

8. Therefore, in my opinion, it is not now open to the third respondent to challenge the genuineness or validity of the Will of his father.

9. I have already gone through the award in detail and I do not find any creation or extinction of interest in immovable property in favour of any of

the parties herein. Therefore, I am of the opinion that the award in question does not require registration under the Indian Registration Act and I

overrule the objection raised on behalf of the third respondent.

10. Mr. M.R. Narasimhan, learned Counsel appearing for the third respondent has cited the following decisions in support of his preliminary

objections:

1. Union of India (UOI) Vs. Romesh Kumar Rajgharia, . Mt. Khela Wati Vs. Chet Ram Khub Ram, : 3 Kanhialal Sarda and Another Vs. State of

Orissa and Others, : 4. Sh. Mulk Raj v. Hem Raj AIR 19741 & K. 40 : 5. Aditya Kumar De Chowdhury Vs. Narayandas De Chowdhury, .

Lachhman Dass Vs. Ram Lal and Another, and 17. Bakhtawar Lal and Others Vs. Ram Kumar and Others, .

As stated above, I have gone through the entire award in detail and I do not find any creation or extinction of any interest in immovable property in

favour of any of the parties herein. Therefore, I am of the opinion that the award in question does not require any registration under the Indian

Registration Act. In view of this, there is no need for me to consider the above judgments relied on by the learned Counsel for the third respondent

in detail since they have been referred on the facts and circumstances of each case.

11. In my opinion, the submissions made by the learned Counsel for the third respondent in regard to the applicability of Section 17 of the

Registration Act are not tenable. The award is not registerable u/s 17 of the Registration Act in so far as the award does not purport or operate to

create, declare, assign, limit or extinguish whether in, present of in future any right, title or interest whether vested or contingent to or in immovable

property. The award merely refers to the rights, obligations or liabilities already created and agreed to between the parties in terms of the

transactions, which have already been effected to by and between them. As

stated in the preamble portion of the award, the arbitrators have stated that they have gone through the account books relating to the distribution of assets as per the directions given in the last Will of late L. Milapchand Dadha and that the distribution was done in accordance with his directions. It is further stated that the parties have duly accepted the distribution. Thus, in my opinion, the arbitrators have merely referred to an event which has already taken place viz., the distribution of the estate of the deceased by the parties in a manner which was agreed to by both of them. The arbitrators merely confirmed that such a distribution has taken place and had not disturbed the said distribution. The award in question opens with a statement of what had actually transpired, a distribution which had already taken place between the parties.

12. Union of India (UOI) Vs. Romesh Kumar Rajgharia, , was cited by Mr. M.R. Narasimhan, learned Counsel for the third respondent in O.P.

No. 205 of 1990 to say that the award may be set aside notwithstanding statement in award that the parties had been heard. In my opinion, this decision referred to the details of the power of the Court to set aside an award, which again relates to the merits of the case with which we are not at present concerned. Hence, there is no need for me to consider this decision at this stage.

In Mt. Khela Wati Vs. Chet Ram Khub Ram, deals with an entirely different fact. This decision states that the genuineness of the Will cannot be

referred to arbitration. In the instant case, the arbitrators have not adjudicated upon the genuineness of the Will. In fact, as stated supra, the parties

have accepted the truth, validity and the genuineness of the Will in the proceedings referred to above and the distribution of the assets have been

pursuant to the direction given in the Will. The arbitrators have merely referred to the fact of distribution and the fact that the parties have accepted

the same. The third respondent himself has been a party in placing the fact of distribution before the arbitrators. Hence, the contention of the third

respondent that by referring to the distribution, which has already taken place and given effect to. the arbitrators have exceeded their jurisdiction is

wholly untenable.

Kanhialal Sardar and Another Vs. State of Orissa and Others, , cited by the learned Counsel for the third respondent prohibits bilateral

proceedings relating to the Will under Article 226 of the Constitution of India, when the Will has not been probated. This issue is not relevant in the present case. In my view, the third respondent has missed the real point in issue in this connection. The arbitrators have not acted erroneously in referring to the distribution of assets by the parties. In fact, the arbitrators have not distributed the assets according to the Will and in fact they have not distributed the assets at all. The parties themselves had distributed the assets and have also given effect to the said distribution. The arbitrators have only referred to this fact in the award. They have neither given effect to the Will nor distributed the assets in accordance therewith. Hence, *Kanhialal Sarda and Another Vs. State of Orissa and Others*, , has no relevance or application to the facts of the instant case.

Sh. Mulk Raj's case AIR 1974 J. & K. 40, is the next decision cited by the learned Counsel for the third respondent. Here again, the Judgment has no relevance or applicability to the facts of the case.

Aditya Kumar's case AIR 1971 Cat. 65, cited by the learned Counsel for the third respondent deals with the question of registration of an award, which creates or extinguishes the right for an immovable property. It is not in dispute that the award is registerable. Where a right in an immovable property is created in the said case, the reference to arbitration was for effecting partition of a property and the Court held that an award which effects a partition on its own, is registerable. Where an award merely refers to a partition which had already taken place, the award does not create right by itself and such an award is not registerable.

Lachhman Dass Vs. Ram Lal and Another, , referred to by the learned Counsel for the third respondent is also not applicable to the facts of the present case and is not relevant. It is no doubt true that the proposition of law laid down therein cannot at all be decided the ratio of the case was based on the facts therein. There was a clear transfer of property in immovable property from A to B under the award. On those facts, the Honourable Supreme Court found that a right in an immovable property was created in favour of one of the parties by the award and hence the award was registerable. The facts are thus totally different in that case. The facts of the present case have been considered in detail in the paragraphs above. In the instant case, I do not find any creation or extinction of

any interest in the immovable property in favour of any of the parties herein and hence, it does not require registration under the Act.

Bakhtawar Lal and Others Vs. Ram Kumar and Others, , cited by the learned Counsel for the third respondent also does not relate to the

applicability of Section 17 of the Indian Registration Act. In that case, the Allahabad Court found that there was violation of Rules of natural justice

since the arbitration agreement allowed the arbitrators to give the award on the basis of their personal knowledge. This is a matter relating to the

merits of the case. Hence, this decision has no application to the present case. Lastly, the learned Counsel for the third respondent also invited my

attention to the decision in Bhudeb Chandra Roy and Others Vs. Bhikshakar Pattanaik and Others, . The matter in issue in the said decision was

the question of registration of Mining lease. The Division Bench of the Calcutta High Court while interpreting the terms of the Mining lease held as

follows:

Held, that the provision as to additional burden of payment of royalty if taken by itself might be construed to create a fresh mining lease in favour of

the lessees; but the compromise decree read as a whole, as it ought to be, could not be said to have created a fresh lease. The transfer of the jama

which was over Rs. 100 to the lessor though came u/s 17(1)(b) of the compromise decree was exempt from registration u/s 17(2)(iv)

In my view, the said decision is not relevant to the facts of the present case since the facts in that case were entirely different and the conclusion of

the Court does not support the proposition put forward by the third respondent in this case.

12. The arbitrators in paragraph 5(d) of the award have stated that they have verified that Form 34-A, duly filled and signed by all the three

brothers individually. This again is a confirmation of what is taken place. Form 34-A is a declaration filed before the Income Tax Authorities for tax

clearance certificate. The third respondent has admittedly signed this verification. Since the arbitrators have clearly stated that they have verified the

documents, this finding cannot be challenged. In any event, the arbitrators have only referred to an event which has transpired. Hence, they do not

create or extinguish any right or liability, in an immovable property. Consequently, this finding does not necessitate registration of the award.

13. The third respondent has also questioned the lease deed. Since it relates exclusively to the merits of the case that point is left open to be

decided at the final hearing of the Original Petition No. 552 of 1990. The lease deed referred to by the third respondent was the one executed by

Mahipal Dadha in favour of M/s. Dadha Estates Private Limited. The memorandum of understanding had been acted upon by the parties, which

has been accepted by the arbitrators in so far as the parties have acted upon the same.

14. It is further contended by the learned Counsel for the third respondent that the arbitrators were passing the award in question based on void

documents and on their knowledge etc. Here again, the submissions relate to the merits of the case and the findings in the award. Hence, the said

submission is also not considered at this stage. Likewise the submissions made by the third respondent through his counsel in regard to the Will of

late L. Milapchand Dadha are totally untenable. These contentions are not relevant in determining the registerability of the document and the

applicability of Seal 7 of the Indian Registration Act, with which we are concerned at this stage. At the time of hearing many arguments were

advanced by the learned Counsel for the third respondent on merits. These arguments are not considered because as stated supra, these arguments

are not direct on the point of applicability of Section 17 of the Indian Registration Act and I am called upon to decide only the preliminary

objections raised by the third respondent in this matter. Hence, I refrain from considering the submissions made by the learned Counsel for the

third respondent. Therefore, in my view, the award does not create or extinguish any right in immovable property even on these grounds.

15. Per contra, Mr. M.V. Ramachandran, learned senior counsel appearing for the respondents 1 and 2 in O.P. No. 205 of 1990 has referred to

a number of decisions. The learned Counsel has put forward the following three broad propositions with reference to the preliminary issue:

(a) That the award did not by itself create or extinguish any right in any immovable property attracting Section 17 of the Indian Registration Act;

(b) That the award only made reference to and set out the transactions already entered into by the parties and made only a record thereof. In such

an event the award does not require -registration; and (c) A document which merely states an existing fact with reference to existing. document

does not create or declare of its own force any interest in immovable property.

In support of the above propositions, Mr. V. Ramachandran, learned senior counsel has placed strong reliance on the following decisions:

Kashinathsa Yamosa Kabadi, etc. Vs. Narsingsa Bhaskarsa Kabadi, etc., , Nawab Usmanali Khan Vs. Sagarmal, , Mrs. Tehmi P. Sidhwa and

Others Vs. Shib Banerjee and Sons Pvt. Ltd. and Another, , Swaminathan and Others Vs. Koonavalli and Others, , Capt. (Now Major) Ashok

Kshyap Vs. Sudha Vasisht and Another, : Capt. (Now Major) Ashok Kshyap Vs. Sudha Vasisht and Another, and Nitya Ranjan Chatterjee Vs.

Chitta Ranjan Catterjee and others, . In Kashinathsa Yamosa Kabadi, etc. Vs. Narsingsa Bhaskarsa Kabadi, etc., , the Supreme Court held as

follows:

The records made by the Panchas about the division of the properties, it is true, were not stamped nor were they registered. It is, however, clear

that if the record made by the panchas in so far as it deals with immovable properties, is regarded as a non-testamentary instrument purporting or

operating to create, declare, assign, limit or extinguish any right, title or interest in immovable property, it was compulsorily registerable u/s 17 of

the Registration Act, and would not in the absence of registration be admissible in evidence. But, in our judgment, the true effect of what are called

awards is not by their own force to create any interest in immovable property; they recorded divisions already made and on the facts proved in this

case, their validity depends upon the acceptance by the parties. The records made by the panchas were documents, which merely acknowledged

partitions already made and were not by law required to be registered. On a perusal of Ex. 456-A which is a translation of the Tippan book in

which recorded the decisions which are signed by the parties, it is evident that the Panchas were merely recording what had been actually divided

and they were not seeking to set out their decisions relating to division of property to be made.

In Nawab Usmanali Khan Vs. Sagarmal, , it was argued on behalf of the appellant that the award for the immovable property of the value of more

than Rs. 100 and as it was not registered, no decree could be passed in terms of the award. Several other contentions were also raised. In dealing

with the first contention, the Supreme Court held as under:

(5a) The first contention raised by Mr. Pathak must be rejected. The award states that the existing documents relating to debts obtained on lands

would remain as before, they would remain as securities till payment of the debts and the appellant would have no right to transfer the land. This

portion of the award stated an existing fact. It did not create of its own force declare any interest in any immovable property. Consequently, the

document did not come within the purview of Section 17 of the Indian Registration Act, 1908 and was not required to be registered.

In paragraph 5 of the decision in Mrs. Tehmi P. Sidhwa and Others Vs. Shib Banerjee and Sons Pvt. Ltd. and Another, , the Supreme Court held

as follows:

It would be noticed that the award itself does not purport or operate to create, declare, assign, limit or extinguish, whether in present or in future

any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, in respect of the immovable - property, as

contemplated u/s 17(1)(b) of the Registration Act. It merely creates a right to obtain another document, which will," when executed create, declare,

assign, limit or extinguish any such right, title or interest. The award directs Shib Banerjee and Sons Private Ltd., to execute such documents as

may be necessary for declaring the one fourth share of the appellants in the said property and also to execute such documents as may be necessary

for transferring the said property and the lease from the Delhi Improvement Trust to the joint names of themselves and the appellants. It therefore,

squarely falls under Scc.17(2)(v) of the Registration Act.

In Swaminathan and Others Vs. Koonavalli and Others, , Ramanujam, J. while dealing with a similar situation held as under:

8. The learned Counsel for the respondents contends that Ex. A-1 itself brings about a division on the basis of the family settlement and, therefore,

it should be by itself taken to convey interest in the suit property and, therefore, it is inadmissible for want of registration. However, I am not

inclined to agree with the learned Counsel for the respondents that the document itself effects a division in pursuance of the family arrangement

which was brought about by the Panchayatdars. The operative words in the document are as follows:

The above recitals in the document clearly indicate that there was an earlier

decision by the Panchayatdars and as per the decision, the properties have been divided and the document is brought into existence only to record the earlier division. Ex. A-1 nowhere says that it itself effects a division in praesenti. Therefore, the document can be taken to be one which records an earlier transaction of partition suggested by the Panchayatdars. In this view of the matter, I have to hold that Ex. A-1 is admissible in evidence even though it has not been registered.

In Capt. (Now Major) Ashok Kshyap Vs. Sudha Vasisht and Another, , the Supreme Court in paragraph 12 held as under:

Section 17(1)(b) of the Registration Act enjoins that any non-testamentary instrument which purports to operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property should be registered. Therefore, the question is, does the document itself extinguish or purport to create or declares any right in immovable property. It certainly declares the share of the parties in the property but it enjoins that only upon payment of Rs. 40,800

Mrs. Vasisht would vacate the house. It further enjoins that she will be entitled to live in the house in the portion occupied by her till the full

payment of Rs. 40,800 is made to her and she will not be liable to pay any rent for the occupation of the portion and on the said payment, she will

not have any right and also no interest left in the said property."" So her right in the property ceases on payment of the amount of Rs. 40,800 and

not otherwise, not by the operation of document itself. The document itself creates a right by itself to get Rs. 40,800 and right to obtain the

payment and on payment the obligation of relinquishment of her right or interest in the property. It does nothing more.

In Nitya Ranjan Chatterjee Vs. Chitta Ranjan Catterjee and others, , a Division Bench of the Calcutta held as under:

After considering the fact sand circumstances of the case, we are inclined to accept the contention of Mr. Roy, the learned Counsel appearing for

the defendant No. 1 respondent. Considering the award, it appears to us that the award has not created any right or interest in the immovable

properties but has only indicated the shares of the parties in respect of joint properties and has indicated that the parties will get proper deed of

partition on payment of requisite stamps for such partition and also to get such deed registered in accordance with law. It has been very specifically

indicated in the award that at the time of getting such deed of partition registered the parties will also execute and register a proper deed of gift and

of settlement in favour of the nephew in respect of the properties mentioned in the award. In our view, Mr. Roy is justified in holding that the award

could not be held to be invalid for not being registered u/s 17(1)(b) of the Registration Act.

The second proposition put forward by Mr. V. Ramachandran, learned senior counsel is under:

Assuming without conceding that there is any doubt as to whether a document creates an interest in immovable property requiring registration, the

benefit of doubt should be given in favour of the party, who wants the Court to receive the document in evidence. Since the respondents 1 and 2 in

O.P. No. 205 of 1990 require that the award should be admitted, the benefit of doubt should be given to both of them. If there is any doubt on the

question as to whether registration is required. In support of the said contention, the learned Counsel placed reliance on the following two

decisions:

Mool Singh Vs. Pokardas and Another, .

Since, I have already held that there is no creation or extinguishment of any interest in the immovable property in favour of the parties to the

proceedings, the above argument and the two decisions cited supra have not been adverted to by me, as I feel they are wholly unnecessary.

16. The third proposition was made byway of an alternative proposition. According to the learned Counsel, even assuming without conceding that

the award creates or extinguishes right in immovable property even according to the third respondent, it only applies to the following issues viz.,

1. The lease relating to Dadha Complex and
2. The land at Phallodi.

According to the learned Counsel, these issues are severable from such of the awards and hence the award has got to be admitted in regard to all

other issues. In support of the above contention, Mr. Ramachandran drew my attention to the following two decisions:

Mattapalli Chelamayya and Another Vs. Mattapalli Venkataratnam and Another,

and M. Venkataratnam and Another Vs. M. Chelamayya and

Another, . As held above, the award in question does not create or extinguish any right in favour of any of the parties in the proceedings, this point

also need not be considered. As a final statement, Mr. Ramachandran has contended that the award, assuming without conceding is registerable,

the time during which the award was in Court has got to be excluded and in the event of this Court coming to the conclusion that the award is to be

registered, this Court might be pleased to return the award directing the registration thereof, if so required, after excluding the whole period, during

which the award was in Court in computing the four months" period allowed for registration. The decision reported in Raj Kumar Dey and Others

Vs. Tarapada Dey and Others, , was relied on for this purpose. In view of my finding that the award does not require registration, this question

also does not arise for consideration.

17. I have carefully considered the rival submissions made by the learned Counsel appearing for both sides, on the preliminary objections. In my

considered opinion, the award does not create or extinguish any right in any immovable property in favour of any party. The award has been

created by valid documents and transactions which have taken place already between the parties prior to reference to arbitration. The award

merely sets out the transactions that took place between the parties. The arguments of Mr. Ramachandran, learned senior counsel for respondents

1 and 2 in O.P. No. 205 of 1990 have thus merit consideration and acceptable. Under these circumstances, I hold:

That the award in question does not require registration under the Indian Registration Act and the preliminary objection by the learned Counsel for

the third respondent is overruled.

In view of the disposal of the preliminary objections, office is directed to post both the petitions, O.P. Nos. 205 and 552 of 1990 for final hearing

on 10.6.1991 for hearing the matters on merits. Call on 10.6.1991.