

(1922) 12 MAD CK 0062
In the Madras High Court

Pasumarthi Bhagavanulu and Others	APPELLANT
Vs	
Bollam Seetharamaswami and Others	RESPONDENT

Date of Decision : 05-12-1922

Acts Referred:

Citation : (1923) 17 LW 424 : (1923) 44 MLJ 359

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—The suit concerned in this Civil Revision Petition was instituted by a reversioner claiming the right as an adopted son to have his title declared to certain properties in Schedules A, B and C and to recover possession of them from the persons to whom the 1st male owner's wife and mother had alienated them. During the trial of the suit there were two references to arbitration under Shcoudle II, para. 1, C.P.C. The first was on 22nd August, 1919 by plaintiff and defendants 6 to 8 who were interested in B Schedule properties. The 2nd reference was on 27th August 1919 by plaintiff and defendants 1, 3 and 4 who were interested in A Schedule properties.

2. It is now urged as the sole ground of revision by defendants 6 to 8 that the entire reference to arbitration and the arbitrator's award are invalid because defendants 2 and 5 did not join in the reference. 2nd defendant is the brother of 1st defendant and 5th defendant is the undivided son of 2nd defendant. They had no interest in the B Schedule properties over which the plaintiff and these petitioners were disputing. But there was a common issue between the plaintiff and all the defendants as to plaintiff's adoption.

3. u/s 506 of the CPC of 1882 it was necessary that all parties to a suit should join in a reference to arbitration. In Pitam Mal v. Sadiq Ali and Sughra Fan-ma ILR (1902) All. 229 "all the parties to a suit "was interpreted as meaning all the parties interested, and in the present Code it was so expressed.

4. Here the defendants 2 and 5 were ex parte throughout and were exonerated

on September 1st, that is, seven days before the arbitrator submitted his award. From the mere fact that they did not put in an appearance and the case proceeded ex parte so far as they were concerned, it cannot be assumed that they were not interested parties (vide Pallia Pavana Panda v. Narasinga Panda 36 MLJ 538 and Lahtram Nath Mal v. Nandalal Karuni ILR (1920) Cal. 555. It is more material that defendants 1, and 3 and 4 in their written statement asserted that defendants 2 and 5 had no interest in the A Schedule properties, and it has never been suggested that they had an interest in the B Schedule properties. After they were exonerated they had no further interest in the suit, even if they had an interest before. In Hasna v. Mahbub 8 A.L.J. 645 it was held by a Bench of the Allahabad High Court that it was essential that all parties who were interested at the time of the reference. to arbitration should join and that otherwise the reference and the award would be invalid. There is no finding whether the defendants 2 and 5 were interested at the time of either of the two references and, if necessary, 1 should call for a finding from the Subordinate Judge on this point. But I hold that in any case it is not Open to the defendants 6 to 8 to ask this Court to proceed u/s 115, Civil Procedure Code. They did not raise this objection in their memorandum of objections to the award presented in the Lower Court, and they have failed to show that defendants 2 and 5 are necessary parties to the suit between the plaintiff and, themselves. I therefore dismiss the Civil Revision Petition with costs.