

(1929) 10 MAD CK 0056
In the Madras High Court

(Peddibhotla) Venkata Subbayya and Another	APPELLANT
Vs	
(Bhamidipati) Venkataramanayya (dead) and Others	RESPONDENT

Date of Decision : 21-10-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1930 Mad 646

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This is an application u/s 115, Civil P.C., to revise the order of the Subordinate Judge of Bapatla making the award passed by the arbitrator in O.S. No. 76 of 1923 a decree of Court. The plaintiff's suit was for a declaration of his title to the properties in the schedule together with mesne profits. There were nine defendants in the suit. Defendants 6 to 9 were alleged to be lessees of the properties holding them from the other defendants. A decree for mesne profits was also asked for in the plaint. After the issues were framed in the course of the suit, the plaintiff and defendants 1 to 5 put in a petition asking the Court to refer the subject matter of their dispute to the decision of an arbitrator under para. 1, Son. 2, Civil P.C. They

appointed one Suryanarayana of Bezwada as arbitrator for the purpose of enquiring into and deciding upon the allegations in the plaint and in the written statements

2. and they undertook that they

shall without filing an appeal etc, abide by the award which the said parson shall give either after holding an enquiry or without an enquiry.

3. In due course the arbitrator passed an award and an application was made to the Subordinate Judge to make it a decree of the Court. Objections were filed by defendants 1 to 5. One of them was that the award should not be accepted for the reason that the arbitrator heard evidence of the plaintiff in the absence of the

defendants. The learned Judge overruled this and the other objections and passed an order which is the subject matter of this petition.

4. Mr. Govindarajachari for the petitioners, i.e., defendants 1 and 2, argues that the decree and the award should be set aside (SIC) the ground that all the parties interested in the dispute were not parties to the reference. This argument is based on the fact that defendants 6 to 9 were not parties to the reference. It has been decided in a series of cases in this Court: see *Polita Pavana Panda v. Narasinga Panda* [1919] 42 Mad. 632; *Bhagavanulu v. Seetharamaswami* AIR 1923 Mad. 502 ; *Venkataramanujacharlu v. Vasudeva Acharyulu* [1926] 23 M.L.W. 769 and *(Samitti) Ranga Reddi and Others Vs. Vallialuru China Sidda Reddi and Another*, that an award passed on a reference to which all the parties interested in the dispute are not parties, is illegal and should be set aside. This proposition is not disputed by Mr. Raghava Rao, the learned advocate for the respondents. But he contends that the petitioners should not be allowed to raise this objection now, because that was not raised before the lower Court and that even if they are to be permitted to raise it in this Court for the first time, a decision should not be given in their favour without calling for a finding from the lower Court on the question whether defendants 6 to 9 are interested in the dispute in the suit to which they along with others are parties.

5. Neither of these contentions can be accepted. The question now raised relates to the jurisdiction of the Court in making the reference to the arbitrator. Sch. 2, para. 1, Civil P.C., clearly states that all the parties interested in the subject matter in dispute should join in asking the Court to make a reference; it follows that if any of such parties does not join in the application, the Court has no jurisdiction to make the reference and the arbitrator can have no jurisdiction to pass an award on the reference. The question as it relates to the jurisdiction of the Court was allowed to be raised for the first time in this Court in *Polita Pavana Panda v. Narsinga Panda* [1919] 42 Mad. 632: see also in *Venkataramanujacharlu v. Vasudeva Acharyulu* [1926] 23 M.L.W. 769. This contention must therefore be overruled.

6. As regards the second contention that the objection now raised should not be given effect to without a finding from the lower Court see in this connexion *Bhagavanulu v. Seetharamasivami* AIR 1923 Mad. 502 agree that it may perhaps be necessary in certain cases that the Court should call for a finding on the question whether the parties who did not join in the reference are really interested in the matter in dispute. But in this case, no finding is necessary as I have no doubt that defendants 6 to 9 are interested in the subject matter of the dispute. As I have already pointed out, the plaint asks for relief against them and the award that has been made by the arbitrator gives relief against them specifically. In view of these facts, I do not think it is open to the counter-petitioners to contend that they are not parties interested in the dispute. This objection also must be overruled.

7. As the reference has been made without jurisdiction the award passed by the

arbitrator is not legal and the Court has no jurisdiction to make the award a decree of the Court; the entire proceedings should therefore be set aside. This would be enough to dispose of this civil revision petition.

8. But another point was also argued by the learned advocate for the petitioners, viz., that the award is vitiated by the misconduct of the arbitrator inasmuch as he received the evidence given by the plaintiff in the absence of the defendants. In support of this argument various decisions of English Courts were brought to my notice, viz., *Dobson and John Sullon v. Groves* 115 E.R. 239, *Harvey v. Shelton* 49 E.R. 1141 and *Walker v. Frobisher* 31 E.R. 943. These decisions support the petitioner's contention and are referred to in *Sanyasi Rao v. Venkata Rao* AIR 1923 Mad. 301, where the point is dealt with elaborately. It should be held on the authority of these decisions that the arbitrator in this case did not conduct himself properly if the facts alleged against him by the petitioners are true. His conduct was apparently sought to be justified in the lower Court on the ground that under the reference the arbitrator may dispose of the case with or without enquiry. This provision no doubt gives power to the arbitrator to dispose of the matter without holding any inquiry at all. But it does not give him any power if he decides to hold an inquiry to take the evidence given by one party in the absence of the other party. On this ground also the award and the decree are liable to be set aside, if the facts alleged by the petitioners that the evidence of the plaintiff was taken in their absence is true. The respondent states that the decree should not be set aside on this ground, without a finding whether the allegation made by the petitioners is true; but having regard to my decision that the entire proceedings should be set aside as the Court had no jurisdiction to make the reference, I do not think it is necessary to make any investigation as regards the truth of the allegation made by the petitioners and disputed by the respondent. The decree of the lower Court is set aside with costs. The learned Subordinate Judge will take the suit on file to dispose of it in accordance with law.