(1915) 11 AHC CK 0018

In the Allahabad High Court

Ram Ugrah Pande and Others — APPELLANT

Vs

Achraj Nath Pande and Others — RESPONDENT

Date of Decision : 29-11-1915

Acts Referred:
Limitation Act, 1963 — Section 14, 5

Citation : AIR 1915 All 369 : (1916) ILR (All) 85

Hon'ble Judges : Tudball, J;Piggott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tudball and Piggott, JJ.—This is an appeal arising out of an application made in the court below which was primarily based on Clause 17 of the second schedule of the Code of Civil Procedure. While the matter was pending an application for amendment was made and an alternative relief was asked for under Clause 20 of the same schedule. The lower court has refused both the reliefs. The first relief, which was claimed under Clause 17 it rejected on the ground that an award had been made by the arbitrator on the basis of the agreement between the parties and that Clause 17 could not apply, the matter having attained a stage beyond that contemplated by that clause. With regard to the relief claimed under Clause 20, it rejected it on the ground that the application was barred by time under Article 178 of the first schedule to the Limitation Act. The applicants have come here on appeal. The parties are the descendants of one Prag Dat Pande. The latter had five sons, one of whom died childless. All the others have now died. Sheomangal has left three sons who are parties to the present dispute. Hansraj has left five sons and a widow who are also parties to the present dispute. Kedar Nath left a widow Musammat Sonkali and three daughters, of those the former alone is a party to the dispute. Gokul Nath has loft a widow Musammat Dirka and three daughters and the former only is a party to this dispute. It appears that the family was possessed of shares in a number of villages lying in the two tahsils of Basti and Khalilabad in the Basti district. Some of the villages stood in the names of some of the members, and others stood in the names of other members. After the death of Kedar Nath a dispute arose amongst the various branches as to their title. One branch alleged separation, the other branch alleged that the family still remained joint. An application for mutation of names was made in regard to each village. In the case of the Basti villages the applications were made in. the regular way to the Tahsildar Assistant Collector. In the case of the Khalilabad villages the application appears to have been made in the court of the Assistant Collector who was in charge of the pargana. In the Basti cases the 18th of November, 1912, was fixed by the Tahsildar. In the Khalilabad cases the 2nd of December was fixed by the Pargana Officer. On the 18bh of Novomber, the parties executed an agreement to refer their dispute as to the title to the land to the arbitration of one Rameshwar Dat Man Tiwari. This agreement clearly sots out that the parties have a dispute as to their title to the family property, that they refer the dispute to the arbitrator, that they will abide by his decision, that they will take possession of their various shares according to his decision and that they will cause mutation of names to be made according thereto. Apparently the agreement was put before the Tahsildar and was filed on the record of the case before him. He adjourned the mutation case clearly with a view to enable the parties to settle their dispute by means of arbitration. He fixed a date directing them to settle that dispute but also laying down that if the disputes were not settled by the date so fixed then they were to be prepared to produce evidence in connection with the mutation case. On the 2nd of December, 1912, the date fixed by the Pargana Officer in the case before him, a similar agreement, written exactly in the same language and bearing the date 2nd of December, 1912, was filed before the Pargana Officer of Khalilabad. Under orders of the Collector the Pargana officer of Khalilabad was directed to decide both sets of cases, namely, the Basti and the Khalilabad cases. The Pargana Officer of Khalilabad sent all his files to the Tahsildar of Basti and told him to send the agreement to arbitrate to the arbitrator. This clearly was done, for on the 13th of February, 1913, the arbitrator filed an award bearing date the 8th of February, 1913. It appears that at a subsequent stage of the case he was directed to write out another award and that he did draw up an award worded exactly in the same language as the first one simply bearing a different date. One of the parties, the respondents to the present appeal, apparently was not pleased with the decision of the arbitrator. The mutation cases were fought up to the Board of Revenue which finally sent back the records of the mutation cases with directions to try them de novo without any reference whatsoever to the arbitration proceedings. The present appellants then filed the present application, out of which this appeal has arisen, in the Civil Court. Primarily, as we have noted, it was an application under Clause 17 of the schedule asking that the agreement to arbitrate of the 18th of November, 1912, should be filed in court. Subsequently an alternative relief was prayed by the subsequent amendment asking that the award dated 8th of February, 1913, be filed in court and that a decree be passed based on the same. We have heard considerable argument as to whether the Tahsildar of Basti or the Paragana Officer of Khalilabad had or had not power to refer the matter to the arbitrator. We have not been shown any written application by the parties to either of those officers asking them to make the reference to the arbitrator. It is quite clear that the agreement of the 18th of November, 1912, was an agreement made entirely out of court. It is an agreement to refer to the arbitrator the disputed question of title, i.e., a question which the Revenue Court was not competent to decide in the cases then pending before it. It was not an agreement to refer the mutation case or cases to an arbitrator. It is an agreement on which the arbitrator, if the parties had referred the matter at once to him directly, would have been empowered to take the evidence of the parties and to make an award. It seems to us immaterial whether or not the Tahsildar or the Pargana Officer had not legal power as a Revenue Court to refer the agreement to the arbitrator. It is quite clear that the Tahsildar forwarded it to the latter with the full consent of the parties. If, therefore, there was any illegal reference under the Revenue Act it does not concern this present case. An agreement to arbitrate and a valid agreement was made out of court and by the wish of the parties it was sent on to the arbitrator by the Tahsildar, as indeed it might have been forwarded through any private person. It is an admitted fact that the arbitrator made au award. It is, therefore, quite clear that Clause 17 of the second schedule of the CPC cannot operate in the circumstances of the present case. The facts have gone beyond the stage contemplated by that clause. In regard to Clause 20 of the schedule, in so far as the application is based thereon, the question is whether or not the application is barred by time. Admittedly Article 178 of the first schedule to the Limitation Act applies and that lays down a period of six months from the date of the award. The present application was made more than a year after the date of the award. Prime facie it is therefore barred by limitation. A certain amount of stress has been laid on Sections 5 and 14 of the Limitation Act. Section 5 clearly cannot apply. If the present proceedings be deemed to be based on an application and not to be a "suit," Section 5 does not apply, as that only relates to an appeal or an application for review of Judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force. No enactment or rule can be shown which would make this section applicable to an application of the present description. On the other hand, if the present matter be deemed to be a suit within the meaning of Section 14f it is equally clear that the present appellants are not entitled to exclude the time during which they were prosecuting the mutation cases in the Revenue Court. The present application is an application to have an award filed and a decree passed on the basis of that award. The matter in controversy in the Revenue Court was not of this description. It was merely a mutation matter with a totally different cause of action as its basis. The present application is based upon the fact that there was an agreement to arbitrate and an award made upon that agreement, The two proceedings cannot be said to be founded on the same cause of action.

2. There remains the question, which we need not decide, as to whether the proceeding in the Revenue Court was a suit within the meaning of Section 14,

although on that point there is a ruling in Muhammad Subhanullah v. The Secretary of State for India Weekly Notes 1904 p. 54, which is against the present appellants. It is therefore impossible for us either u/s 5 or Section 14 of the Limitation Act to extend the time so as to enable the present application to be treated as made within time. We note that the respondents plead before us in argument that both the agreement and the award wire prime facie legal and binding, subject to any objection which could be raised on the ground of fraud or misconduct of the arbitrator, etc. The court below has found that both the agreement and the award ware valid and that the present application was barred by time. With this we find ourselves in agreement. This result therefore is that the appeal fails and is dismissed with costs.