

**(2003) 07 KAR CK 0026**

**In the Karnataka High Court**

**Case No : Regular Second Appeal No. 561 of 1986**

Roddam Gopal Krishnaiah (deceased) by L.Rs.

APPELLANT

Vs

Roddam Adiseshayya (deceased) by L.Rs. and Others

RESPONDENT

**Date of Decision : 24-07-2003**

**Acts Referred:**

Arbitration Act, 1940 — Section 14, 32  
Registration Act, 1908 — Section 17, 17 (1) (b)

**Citation : (2004) 2 KCCR 841**

**Hon'ble Judges : K. Sreedhar Rao, J**

**Bench : Single Bench**

**Advocate : K. Raghavendra Rao, for the Appellant; T.N. Raghupathy, for Respondent 1 and K. Chandrakanth Ariga, for Respondent 3, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

K. Sreedhar Rao, J.—The discordance and disharmony in the family of the Plaintiff with his brothers has led to an entangled litigation manifesting in revisions, appeals, remands, second appeal and an appeal before the Apex Court. Literally for the second time this second appeal is before this Court and almost one-year short of celebrating golden jubilee. Except second Defendant all the parties to the suit are dead and are represented by legal representatives.

2. One Bhaskarappa Shetty is the propositus constituted a joint family consisting of himself, his sons, Plaintiffs, Defendants 1 and 2 and the third Defendant is the widow of Bhaskarappa Shetty and his second wife. The Plaintiff and the first Defendant are the sons born to Bhaskarappa Setty through his first wife. It is to be noted that the mother's name of the Plaintiff, and the third Defendant is the same. Consequent to the disputes in the family for partition of the properties an arbitration agreement was executed as per Ex.D.2. The nominated arbitrators took upon arbitration to divide the properties. The Plaintiff who is a signatory to Ex.D.2 initially agreed to arbitration executed Ex.D.2 but later on resiled from his stand on a qualified condition that the arbitrators should adjudicate the dispute

and decide within 4 months, failing which he would not be bound by the arbitration award. The arbitrators could not conclude the proceedings within 4 months. The Plaintiff therefore abstained from the arbitration proceedings. Nonetheless, the arbitrators rendered an award as per Ex.D.3, two years the arbitration agreement. The Plaintiff filed the suit for partition and possession subsequent to Ex.D.3. The Defendants stoutly contend that the suit is not maintainable in view of arbitration agreement and the award.

3. The trial Court in the first instance allowed the suit of the Plaintiff and awarded 1/4th share in the suit properties. The Appellant Court reversed the findings of the trial Court and held that the suit is not maintainable in view of the arbitration agreement and the award. In the second appeal in R.S.A. No. 1400 of 1973, this Court set aside the Judgment and decree of the first appellate Court and remanded the matter for disposal in accordance with the law, since an issue relating bar of the suit in view of Section 32 of the Arbitration Act, was not framed so also no issue was framed on the controverted fact that the parties have acted upon the arbitration agreement-Ex.D.2. After the remand, the parties adduced further evidence, and the trial Court for the second time held that the Plaintiff is entitled to 1/4th share. The trial Court allowed the suit of the Plaintiff. The appellate Court reversed the findings holding that the suit of the Plaintiff is not maintainable in view of the arbitration agreement and award and dismissed the suit by allowing the appeal. This Court on 29.1.1986 dismissed the second appeal on the ground that no substantial question of law involved. As against the said order the Civil Appeal filed before the Supreme Court by the Appellants is allowed and remanded the matter for fresh consideration of the substantial questions of law indicated by the Apex Court.

4. After hearing the Counsel for the Appellant and the Respondents, the following additional questions of law are framed for consideration as observed by the Supreme Court:

(1) Whether the non-compliance of arbitration Section 14 of the Arbitration Act is valid and binding on parties and whether the suit filed by the Plaintiff is barred u/s 32 of the Arbitration Act?

(2) Whether the findings of the appellate Court that the arbitration award is acted upon is perverse and contrary to the evidence on record.

5. It is the contention of the Counsel for the Respondent that an award if it is not made a rule of the Court, is unenforceable at law. Therefore does not create any right. In this regard relied on the ruling of this Court in the case of Kapgal Konda Gireanna and Anr. v. Kapgal Konda Basappa reported in AIR 1964 Mys 238.

6. Sri K. Raghavendra Rao appearing for the Appellants placed reliance on the Ruling of the Supreme Court in the case of Satish Kumar and Others Vs. Surinder Kumar and Others, . The facts disclose that an application was made u/s 14 by the arbitrators to make the award a ruling of the Court. The award pertains to partition of immovable properties valuing Rs. 100/-. An objection was raised that

an unregistered award cannot be marked in evidence. In that context, the matter had reached Punjab High Court. The Full Bench of Punjab High Court in its earlier rulings had held that an award unless made a rule of the Court is a waste paper. It was contended that the registration of award would arise after it is made a rule of the Court; but the Supreme Court relied on its earlier unreported decision in *Uttam Singh Dugal Company v. Union of India*, Civil Appeal 162 of 1962 wherein it is held as follows:

the award is, in fact, a final adjudication of a Court of the parties' own choice, and until impeached upon sufficient grounds in an appropriate proceedings, an award, which is on the face of it regular, is conclusive upon the merits of the controversy submitted, unless possibly the parties have intended that the award shall not be final and conclusive...in reality, an award possesses all the elements of vitality even though it has not been formally enforced and it may be relied upon in a litigation between the parties relating to the same subject-matter. This conclusion, according to the learned Judge, is based upon the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to Judgment of a Court of last resort.

Further in paras 13 and 19 the following observations are made with reference to the facts in *Satish Kumar's* case.

13. In view of the above decisions it is not necessary to refute the other reasons given by both the Full Benches, but out of respect for the learned Judges we deal with them. We may mention that no comment was made in these cases on the provisions of Para 7 of Schedule 1 to the Act. This para provides:

If the award is final and binding on the parties it can hardly be said that it is a waste paper unless it is made a rule of the Court.

19. Hegde, J. : I agree. But I would like to add few words, Arbitration proceedings, broadly speaking may be divided into two stages. The first stage commences with arbitration agreement and ends with the making of the award. And the second stage relates to the enforcement of the award. Paragraph 7 of the First Schedule to the Arbitration Act lays down that "the award shall be final and binding on the parties and persons claiming under them respectively." Therefore it is not possible to agree with the Full Bench decisions of the Patna High Court and that of the Punjab and Haryana High Court that an award which is not made a decree of the Court has no existence in law. The learned Judges who decided those case appear to have proceeded on the basis that an award which cannot be enforced is not a valid award and the same does not create any rights in the property which is the subject matter of the award. This in my opinion is not a correct approach. The award does create rights in that property but those rights cannot be enforced until the award is made a decree of the Court. It is one thing to say that a right is not created, it is an entirely different thing to say that the right created cannot be enforced without further steps. For the purpose of Section 17(1)(b) sic 17(1)(b) of the Registration Act, all that we

have to see is whether the award in question purports or operates to create or declare, assign, limit or extinguish whether in present or future any right, title or interest whether vested or contingent of the value of one hundred rupees or upwards to or in immovable property. If it does, it is compulsorily registrable. In the aforementioned Full Bench decisions sufficient attention has not been given to Section 17 of the Registration Act. The focus was entirely on the provisions of the Arbitration Act and there again on the enforcement of the award and not in the making of the award. The document may validly create rights but those rights may not be enforceable for various reasons. Section 17 does not concern itself with the enforcement of rights. That Section is attracted as soon as its requirements are satisfied. There is no gainsaying the fact that the award with which we are concerned in this case, at any rate, purported to create rights in immovable property of the value of rupees more than one hundred. Hence it is compulsorily registrable.

Appeal dismissed.

7. The decision of the Supreme Court relied on by the learned Counsel for the Appellant in U.P. Kattha Factories Association Vs. State of U.P. and others, has no application to the facts of this case. In that case the question was whether the provisions of Article 119 or 137 of Limitation Act would apply for making an application to make the award a rule of the Court. The said decision does not lay down any categorical ratio or obiter dicta that an award which is not made a rule of a Court is a nullity and unenforceable in any manner but in view of the decision of the Supreme Court in Satish Kumar and Others Vs. Surinder Kumar and Others, the ruling of this Court in Kapgal Konda Giredda and Anr. v. Kapgal Konda Basappa AIR 1964 Mys 238 is not a good law. Therefore an award although not made a rule of a Court is binding on the parties to the award and by virtue of the provisions of Section 32, there is a bar for instituting a suit.

8. This Court in the case of Krishnagouda v. Bhimangouda Venkanagouda and Ors. 1972 (1) Mys.L.J. 245 has held that the award made after prescribed period of four months, in the absence of an extension of time, u/s 23 is not a nullity. It is further held in the decision that a challenge to the award about its validity and legality has to be made only under the provisions of Arbitration Act and not by a separate suit. The proceedings in the cited case did not arise out of the proceedings under the arbitration Act but out of a separate suit. The Court made the following observations:

If the challenge to the award, on the ground that the same is a nullity, the same having been made after the prescribed period of four months, could be made by way of a suit, their Lordships of the Supreme Court would not have affirmed the decision of the High Court which dismissed the suit after setting aside the decree made u/s 17 of the Act. The decision of the Supreme court in Hari Shankar Lal Vs. Shambhunath Prasad and Others, relied upon by Sri Bhatta clearly establishes that a challenge to the award on the ground that the same has been made beyond the prescribed period of four months has also to be made by

means of an application under the Arbitration Act and not by means of a separate suit. Section 32 clearly provides that no suit shall lie on any ground whatsoever for a decision upon the existence of the award among other matters.

9. In view of the ruling of the Supreme Court in Satish Kumar and Others Vs. Surinder Kumar and Others, the award although not made a decree of the Court still it is binding on the parties u/s 32 of the Arbitration Act. Further the ruling of this Court in Krishnagoud's case (1972 (1) Mys.L.J 245) makes it clear that the challenge to the award has to be made only under the provisions of the Arbitration Act and not by way of separate suit. It is further held in the decision that an award passed beyond the period of four months even in the absence of extension of time granted by the Court is not a nullity u/s 23 of the Act.

10. It is the contention of the Appellant that award has not been acted upon and indeed the arbitrators have not passed any conclusive and effective award in relation to the immovable properties involved in the suit. Therefore the legal and technical impediment of Section 32 would not debar the Plaintiff from filing a suit for partition. Ex.D.3 is the English translation. As per the contents of the registered award, the Arbitrators have taken stock of all the movable and immovable properties including the stock in trade in the business run under the name M/s. Bhaskarappa and Sons. The arbitrators find that on account of the speculative investments in the business by the Plaintiff, the joint family is made to suffer a loss of Rs. 8,000/- and that he has recovered Rs. 1,500/- decretal amount payable to the family, also taken away the movables worth of Rs. 900/- for his personal benefit from the account of the family and spent Rs. 700/- towards registration of sale deed which cannot be accounted to joint family debts. The total family debts are assessed and the arbitrators proposed tentatively that the agricultural lands situate in Donekal village have to be sold and from the sale consideration the family debts are to be discharged. Under the award, first Defendant and the Plaintiff directed to discharge a portion of family debts, the liability is fastened on the 1st Defendant to discharge the debts of Plaintiff's account. The material portion of the award relating to the suit immovables is dealt in paras 21 to 25 is extracted here under:

21. On the opinions expressed by the parties the properties shown in the plan had been divided into four parts and divided between them on the assumption that the sale price of Donekal lands will discharge the debts due by the family in full. Since the debts have not been discharged in full, the said division has been cancelled.

22. The bath room marked "R" in Red ink has been included in the "B" division property and this has been shown in the plan also.

23. The immovable property of the joint family numbered 133, and 136 have been divided into four parts and the area of each part has been shown in English in Red ink in the plan.

24. There are no immovable properties left over to divide between the sharers

after making the arrangements to discharge the joint family debts in full, as also after earmarking some of the immovable properties for meeting the marriage expenses of the unmarried daughters and the maintenance of Janamma.

25. It has been decided that the sums shown in page 3 para 10 being the amounts spent by Gopalakrishnaiah Setty have been written off since they have been spent when he was living in the joint family.

11. Along with the arbitration award, there is only one plan annexed. In para 21, there is a categorical observation made by the arbitrators that the family debts have not been discharged in full. Therefore the proposed contemplated division indicated in para 21 is cancelled. Again in para 23 with reference to the plan annexed to the arbitration award, it is said that the property is divided into four parts and each part shown in English in red ink. In para 25, it is said that amounts shown in paras 3 to 10 are the amount spent by Plaintiff have been written off since they have been spent when he was living with the joint family, therefore debt-liability whatever fastened on the Plaintiff has been written off and Plaintiff is exonerated. In para 24, it is mentioned that there are no other movable left over for division between the sharers after making the arrangements to discharge the joint family debts in full. In para 21, the division effected as per the plan is declared to be cancelled. A further division of 4 parts is effected in para 23, but it is not mentioned as to which of the heirs are entitled to those 4 parts and in what manner. Para 24 is also vague in a sense that it makes no definite allotment of property earmarking for meeting the marriage expenses of unmarried daughters and maintenance of third Defendant. Therefore the combined reading of paras 23 and 24 and the entire award does not indicate to whom the four divided parts are allotted or to be allotted.

12. In retrospect, I feel, the entire exercise of arbitration made by the arbitrators has gone totally in vain. The careful and meticulous reading of the award does not show a categorical and effective division of the immovable property indicating as to which of the parties to the arbitration agreement are entitled to those 4 parts of immovable property shown in the plaint. Therefore it is deemed that the arbitrators have failed to effect the partition of the immovable property in a complete and effective manner so as to bind the parties. In that view of the matter, when there is no division effected by the arbitrators in respect of immovable property, it cannot be said that the Plaintiff is not entitled to maintain a suit. When the subject matter in controversy is left unanswered in the award and when there is no effective decision in the award relating to the subject matter the bar u/s 32 would not operate against the Plaintiff for filing the suit for partition. The arbitrators have effected division of the business relating to Bhaskarappa and sons and other movables but the immovable property for inexplicable reasons has escaped the effective adjudication by the Arbitrators.

13. In the written statement of the second Defendant a contention is taken that the partition effected in award has been acted upon but no issue is framed none the less that contention may not come in the way of Plaintiff since the Plaintiff

did not participate in the arbitration proceedings and he refused to abide by the terms of the award. Therefore to say that Plaintiff acted upon the award is untenable and there is no evidence placed on record to show that Plaintiff has acted upon the terms of the award to estop him from challenging the validity and legality of the award. In the absence of adjudication of the division of immovable property rendered by arbitrators there would be no impediment for the Plaintiff to maintain suit. The first question of law is answered partly in affirmative to the extent that non-compliance of Section 14 of the Arbitration Act does not render the award as invalid and Section 32 does operate as a bar for a suit but the inchoate award does not prevent the Plaintiff from filing the suit.

14. Admittedly the properties are ancestral properties, the Plaintiff would be entitled to 1/4th share. Second Defendant would be entitled to 1/2 share and first Defendant would be entitled to 1/4th share. The third Defendant is dead. Therefore 4 daughters of third Defendant Janakamma second Defendant are entitled to 1/5th share in 1/4th share of third Defendant's share.

Accordingly, the appeal is allowed. Since the award had made a provision for meeting the marriage expense of two daughters, it is permissible for Defendants to seek adjudication of the reasonable marriage expenses to be awarded and to compensate the party who has expended money for purpose of marriage in the final decree proceedings.