

(1926) 12 MAD CK 0064
In the Madras High Court

(Samitti) Ranga Reddi and Others

APPELLANT

Vs

Vallialuru China Sidda Reddi and Another

RESPONDENT

Date of Decision : 09-12-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 1(2)

Citation : AIR 1927 Mad 1154

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The father of the plaintiff, and defendant 4, the father of defendants 1 and 2, and another, started a partnership business. On the death of the plaintiff's father, his sons became members of the partnership, and defendant 3 was also taken in as a partner. Later on, the father of defendants 1 and 2 having died, they also became members of the partnership. The plaintiff and defendant 4 were entitled to one-twelfth share in the partnership business. Unpleasantness having arisen between the parties, the plaintiff instituted a suit for the dissolution of the partnership, settlement of accounts and recovery of his brother's one-twelfth share and for other allied reliefs. The defendants, including defendant 4, disputed the correctness of some of the statements made in the plaint. Defendant 4 also prayed that the amount due to him might be paid to him. The case was, by an order of Court, referred to an arbitration of three persons. Defendant 4 did not join in the reference and was not a party to it. One of the arbitrators did not attend three of the meetings of the arbitration board. The arbitrators gave their award giving the plaintiff and defendant 4 their one-twelfth share.

2. Before the District Munsif the award was objected to on the ground that "the reference itself from the Court was invalid for the reason that defendant 4 had not joined in the reference" and also on the ground that all the arbitrators were not present at all their meetings. He overruled the latter objection, and, as regards the former, he held that if the plaintiff was given only half of the one-

twelfth share awarded to him and defendant 4, jointly, the fact that defendant 4 did not join in the reference would not affect the validity of the award. He therefore gave

a judgment in terms of the award as modified with reference to the defendant 4's share in the amount, for the plaintiff's half-share, viz., Rs. 608-4-0, with subsequent interest.

3. The present petition has been filed by defendants 1 to 3 to revise the decree of the District Munsif, and defendant 4 has filed a memorandum of objections effectively supporting the revision petition.

4. The same two objections that were pressed before the District Munsif have again been urged before me by Mr. Somayya on behalf of the petitioners. Either of the grounds, if accepted, would lead to the setting aside of the District Munsif's decree. In this judgment I propose to deal only with the first objection, namely, that the award is invalid as defendant 4 was not a party to the reference.

5. It cannot be denied that defendant 4 is a necessary party to the reference. Section 1, Schedule 2, Civil P. C., states that

where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time, before judgment is pronounced, apply to the Court for an order of reference.

6. The section requires that all parties interested should agree before the Court can make a valid reference to arbitration. As defendant 4 has not joined in the reference, it follows that the reference is not a valid one. What gives the Court jurisdiction to refer matters to arbitration is the consent of all the parties interested, and as defendant 4 has not given his consent, the Court had no jurisdiction to refer the matter to arbitration. This defect, which vitiated the reference and all the subsequent proceedings, cannot be cured by the Court ignoring defendant 4 and giving the plaintiff only half of the one-twelfth share due both to the plaintiff and defendant 4. Defendant 4 not being a party to the reference has a right to question the validity of the award and this will affect the interest of defendants 1 to 3 also. In these circumstances, I hold that the reference itself is invalid. This conclusion is supported by the decision of this Court in *P. Bavana Panda v. Narasinga Panda* [1919] 42 Mad. 632 and *Subbarao v. Appudurai Ayyar* A. I. R. 1925 Mad. 621. It is unnecessary to refer to the other decisions brought to my notice on this point.

7. In this view, the District Munsif should not have given effect to the award of the arbitrators even in a modified form.

8. Allowing this objection, I set aside the decree of the lower Court. The District Munsif will restore the suit to his file and proceed to dispose of it on the merits. Respondent 1 will pay the petitioners' costs of this revision petition. The memorandum of objections by defendant 4 is allowed, but I make no order as to costs.