

(1920) 01 CAL CK 0031
In the Calcutta High Court

Sashibala Dasi and Others

APPELLANT

Vs

Kamiksha Nath Dutt and Krista Chandra Dutt and Others

RESPONDENT

Date of Decision : 23-01-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : 55 Ind. Cas. 716

Hon'ble Judges : Teunon, J;Beachcroft, J

Bench : Division Bench

Judgement

Beachcroft, J.—This is an appeal against an order of the Additional Subordinate Judge of Howrah, directing that an award made by arbitrators should be enforced as a compromise under Order XXIII, Rule 3, Code of Civil Procedure.

2. The suit was one for partition. It was instituted on the 11th March 1916. The plaintiffs, three in number, are the daughters of one Uday Chand Dutta. Another daughter of Uday Chand, a childless widow at the time of her father's death, is defendant No. 4. Defendants Nos. 5 to 8 are sons of another daughter of Uday Chand. The defendants Nos. 1 to 3 are sons of one Gagan Chandra Dutta, who was the brother of Uday Chand, and defendant No. 9 is the widow of Gagan Chandra. On the 29th May 1916 the three plaintiffs and defendants Nos. 1 to 5 executed an agreement to refer the matter in dispute between them to arbitration and the Court allowed time for the purpose. The reference to arbitration was made without the intervention of the Court. On the 20th February an award was made by five out of the seven arbitrators, who were nominated by the parties. Of the other two one had died and one had taken no part in the arbitration proceedings. The Court was not informed that the arbitration had been completed and on the 24th February 1917 the plaintiffs applied for further time. This application was rejected, and a preliminary decree was then made ex parte but this was subsequently set aside. On the 3rd September 1918 the defendants Nos. 1 to 3 applied to the Court to record the award as a compromise under Order XXIII, Rule 3, Code of Civil Procedure, and the Judge made the

order which is now complained of.

3. The effect of the award has been to give, to certain persons who would not ordinarily be entitled to shares under the Hindu Law, certain shares in the property; for instance, shares have been given to defendant No. 4, who as I have already remarked was a childless widow at the time of her father's death, and defendant No. 5, a daughter's son, who in the presence of plaintiffs Nos. 1 to 3 would not be entitled to any share.

4. The only point taken in this appeal, and that even has not been pressed very seriously, is that the award having given to certain persons shares, which they would not ordinarily be entitled to under the Hindu Law, the compromise so arrived at between these persons, who are parties to the suit, cannot be regarded as lawful within the meaning of Rule 3 of Order XXIII, Code of Civil Procedure. That contention, it appears to me, cannot be upheld. The parties came to an agreement, which it is impossible to say was not a lawful agreement, and having come to this agreement between themselves some of them cannot now be allowed to back out of it because the arbitrators' award is not to their liking. The argument in effect comes to this that the word "lawful" in Order XXIII, Rule 3, has the same meaning as the word legal, but the agreement cannot be said to be unlawful merely because the parties do not get the shares to which they would be legally entitled.

5. In my opinion the appeal ought to be dismissed with costs. The hearing fee is assessed at three gold mohurs.

Teunon, J.

6. I agree that the appeal should be dismissed.