

(1951) 07 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 12 of 1948

Shambhu Nath and Others

APPELLANT

Vs

Gokal Chand and Others

RESPONDENT

Date of Decision : 23-07-1951

Acts Referred:

Registration Act, 1908 — Section 17

Citation : AIR 1952 P&H 146

Hon'ble Judges : Eric Weston, C.J.;Falshaw, J

Bench : Division Bench

Advocate : I.D. Dua, Hem Raj Mahajan and N.L. Salooja, for Advocate General, for the Appellant; Shamair Chand, for the Respondent

Final Decision : Allowed

Judgement

Weston, C.J.—This is a Letters Patent Appeal against a decision of Mr. Justice Achhru Ram given on the 19th of March 1948 in appeal from an order of a Subordinate Judge of Amritsar rejecting an arbitrator's application for the filing of an award made by him.

2. By means of an agreement dated the 25th of September 1942 two sets of parties, being the sons and grandson of Lachhman Das on the one part and sons and grandsons of Ram Das on the other part. Lachhman Das and Ram Das being brothers, referred to an arbitrator Dr. Nand LaL their disputes, which in the agreement of reference were described as disputes regarding business and movable and immovable properties etc., namely the business Gokal Chand, Radha Ram of Calcutta, the business Gokal Chand-Radha Ram of Singapore, the business Shambhu Nath-Dhanpat Rai of Amritsar, and, movable and immovable property situate at Dalo Nangal in the Amritsar District.

3. The arbitrator in his award dated the 31st of May 1943 dealt with the immovable properties, namely lands and houses situated in Amritsar itself, in three villages of Amritsar District, in one village of Kapurthala State and in two

villages of Jullundur District. He held that although these various properties stood in the names of Individual members of one branch or other of the family, the Lachhman Das branch and the Ram Das branch were each entitled to a half share in each property. In respect of the various businesses the result of his finding was that each branch was entitled to a total amount of Rs. 2,48,665/3/9. The Ram Das branch had with it Rs. 1,30,372/- in excess of its share and the arbitrator therefore held that the Lachhman Das branch represented by Gokal Chand as manager should recover Rs. 1,30,372/- from the Ram Das branch with certain interest. The arbitrator also made this amount a charge on the entire immovable property belonging to the Ram Dass branch.

4. When the award was sought to be filed objection was taken by the Ram Das's branch that the award could not be made a rule of the Court for want of registration. There was also a question raised of the stamp duty payable on it. The Subordinate Judge held that the award required registration and therefore was not admissible. He also held that the stamp duty payable was that upon an instrument of partition. On his first finding, however, he rejected the award. The Gokul Chand branch then came in appeal to this Court and Mr. Justice Achhru Ram by his order has held that the award in respect of immovable property does nothing more than recite what according to the arbitrator was a pre-existing fact. Relying on the rule laid down by the Privy Council in "Bageshwari Charan Singh v. Jagarnath Kuari", 11 Pat 272, he held that the apparent declaration of title appearing in the award was not such declaration as contemplated by Section 17 of Registration Act and that the Subordinate Judge was wrong in holding that the award was compulsorily registrable & that it could not be admitted in evidence by reason of not having been registered. The learned Judge also dealt with the question of stamp duty, holding that the award was chargeable with duty as an instrument of partition.

5. Mr. Justice Achhru Bam, I think, quite correctly set out the rule laid down by the Privy Council in "Bageshwari Charan Singh's Case", 11 Pat 272, where their Lordships said:

"The distinction is between a mere recital of a fact and something which in itself creates a title."

I am not able, however, to agree with Mr. justice Achhru Ram when he held that in the present case the award in respect of the immovable property merely declared a pre-existing fact. It is stated in the agreement of reference itself that title to immovable property was one of the matters in dispute between the two branches. It is not suggested before us that the arbitrator went beyond the terms of reference. It is also clear from the arbitrator's award that certain of these properties stood in the names of various individual members of the two branches. When the arbitrator held that notwithstanding the apparent titles of individuals all these properties were to be considered joint property he was disturbing titles as appearing in the Revenue Records. When he came to the conclusion that they were joint properties, the shares, namely half and half,

probably were not in dispute. The dispute probably was whether they were joint properties at all. But quite apart from the internal evidence, it is enough to look to the agreement of reference itself, which expressly places immovable properties as in dispute and to be the

subject of the arbitration. I think, therefore, that the declaration made by the arbitrator was something which in itself created title and the award therefore required registration.

6. A suggestion has been made that in any event the award of Rs. 1,30,372/- is separable from that part of the award dealing with the immovable property & to this extent at least should be made a rule of the Court. I do not think this can be accepted. It seems that the arbitrator having held all the immovable property to be joint then proceeded on the simple basis that all movable assets should be similarly divided. If the immovable properties were left as they are with ostensible title to various members of the two branches, then the division of movable assets in the manner made by the arbitrator would appear inequitable. This seems to be a case where the award must be taken as a whole and I do not think it can be accepted that a particular part of it can be enforced in the absence of the remainder.

7. As in my opinion the award is inadmissible for want of registration the question of the proper stamp duty payable upon it need not be considered by us. We are informed that the document was impounded by the Subordinate Judge and it will be for him now to take such further action u/s 38 of the Indian Registration Act, if not already taken, as may be necessary.

8. I would allow the appeal, set aside the order of Mr. Justice Achhru Ram and restore that of the Subordinate Judge rejecting the application to file the award. The appellants must get their costs throughout from the respondents.

9. The cross-objections filed against the order as to stamp duty are not pressed before us in view of the order we have made and are dismissed. No order as to costs.

Falshaw, J.

10. I agree.