

(1923) 02 BOM CK 0013

In the Bombay High Court

Case No : Appeal from Order No. 23 of 1922

Shankar Ramchandra Kulkarni

APPELLANT

Vs

Ramchandra Annaji Kulkarni

RESPONDENT

Date of Decision : 15-02-1923

Acts Referred:

Citation : (1923) 25 BOMLR 437 : 73 Ind. Cas. 415

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—This is an appeal from the decision of the Subordinate Judge who pronounced judgment in terms of the award, Exhibit 22. One Gurunath Balaji died on September 30, 1918, leaving a will. Probate proceedings with regard to the will were pending in the District Court at Dharwar instituted by the first defendant, in whose favour the will in question had been passed. On January 5, 1919, the parties concerned with the will executed a submission paper, Exhibit 28. What was submitted to the arbitrators was the dispute with regard to the estate of Gurunath Balaji. The arbitrators made an award, which is Exhibit 22, by which, after it was recited that in order that the two parties should not ruin themselves unnecessarily by going to litigation in respect of this dispute existing between them with reference to the estate of Gurunath Balaji, the disputes were referred, various properties were allotted to the disputing parties. Clearly, although the submission paper was in a general form, it was never considered that the arbitrators were to decide whether Gurunath had as a matter of fact executed a will. It is apparent on the face of the award that the arbitrators were in no way ousting the jurisdiction of the Court before which probate proceedings were pending. They made no attempt whatever themselves to decide whether or not probate should be granted. Obviously that could not be decided by them.

2. But it is contended by the appellant that because probate proceedings were

pending, therefore the award was illegal. No authority was cited for that proposition. But the appellant relied upon the decision of this Court in *Manilal Motilal Vs. Gokaldas Rowji*, . That decision could only be applicable if there had been a suit pending between the parties, the issues in which had been referred to arbitration without the intervention of the Court. There was nothing whatever to prevent the parties going to arbitration with regard to the division of the estate, leaving the Court to decide whether or not probate should be granted of the will. That was a question entirely outside the functions of the arbitrators, while the actual questions regarding the division of properties in dispute between the parties could properly be referred to them. The simple test in this case would be to consider what would have happened if the parties had waited until probate had been issued to refer to arbitration the question how the properties of the deceased should be divided. It could not possibly be said then that the submission to arbitration would be illegal. The mere fact that it was entered upon before the probate proceedings had come to an end cannot possibly affect the question of its legality or illegality. The order of the lower Court was right and the appeal must be dismissed with costs.