

Draupadibai and ors. Vs. Narayan Masanu Sutar and ors.

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Court : Karnataka

Decided On : Jan-28-1985

Reported in : AIR1985Kant258; ILR1985KAR940; 1985(1)KarLJ298

Judge : K. Jagannatha Shetty and ;M.P. Chandrakantaraj Urs, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 2 and 30

Appeal No. : R.F.A. No. 19 of 1975

Appellant : Draupadibai and ors.

Respondent : Narayan Masanu Sutar and ors.

Advocate for Def. : H.F.M. Reddy, Adv.

Advocate for Pet/Ap. : B.V. Krishnaswamy Rao, Adv.

Judgement :

Chandrakantarajurs, J.

1. This is a defendants' appeal against the judgment and decree of the Prl. Civil Judge, Belgaum, in O.S. No. 60/72 on his file.

2. The five respondents in this appeal were the plaintiffs in the said suit. That suit was filed by the plaintiffs for partition of suit schedule properties by metes and bounds and for possession. The suit schedule properties consisted of certain

lands in Bijagarni village, Belgaum taluka and certain other properties situate in Belgaum city. The plaintiffs claimed that the entire properties were joint family properties and that they and the defendants were an undivided Hindu family.

The suit for partition was resisted by the defendants mainly on the ground that the properties in the village consisting of agricultural lands and two houses in the village had already been partitioned as far back as in the year 1965 and that even the properties in the Belgaum city had been subjected to partition by arbitration.

3. We have stated the minimum facts as above as the question raised before us by the learned counsel for the appellants is confined to issue No. 4 framed by the trial Court. In regard to the other properties there is no dispute. There is no dispute in regard to the origin of the family. One Masnu was the propositus and Gundu defendant and Narayan-plaintiff I were the two sons of the said Masnu. Since the filing of the suit defendant-1 died and has been represented by his legal representative, who are none other than his sons, 2nd, 3rd, 4th and 5th defendants.

4. Issue No. 4 was as follows :

'Whether defendants further prove that there was another reference to Arbitrators in respect of the properties at paras 2(a)(1), 2(A), 2(C) of the plaint, and if so, whether any award was passed, and if passed, is it legal and valid and binding on the parties?'

5. Before us, Sri B. V. Krishnaswamy Rao, learned counsel for, the appellants, has canvassed that the only point for determination is whether the decree passed as under appeal despite the decree passed in Arbitration Case No. 3 of 1971 is valid in law?

6. In this context it would be necessary to briefly state the facts leading to the decree in the said Arbitration Case' No. 3/71 on the file of the Addl. Civil Judge, Belgaum. As per Ex. D. 3 dt. April 15, 1971 plaintiffs I and 2 and defendants 1, 3 and 4 made a reference to Arbitrator-Referees consisting of 5 gentlemen known to them. They passed an award in respect of the properties situate in Belgaum City

as per their award dt. July 1, 1971. It is claimed that the said award was communicated to the parties concerned by the Arbitrators. However, defendants presented an application Linder S. 42 of the Indian Arbitration Act in the Court of the Civil Judge, Belgaum, which came to be registered as Arbitration Case No. 3/71 on Aug 16, 1971 seeking inter alia that the Arbitrators may be called upon to file into Court the award along with all documents and papers and to pass a decree in terms of the award. In the application plaintiffs 1 and 2 only were made opponents while the appellants-defendants described themselves as applicants. The Court directed notice to the opponents but found that they could not be served in person. Thereafter on Sept. 30, 1972 notice by substitute service was ordered under Or. 5 R. 20 CPC. Despite that substitute service by publication in newspaper the opponents did not enter appearance. Then the applicants took out summons to the Umpires to file the award in Court. The umpire Ganapat Patil filed the award and he was also examined by the Court and he spoke about the parties referring the dispute to the Arbitrators and asserted that the umpires had heard the parties. He produced certain documents including a memo signed by the panchas, by the applicants and the opponents and they made the allotment of the properties in question between the plaintiffs and the defendants and directed that the appellants before us to pay Rs. 11,001/- to the defendants. In terms thereof on Sept. 18, 1973 the 'Court came to pass a decree. A certified copy of the decree was marked as Ex. D. 3 in the original suit proceedings, which is the original suit for partition which in turn is the subject-matter of this appeal.

7. On consideration of the oral and documentary evidence led for the plaintiffs as well as the defendants, the trial Court came to the conclusion that the decree resulting from Arbitration Case No. 3/71 on the file of the Prl. Civil Judge was a nullity and not binding on the plaintiffs. We do not think that we need examine the evidence on which the learned judge relied upon to reach the conclusion and the reasons given by him.

8. Sri Krishnaswamy Rao, learned counsel for the appellants, essentially relied upon a recent decision of the Bombay High Court in the case of Delux Silk Traders v. Satyanarayan Mahendrakumar, : AIR1979 Bom149 . In the said case a learned single Judge of the Bombay High Court while examining the scope of S. 32 of the

Arbitration Act came to the conclusion that even though no decree was passed in terms of an award under the Arbitration Act, nevertheless a suit was barred on the same cause of action. We do not see how that case is of any assistance to the case of the appellants. Undoubtedly, having regard to the plain language of S. 32 of the Arbitration Act, an award made under the Act could be either decreed or set aside only under the provisions contained in the Arbitration Act and not by any other procedure. The facts of that case are totally different though there was a valid reference is not disputed.

9. On the other hand Sri H. F. M. Reddy, learned counsel for the respondents, has placed strong reliance on the decision of the Patna High Court in the case of Deep Narain Singh v. Mt. Dharneshvari, : AIR1960 Pat201 . In the said case a Division Bench of that Court placing reliance upon a decision of the Privy Council in the case of Chhabba Lal v. Kallu Lal came to the conclusion that if a reference was made to arbitration without all the parties interested in the arbitration being signatories thereto such a reference would be a nullity and the resultant award would also be void throughout. The facts of the Patna case are somewhat similar to the case we have on hand in this appeal. There, out of 15 defendants only 5 defendants had signed the reference to arbitration. One of the 5 claimed that he had authority of the other defendants to sign on their behalf committing them to arbitration. But that authority was not proved. In the instant case we have only plaintiffs 1 and 2 who signed the reference dt. April 15, 1971. Even defendant-2 has not signed. Mr. Krishnaswamy Rao did not dispute these facts. There is no indication that the first plaintiff at any time acted and signed the reference as guardian of respondents 3 to 5 correspondingly plaintiffs 3 to 5. In a reference for arbitration for division of immoveable properties every person who is entitled to a share has to give his consent. If he has failed to give that consent then the reference would not be competent at all in the eye of law and any resultant award thereof would be void.

10. In the face of these undisputed facts that plaintiffs 3 to 5 were not parties to the reference nor parties before the Arbitrators it cannot be said that any award passed in Arbitration Case No. 3 of 1971 would bind plaintiffs 3 to 5. If it is not binding on them' then plaintiffs could necessarily maintain the suit for partition in

the court of the Civil Judge at Belgaum. It is needless to repeat that defendant 2 who was also not a party to the reference could at any time challenge that award as not binding on him. In that sense' the partition made by the Arbitrators could not be said to be a partition binding all the parties, who are entitled to the share in the properties in question.

11. In the view we have taken, we should necessarily reject the contention advanced by Sri Krishnaswamy Rao.

12. No other ground has been urged in support of the appeal.

13. Therefore, the appeal stands dismissed.

14. The parties to bear their own costs in this appeal.

15. Appeal dismissed.

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