

Subbaraya Chetti and anr. Vs. Sadasiva Chetti and ors.

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SooperKanoon Citation : sooperkanoon.com/786511

Court : Chennai

Decided On : Feb-19-1897

Reported in : (1897)ILR20Mad490

Judge : Davies and ;Boddam, JJ.

Appellant : Subbaraya Chetti and anr.

Respondent : Sadasiva Chetti and ors.

Judgement :

1. The first question is, what is this suit? Is it a suit to enforce an award or for a partition of family property or on a contract to accept the shares settled by arbitrators? The Judge has treated it as a suit on a contract to accept the shares settled by arbitrators, but we are unable to see that this is what was alleged or claimed by the plaintiff. We think the suit is a suit to enforce an award with an alternative claim for partition of family property.

2. There having been an award, it is clear that the alternative claim for partition cannot succeed. See Krishna Panda v. Balaram Panda I.L.R. Mad. 290 with which we agree.

3. It was argued before us that the suit to enforce the award will not lie, as the proper and only course open to the plaintiff was to proceed under the Civil Procedure Code, Section 525. Having regard, however, to the decision in Gopi Reddi v. Mahanandi I.L.R. 15 Mad. 99 and the apparent consensus of opinion in

this Court from the time of Palaniappa Chetti v. Bayappa Chetti 4 M.H.C.R. 119 down to Husananna v. Linganna I.L.R. 18 Mad. 423 we think that the procedure directed by the Civil Procedure Code does not preclude an action being brought to enforce an award. We, therefore, hold that the plaintiff is entitled to succeed as to this.

4. There is no doubt that an award was given (Exhibit A). It was argued that it was an incomplete award, and could not be enforced. We think, however, that the award is complete in itself. But it is said that only a declaratory decree can be given upon it, and that the decree of the Judge directing a partition went beyond the award. The parties, however, agreed at the settlement of issues that, when the shares were determined, the actual partition of the family property should be made by a Commissioner in execution and this is all that the Judge has decreed. We do not see that there is anything illegal in this.

5. Then an objection is taken that it has not been settled in the suit or by the arbitrators what the family property is which the Commissioner is to divide. All we can say is that no question as to this was raised in the lower Court, and we must assume that any dispute there may have been was waived, and that the property mentioned in the plaint is the property to be divided.

6. Finally, the question arises when the partition is to be considered as taking effect on the date of the award or on the date of the lower Court's decree, because in the former case, the share of one Sabapathi Chetti would go to his heirs, instead of to the coparceners as the appellants claim. We are, however, of opinion that the award (Exhibit A) followed up as it was immediately, by an actual division of some of the moveable properties, effected a division at that time, so that the share allotted to Sabapathi, now deceased, passes to his heirs.

7. We must support the decree of the Court below and dismiss the appeal with costs (two sets--plaintiff and defendants Nos. 1 to 3).