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Court : Chennai

Decided On : Feb-03-1919

Reported in : 51Ind.Cas.53

Judge : Kumaraswami Sastri, J.

Appellant : Rethamali Servai and anr.

Respondent : Ramasami Servai and anr.

Judgement :

1. It is clear from the plaint that the suit is to file the award under Section 20 of the Second Schedule to the Civil Procedure Code and to direct payment of the money decided by the arbitrators as payable to the plaintiff by the defendants. The Subordinate Judge has in his judgment refused to file the award.

2. The award, after directing the defendants to pay plaintiffs Rs. 427-1.7 with interest at 6 per cent. per annum, declares the dissolution of the marriage between the 2nd plaintiff and the 2nd defendant. The arbitrators decide that the marriage between the parties has been dissolved pursuant to the custom in vogue amongst the members of the caste and state that 'henceforth there shall be no manner of connection between the 2nd plaintiff and 2nd defendant and that 'as sanctioned by the custom of the caste each party shall be at liberty to marry according to his or her pleasure.'

3. I do not think the Small Cause Court has jurisdiction to file an award which, though it directs payment of money within the pecuniary limits of its jurisdiction, goes on to declare the dissolution of marriage between the parties. Section 20 of the Second Schedule to the Civil Procedure Code directs the filing of the award in any Court 'having jurisdiction over the subject-matter of the award.' By 'subject matter of the award' I think is meant the whole matter dealt with and decreed by the award, and not any particular portion which affects any particular party. The jurisdiction of the Court will depend upon the reliefs awarded by the award. *Mohesh Chandra Kundu v. Amar Chandra Kundu* 22 Ind. Cas. 798 ; 18 C.W.N. 867 ; 19 C.L.J. 260 and *Raghavendra Ayyaji Lesai v. Gururao Raghavendra Desai* 19 Ind. Cas. 882 ; 37 B.P 442 ; 15 Bom. L.R. 362 referred to by the Subordinate Judge do not decide that it is open to a party to confer jurisdiction on a Court by asking for only one relief granted by the award and getting the award filed under Section 20, though the other reliefs granted are beyond the competence of the Court. If the suit was simply a suit for a decree in respect of the amount decided by the arbitrators without any prayer to file the award under Section 20, the jurisdiction of the Court will no doubt depend on the amount awarded without reference to the subject-matter of the original dispute but when it is sought to file the whole award under Section 20, the reliefs granted by the arbitrators must govern jurisdiction.

3. On the merits, the Subordinate Judge has failed to note that it was open to the parties to waive any error in the procedure adopted by the arbitrators and to see how far the fact that the parties supplied the stamp paper for the award (see Exhibit C) and did not object to evidence recorded by one arbitrator in the absence of others being referred to by them would cure the defect noted by the Judge. That irregularities might be waived is clear from *Manindra Nath Mandal v. Mohanunda Roy* 13 Ind. Cas. 161 ; 15 C.L.J. 360 and *Moseley v. Simpson* (1873) 16 Eq. 226 ; 42 L.J. Ch. 739 ; 28 L.T. 727 21 W.R. 694; it must of course be shown that the parties knew of the irregularities and waived them with such knowledge.

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4. I direct that the application to file the award be returned by the lower Court to be presented to the proper Court. I make no order as to costs.

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