

Valliammal Vs. Saroja

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SooperKanoon Citation : sooperkanoon.com/800646

Court : Chennai

Decided On : Aug-07-1978

Reported in : AIR1979Mad151

Judge : Sethuraman, J.

Acts : [Arbitration Act, 1940](#) - Sections 32

Appeal No. : Appeal No. 863 of 1974

Appellant : Valliammal

Respondent : Saroja

Judgement :

1. The plaintiff in O. S. No. 58 of 1972, on the file of the Subordinate Judge, Kumbakonam, is the appellant. The plaintiff is the mother and the defendant is the widow of one Chinnasami Odayar who died intestate on 1-4-1972, leaving behind him properties described in Schedules A to D to the plaintiff. The plaintiff and the defendant would be the heirs of Chinnasami Odayar under the provisions of the Hindu Succession Act 1956, the plaintiff and the defendant having each a half share in the properties. The plaintiff therefore claimed partition and separate possession of her half share in all the properties described in the Schedules. In the written statement filed by the defendant it was stated that there was a mediation on 10-4-1972, as a result of which the A Schedule lands were allotted in favour of the plaintiff and the B Schedule and other movables were allotted to the

defendant. The decision of the mediators was said to have been engrossed on a paper and the plaintiff and the defendants were said to have agreed and accepted the award. In these circumstances, it was submitted that there was no scope for any partition.

2. The trial court framed the relevant issues and granted a preliminary decree for partition of the movable properties and directed the plaintiff to bear a half share of certain debts owed by Chinnasami Odayar to the Kumbakonam Co-operative Land Mortgage Bank. As regards D Schedule properties it was found that there was no such property available for partition and therefore the plaintiff's claim was negatived. The plaintiff's claim with reference to A and B Schedules was negatived because of the award passed by the Panchayatdars. The plaintiff has filed the present appeal contesting the conclusion of the court below as regards A and B Schedules properties.

3. The learned counsel for the appellant submitted that the award had not been filed in court and no decree had been passed on the basis of the award and that, therefore, the plaintiff's suit in so far as A and B Schedules properties are concerned, could not have been dismissed on the strength of such an award. For the respondent, the submission was that the award had been acted upon and that therefore the, court below acted rightly in not granting a decree in plaintiff's favour in respect of those properties.

4. The short question that arises for consideration is whether the award dated 10-4-1972 and marked as Ex. B-6 stands in the way of the plaintiff's claim for partition. Section 32 of the Indian Arbitration Act provides :-

'Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be enforced, set aside amended, modified or in any way affected otherwise than as provided for in this Act.'

5. With reference to the awards, there is a special provision in Ss. 14 to 17. Section 14 enables an award being filed in court. Section 15 provides that the

court may modify or correct an award so filed and S. 16 provides for the remitting of an award so filed, under certain circumstances, for reconsideration by the arbitrators. S. 17 empowers the court to pass a decree in terms of the award. There was a difference of opinion as to whether an award which had not been filed into court could be relied upon in defence to an action in the context of the provisions of S. 32 and the related provisions of the Indian Arbitration Act. In *Suryanarayana Reddi v. Venkata Reddi* ILR (1939) Mad 111, a Division Bench of this Court held that the provisions of Ss. 32 and 33 of the Arbitration Act did not extend to a defence as opposed to the filing of a suit, and consequently a defendant would not be precluded from putting forward an award which had been fully performed by him in answer to a claim by the plaintiff based on the original cause of action although such an award had not been filed under the provisions of the Act and judgment obtained. The effect of the observations of the learned Judges in that case was that even where a defendant who relied on the unfiled award had not performed his obligations thereunder, he could rely on such an award in defence to a suit based on the original cause of action. Raghava Rao J. in *Sayyaparaju surayya v. Nekkanti Anandayya* : AIR1951 Mad525 , accepted the proposition that even an unfiled award would be a bar to a suit on the original cause of action. But he took a different view in *Venkatasubbayya v. Bapadu* : AIR1951 Mad458 . Rajagopalan J. in an unreported decision in C. R. P. No. 2110 of 1951 (Mad), expressed the view that the mere existence of an award which did not result in a decree under S. 17 of the Act could not be deemed under S. 17 of the Act could not be deemed to have taken away the right of suit which could be founded on the original cause of action. P. N. Ramaswami J. in C. M. A. No. 296 of 1951 (Mad) and C. R. P. No. 2228 of 1951 (Mad) took a more stringent view as to the maintainability of a suit on the original cause of action and held that even an unfiled award could be a valid defence to a suit based on the original cause of action. When similar question came before Venkatadri J. he referred it to a Full Bench whose decision is reported in *Mohmed Yousuf v. Ghulam Mohamed* : AIR1964 Mad1 . Ramachandra Ayyar C. J. who delivered the judgment on behalf of Full Bench after referring elaborately to all the decisions on the point of this and other courts, observed (at p. 940) (of ILR) : (at p. 7 of AIR) :-

'The result of the foregoing discussion is that an award made on a reference out of court but which had not been filed into court in accordance with the Act and judgment obtained therein, cannot ordinarily be put up as a defence to an action.'

It was however added that this did not mean that under no circumstances can an unfiled award be relied on as a defence to an action and if the terms of the award be relied on as a defence to an action and if the terms of the award had been fully performed by one of the parties thereto it must certainly afford a good defence to an action on the original cause of action by the other party. This was put on the principle of accord and satisfaction.

6. In the present case there is however no evidence to show that the award as such had been acted upon. It is therefore not possible to bring the case within the exception pointed out by Ramachandra Ayyar C. J. in delivering the Full Bench judgment. The present case would therefore come within the scope of the main principle that an unfiled award is no defence to the suit on the original cause of action. As it has not been disputed that the award in the present case had not been filed into court, the award could not have been relied upon as a defence by the defendant. The Court below was therefore wrong in non-suiting the plaintiff by relying on Ex. B.6. The appeal is accordingly allowed. A preliminary decree in respect of the half share of the plaintiff in A schedule properties will be passed. The rest of the decree of the court below is confirmed. There will be no order as to costs.

7. Appeal allowed.