

Kellie Vs. Fraser

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Court : Kolkata

Decided On : Jun-19-1877

Reported in : (1877)ILR2Cal446

Judge : Richard Garth, C.J. and ;Macpherson, J.

Appellant : Kellie

Respondent : Fraser

Judgement :

Richard Garth, C.J.

1. The appellant, Mr. Kellie, contends--

1st. That this Court had no jurisdiction to confirm the award, and

2ndly. That the authority of the arbitrators was revoked by both parties before the award was made.

2. In support of the first objection, it has been argued that the only Court competent to confirm the award under Section 327 was the Court in which a suit must have been brought to settle the differences between the parties, if those differences had not been referred to arbitration; and that as the subject-matter in dispute was a tea garden at Darjeeling, and as both the litigants were resident there, the suit would have been a suit for land, and must have been brought in the

Darjeeling district, and therefore that the Darjeeling Court was the only one capable of confirming the award.

3. The answer to this contention on the part of Mr. Frazer was that the suit under such circumstances would not have been a 'suit for land' within the meaning of Clause VI of the Letters Patent, and that as a part of the cause of action arose in Calcutta, inasmuch as the deed of partnership was executed there, the High Court might, although Mr. Kellie was resident at Darjeeling, have given leave to Mr. Frazer to bring this suit in the High Court; and that any Court in which such a suit might have been brought would have been 'the Court having jurisdiction' over the matter in dispute within the meaning of Section 327.

4. Upon this point, we have been referred to several authorities, some of which have been discussed by the learned Judge in the Court below; and particularly to the late case of *The Delhi and London Bank v. Wordie* I.L.R. 1 Calc. 249 where it was held that a suit brought for the purpose of compelling the sale of a trust property was a 'suit for land.' It will be observed, however, that in all, or almost all the cases upon which the appellant relies, the suit was brought for the purpose of acquiring the possession of, or of establishing a title to, or an interest in, the property which was the subject of dispute, more particularly in the case of *The Delhi and London Bank v. Wordie* I.L.R. 1 Calc. 249 where the object of the petitioner was to establish the title of certain trustees to a share in a portion of the trust property claimed by a person of the name of Lightfoot, and the establishment of this title was an essential element of the entire claim.

5. Now, in this case, it clearly appears, both from the description of the matters in difference and from the award itself, that Mr. Frazer's real object was to remove Mr. Kellie from the management of the partnership property, and to enforce a dissolution of the partnership upon such terms as the arbitrators should think proper. He did not seek to obtain possession of, or to acquire a title to, the tea garden, because that was already the property of the partnership, and the effect of the award was only to dissolve the partnership, and to dispose of the partnership property upon what they considered the most just and reasonable terms. I consider, therefore, that any suit instituted by Mr. Frazer to carry out those objects

would not have been a 'suit for land,' properly so called; and that as the High Court might have given Mr. Frazer leave to bring such a suit in the High Court, that Court had also jurisdiction, under Section 327, to confirm the award.

6. As regards the other point, viz., the alleged revocation of the submission to the arbitrators, I am of opinion that the evidence relied on by the appellant is not sufficient to justify us in finding that a revocation did in fact take place. It is true that, pending the proceedings, a telegram was sent from Darjeeling by both parties to Calcutta in these words, 'Stay further proceedings; arrange matters here;' but having referred to the circumstances under which that telegram was sent, and to the subsequent correspondence and conduct of the parties, we do not consider that this telegram operated, or was over intended to operate, as an absolute revocation of the submission.

7. I think therefore that the appellant has failed upon both grounds, and that the appeal should be dismissed with costs on scale 2.

Macpherson, J.

8. I also think that this appeal must be dismissed.

9. A suit the object of which was to deal with the matters, the subject of this arbitration, might certainly, in my opinion, have, with the leave of the Court first obtained, been instituted on the original side of this Court. The partnership deed having been executed in Calcutta, it seems to me that, according to the current of decision here, it is impossible to say that no part of the cause of action arose within the local limits of the ordinary original civil jurisdiction.

10. Of course if the suit were a suit for land, within the meaning of Section 12 of the Letters Patent of 1865, there would be no jurisdiction, the whole land lying in Darjeeling. But it is not a suit for land within that section. There is no dispute as to the title to the land. The questions at issue relate to the partnership between Kellie and Frazer, the mode in which its business has been and ought to be conducted, and the adjustment of accounts and winding up of the partnership. The mere fact that the object of the partnership was the carrying on of a tea concern does not

make a suit for adjustment of accounts and dissolution a suit for land. If it did, then this result would, follow that, although all the members of a partnership were permanently resident in Calcutta, and the chief business of the partnership, was, at the time of suing, and always had been, conducted in Calcutta, a suit for an account and dissolution would not lie here, if one asset of the partnership happened to be an indigo factory or a tea garden in the mofussil. Yet, in the case suggested, there can be no manner of doubt a suit could be entertained by this Court on its original side; and such suits have, in fact, been repeatedly entertained.

11. The peculiarity in the present case is that the defendant Kellie is not personally subject to the jurisdiction at all, save by reason of part of the cause of action (to wit, the execution of the partnership deed) having arisen in Calcutta. Had he been personally subject, by reason of residing in Calcutta, probably the question which has been raised would never have been suggested.

12. Some discussion has taken place as to the effect of the judgment of the Court in the case of *The Delhi and London Bank v. Wordie* I.L.R. 1 Calc. 249. But I cannot gather from the report that the decision of the Appellate Court in any way modified or altered the earlier decisions. For the only point actually decided by the Appellate Court is that as the owner of a two annas' share of the property denied that he had ever conveyed his share to the defendants, to whom it was alleged to have been conveyed as trustees, the question of title as to these two annas was directly in issue, and therefore the suit was a suit for land and could not be entertained.

13. On the whole, I have no doubt that a suit might, with the leave of the Court first obtained, have been instituted here. And if a suit would have lain there, it appears to me that the Court had jurisdiction under Section 327 to order this award to be filed. I agree with Mr. Justice Kennedy in declining to attach to the words of that section 'the Court having jurisdiction in the matter to which the award relates,' the limited and a special meaning contended for, and in construing them as meaning any Court having jurisdiction to entertain a suit for the matter to which the award relates.

14. I further agree in the opinion that there was no revocation of the authority to the arbitrators.

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