Champalal

Vs

Mst. Samarath Bai

Civil Appeal No. 34 of

(K. Subha Rao, Syed Jafar Imam, J. L. Kapur JJ)

21.01.1960

JUDGMENT

KAPUR J. -

This is an appeal against the judgment and order of the Nagpur High Court and arises out of proceedings under the Indian Arbitration Act.

The appellant in this case is Champalal and the respondent is Samarath Bai, the widow of Lal Chand. The parties who are Jains belong to Balapur in the district of Akola in the previous State of Madhya Pradesh. The relationship of the parties is shown by the following pedigree table :

Phool Chand | ---------- | | |Nanak Chand Khushal Chand Sundarlal | | |Bulakhidas = Lalchand = DeolalJivanbai Samarathbai | | | ---------- | | | | Babibai = Ratanbai = | Rasiklal Vijay Kumar | | ---------- | | | Ishwardas Baglal Digamber Das | | Champalal | | ---------- | | | Sakarchand Vinaychand Vimalchand##

On September 14, 1944, Lal Chand made a will by which he authorized his wife Samarath Bai to adopt Champalal and made certain disposition of his property. Lal Chand died on September 26, 1944. On October 20, 1944, the appellant made an application under s. 192 of Succession Act to the First Additional District Judge of Akola for the appointment of a Curator. This was Misc. Judl. No. 3 of 1944. Notices were issued to the respondent, Samarath Bai and her daughters. The will was registered on December 29, 1944. On January 10, 1945, an arbitration agreement was entered into between the appellant and the respondent and on January 16, 1945, both parties applied for stay of proceedings in the case (Misc. Judl. No. 3 of 1944) and the case was adjourned to March 28, 1945, and then was adjourned to June 18, 1945. On that date the arbitrators made an application to the First Additional District Judge for extension of time for four months for making the award. This application was opposed by the appellant but the court gave three months' time on July 26, 1946. The award was made on October 18, 1946. On October 21, it was filed by the arbitrators in the court of the First Additional District Judge who on October 30, gave to the parties ten days' time for objections. On November 15, 1946, the appellant filed objections to the award and on January 31, 1947, the respondent applied for a judgment in terms of the award and for a decree. The award was unregistered and therefore at the request of the respondent it was handed over for getting it registered to Mithulal who was an attorney of two of the arbitrators Magandas and Sakarchand. On February 7, 1947, he presented it for registration to the Sub-Registrar but the Sub-Registrar returned it as it was not accompanied by a list and particulars of the property covered by the award. On February 15, 1947 the list and particulars signed by Mithulal were supplied and the award was

represented for registration by Mithulal. As he was an attorney of only two of the three arbitrators the Sub-Registrar registered the document on March 26, 1947, in regard to said arbitrators and refused it qua the third arbitrator, Bhogilal. But under the orders of the Registrar the document was registered in regard to Bhogilal also and it was refiled on July 21, 1948, in the Court of the First Additional District Judge. He ordered the two proceedings one under s. 192 of the Succession Act and the other under the Arbitration Act to be separated and the proceedings under the Arbitration Act were ordered to be registered as a suit on August 14, 1948, and on August 30, the court ordered a proper application as required under the High Court Rules to be filed. On September 15, 1948, an application under s. 14(2) of the Arbitration Act was filed. On October 14, 1948, the appellant filed an application for setting aside the award and therein raised various objections which were rejected and on November 22, 1949, a judgment was passed in accordance with the terms of the award followed by a decree. Against this order the appellant took an appeal to the High Court which was dismissed on February 19, 1954. The High Court held that the application filed by the respondent dated September 15, 1948, under s. 14(2) of the Arbitration Act was not within time but the original application filed by the arbitrators on October 21, 1946, was within time; that no objection could be taken to the award on the ground that there were two awards one by the arbitrators and the other by Mithulal who had added to the award by giving the list and particulars; that the First Additional District Judge was authorised to extend time for making an award on the application of the arbitrators and he was properly seized of the case; that no misconduct had been proved and that no illegality had been established and that the appellant did not get anything under the will except on adoption nor was he until then constituted an executor. Against this judgment this appeal has been filed on a certificate by the High Court.

In appeal before us counsel for the appellant raised six points : (1) the filing of the award was not within time as no application was made under s. 14 within the time allowed by the Limitation Act; (2) that the award required registration and was not registered in accordance with law and the mere fact that it was registered does not clothe it with legality; (3) the First Additional District Judge had no jurisdiction to grant three months' extension of time to the arbitrators for making the award which was granted on July 26, 1946; (4) that the arbitrators were guilty of misconduct; (5) that the award is in excess of the power given to the arbitrators under the agreement of arbitration and (6) even if the award was proper and legal the respondent had refused to adopt the appellant and therefore the decree should have been as provided by the award on the happening of that contingency and in the alternative the First Additional District Judge who passed the decree had no jurisdiction to take subsequent events into consideration.

In our opinion points nos. 1, 2 and 3 are wholly without substance. The award was made on October 18, 1946, and the arbitrators filed it in the court of the First Additional District Judge and they also gave notice to the parties by registered post informing them of the making of the award. It has not been shown as to how the filing of the award is barred by limitation. Article 178 of the Limitation Act which was relied upon by the appellant applies to applications made by the parties and not to the filing of the award by the arbitrators.

The second question that the award required registration and could not be filed by the arbitrators before it was registered is equally without substance. The filing of an unregistered award under s. 49 of the Registration Act is not prohibited; what is prohibited is that it cannot be taken into evidence so as to affect immoveable property falling under s. 17 of that Act. That the award required registration was rightly admitted by both parties. It was contended by counsel for the appellant that under s. 21 of the Registration Act and the rules made under s. 22 a description of the property was necessary and as that was supplied through Mithulal who, according to counsel, did not have the

necessary authority to do so, the award must be taken to be an incomplete document which could not be registered. The High Court has found that in the circumstances of this case lists were not necessary and therefore anything done by Mithulal whether authorised or not will not affect the legality of the registration. The third point that the First Additional District Judge before whom the application was made for extending the time for making the award had no jurisdiction is also not sustainable. It so happened that the court which had jurisdiction to entertain applications for the filing of awards was the same before whom the application under s. 192 of the Succession Act had been filed. If that court was the proper court in which such applications were to be made then no defect can be found in the application being made to that court or that court giving such extension.

The ground on which the charge of misconduct of the arbitrators was founded was that the arbitrators had before hearing the parties decided amongst themselves that they would give a particular award. The High Court has found that this charge has not been proved. It was based on a statement of the appellant that one of the arbitrators, Magandas, had suggested to him that he, the appellant, should agree to give to the respondent an absolute estate in a portion of the property and if that was done the dispute would be settled, but he was agreeable only to giving a life estate and the arbitrators then told him that in that case they would give an absolute estate to the respondent. As the High Court has pointed out this fact was not pleaded in the first application of objections filed by the appellant and it was in its opinion an after-thought. Reliance was also placed on the following statement of Magandas in cross-examination as P.W. 3 :

> "We had decided as to how the award was to be made by us, but as these two persons did not come we made the application to the Court for extension of time".

But the explanation of the other arbitrators was that they wanted to bring about an amicable settlement and had gone to Balapur and then to Akola. The appellant and his brother had promised to follow them there but as they did not turn up an application was made for extension of time. There is nothing wrong in what the arbitrators did and it cannot be said that any inference of misconduct can be drawn from this evidence.

It was then submitted that the award was in excess of the powers given to the arbitrators and was therefore invalid. This point was divided into three points : (i) that the reference itself was invalid and therefore the award was a nullity; (ii) that the award was in excess of powers given to the arbitrators and (iii) the award was contrary to law on the face of it. In support of point No. (1) it was submitted that the appellant having accepted the office of an executor could not enter into an arbitration concerning the execution, authority to adopt or the property covered by the will. It is unnecessary to decide the vitality of this point because according to the true construction of the will the appellant was not to become the executor till he had been adopted. Paragraph 10 of the will was as follows :

> "I have this day, made as above the will of my estate. Under this will, I am authorising the said Champalal Ishwardas to execute the same. I have appointed him the executor of this will. Under the said will, the said Champalal alone shall be the full owner of my entire movable and immoveable property and the executor of the will after my death if I adopt him during my lifetime or even if my wife adopts him (after my death)."

The words "under the said will the said Champalal shall be .... the executor of the will after my death if I adopt him during my lifetime or even if my wife adopts him after my death" show that the

appellant was to become executor after his adoption and as he was not adopted he cannot be the executor and therefore the argument that an executor cannot enter into arbitration does not arise and we do not think it necessary to decide this matter beyond saying that the appellant was not constituted an executor eo nominie but was to be an executor if he was adopted. Similarly the question whether the appellant after accepting the office of an executor had renounced it or a discharge was necessary under s. 301 of the Succession Act does not arise.

Points (ii) and (iii) may be taken up together. It was argued that the award is in excess of the power given to the arbitrators because it determined the rights of the appellant as an executor and because it was in excess of para. No. 1 of the arbitration agreement which provided that the arbitrators should maintain the gifts to charities and the gift in favour of the testator's daughters and others. It is difficult to see how the award has lost sight of this paragraph. As a matter of fact the arbitrators have maintained the gifts to charities and other gifts made by the testator in the will and they have clearly stated that the person becoming the owner of the deceased's property, will have to provide for the maintenance of the persons named in the will and pay the charities therein enumerated.

Another objection raised was that according to the arbitration agreement the arbitrators had to enforce the will and not to act outside it and also they could not impose a limit of time for adoption. How they have acted dehors the will has not been shown. The contention raised was that according to the arbitration agreement the arbitrators had to decide in what proportion the parties to the dispute were to "enjoy" the estate of the testator and not that one of them will get nothing at all. As we read paragraph 10 of the will, and the High Court also so construed it, the appellant could get the property of the testator only if he was adopted by the testator or his widow, the respondent. It is not correct, therefore, to read the term of the arbitration agreement as meaning that the appellant was to get at least some portion of the property irrespective of his being adopted.

Paragraph 2 of the arbitration agreement shows that they had also to decide that in case the respondent adopted the appellant what should be the respective rights of the parties in the estate. The arbitrators decided that the respondent should adopt the appellant according to Hindu Law within four months before February, 1947, and if the respondent failed so to do within the time above specified the appellant would be the heir and executor of the deceased's entire property and the respondent would be entitled to Rs. 200 per mensem as maintenance. But if in spite of the respondent's readiness to adopt the appellant refused to be adopted within four months, he would not get any rights in the property of the deceased nor would he be the executor. As it was specifically stated in the arbitration agreement that the consequences of the adoption or non-adoption were to be decided by the arbitrators, they rightly laid down what was to happen if the adoption did not take place and also provided that if it was due to the default of the appellant one consequence will follow and if it was the default of the respondent another consequence would follow. The words of the agreement

> "In the same way the arbitrators may also decide that in case it is decided that the party No. 2 should adopt the party No. 1 and if that thing is accepted by the party No. 1 and in case the adoption takes place, what shall be the rights of both the parties and how they will stand in respect of the property ....." mean that the power to limit the time was implicit because the happening of these events could not be left for a limitless period.

The courts below have found on the evidence that the appellant was not prepared to be adopted. We have been taken through the evidence and we find no reason to differ from the opinion of the High

Court that the appellant was not prepared to be adopted. His attitude in regard to that matter is clear from ground No. 37 of the Grounds of Appeal taken by him in the High Court which was:-

> "The lower Court erred in holding that Champalal was not within his rights in consenting to get adopted by Mt. Samarathbai within the time fixed by the arbitrators without prejudice to his objections against the award."

and the courts have rightly come to that conclusion. In this view of the matter the alternative argument of taking subsequent events into consideration does not arise.

It was also argued that by making the award the arbitrators had perverted the line of succession. All that the award has stated is that in case the adoption takes place the respondent would receive 1/4 share of the property of the testator and it would form her stridhana. How that has perverted the line of succession is difficult to understand.

There is no force in this appeal and it must therefore be dismissed with costs.

Appeal dismissed.

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