

Charan Singh and Ors.

Vs

Babulal and Ors.

Civil Appeal No. 76 of 1964

(K.N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

25.03.1966

JUDGMENT

SIKRI, J.-

This appeal by special is directed against the judgment of Dhavan, J., in Civil Revision No. 1209 of 1957. The learned Judge, following Sarju Prasad v. Civil Judge, Farrukhabad [I.L.R. [1959] 1 All. 354] held that an order of the Court on an objection against an award made under s. 12(4) of the Uttar Pradesh Consolidation of Holdings Act (U.P. Act V of 1954) (hereinafter called the Act) was appealable under s. 39 of the Arbitration Act (X of 1940) Mr. J. P. Goyal, learned counsel for the appellant urged that this decision of the Allahabad High Court is wrong.

In order to appreciate the contentions of Mr. Goyal, it is necessary to give a few facts and set out the relevant statutory provisions. During consolidation proceedings in village Dharaki-Garhi, a question of title arose. The Consolidation Officer, acting under s. 12(4) of the Act, referred the question of title to the Civil Judge, Aligarh, who referred the same to the arbitrator, Shri Vikram Singh, who had been appointed under s. 37 of the Act. Section 12(4) reads as under :

"12(4) Where the objection filed under sub-section (1) involves a question of title and such question has not already been determined by a competent Court, the Consolidation Officer shall refer the question for determination to the Civil Judge having jurisdiction who shall thereupon refer it to the Arbitrator."

Section 37 provides :

"37. Arbitration - (1) Where any matter is, by or under this Act, directed to be referred to an Arbitrator for determination, the Arbitrator will be appointed by the State Government from amongst Civil Judicial Officers or Assistant Collector of the 1 class of not less than five years' standing and in all other respect the matter shall be determined in accordance with the provisions of the Arbitration Act, 1940.

(2) The appointment of an Arbitrator under sub-section (1) may be made either generally or in respect of any particular case or class of cases or in respect of any specified area or areas."

The arbitrator gave his award on May 14, 1956, and submitted the same to the Civil Court for final decision. On May 19, 1956, Charan Singh, Dungar Singh, Maharaj Singh and Lajja Ram, appellant before us, filed objections before the Civil Judge, Aligarh. The Civil Judge, on September 8, 1956,

modified the award dated May 14, 1956. Babu Lal, Mohar Singh and Ram Piyari filed an appeal before the District Judge against the order of the Civil Judge, dated September 8, 1956. Before the District Judge, a preliminary objection was raised that no appeal lay against the order of the Civil Judge. The District Judge overruled the objection. On the merits, the District Judge held that the Civil Judge was not justified, under s. 15 of the Arbitration Act, in modifying the award merely because he disagreed with the finding. He, therefore, allowed the appeal and set aside the order of the Civil Judge modifying the award, and the award announced by Shri Vikram Singh was accepted.

Charan Singh, Maharaj Singh, Doonger Singh and Lajja Ram filed a petition before the High Court under s. 115 of the Civil Procedure Code. As stated above, Dhavan, J., dismissed the petition on the ground that an appeal lay under s. 39 of the Arbitration Act. This Court granted special leave and now the matter is before us.

Mr. Goyal contends that s. 37 of the Act applied the provisions of the Arbitration Act only as far as procedure is concerned, and s. 39 of the Arbitration Act which provides for appeals does not apply to arbitrations referred to in s. 37 of the Act. He relies strongly on s. 12(6) of the Act which provides that the decision of the arbitrator under sub-s. (4) shall be final. We have already set out s. 12(4). He, however, does not contend that the provisions of s. 15 of the Arbitration Act do not apply because the appellants had apparently applied under s. 15 of the Arbitration Act to the Court to modify the award made by Vikram Singh and they had succeeded in getting an order modifying the award in their favour.

In our opinion, the High Court arrived at the correct conclusion in *Sarju Prasad v. Civil Judge, Farrukhbad* [I.L.R. (1959) 1 All. 354] and *Sayeed Ullah Khan v. The Temporary Civil Judge of Sultanpur*. [I.L.R. (1959) 1 All. 331] Section 12(4) of the Act provides for a statutory arbitration and s. 37 of the Act provides for the appointment of an arbitrator by the State Government. It seems to us that apart from the question of appointment of the arbitrator, in all other respects the matter referred to, i.e. the question of title referred to under s. 12(4), shall be determined in accordance with the provisions of the Arbitration Act. Section 37 of the Act does not make any distinction between provisions like s. 39 and s. 15 of the Arbitration Act. Further, the effect of s. 46 and s. 47 of the Arbitration Act is that all the provisions of the Arbitration Act except sub-section (1) of section 6, ss. 7, 12, 36 and 37, apply to arbitrations under the Consolidation of Holdings Act. Section 37 of the Act cannot be held as providing anything inconsistent with this. In our opinion, the effect of s. 37 of the Act, read with ss. 46 and 47 of the Arbitration Act, is inter alia to apply ss. 15 and 39 of the Arbitration Act to the proceedings under the Act. It is not necessary to rely on rr. 63 and 64 of the Uttar Pradesh Consolidation of Holdings Rules, 1954, but we may mention that they proceed on the basis that ss. 15, 16 and 30 of the Arbitration Act apply to the arbitration proceedings under the Act.

Mr. Goyal then urges that this Court in the case of *Attar Singh v. The State of U.P.* [[1959] Supp. 1 SCR 928] understood s. 37 of the Act to mean that it makes the Arbitration Act applicable to the proceedings before the arbitrator in the matter of procedure only. It is true that at p. 935 of the judgment, Wanchoo, J., observed :

"Further s. 12 provides that where there is a dispute as to title and such question has not already been determined by any competent Court, the Consolidation Officer has to refer the question for determination to the Civil Judge who thereafter will refer it to the arbitrator. The arbitrator then proceeds in the manner provided by r. 73 (sic 63) and gives a hearing to the parties and takes evidence both oral and documentary

before making his award; and s. 37 of the Act makes the Arbitration Act applicable to the proceedings before the arbitrator in the matter of procedure."

We are unable to agree with Mr. Goyal that this passage in any manner decides the point which is before us. This Court in Attar Singh's [[1959] Supp. 1 SCR 928] case was concerned with the validity of the Act, and ground No. 2 which was urged before the Court was :

"Sections 8, 9 and 10 read with s. 49 of the Act provide a procedure for the correction and revision of revenue records for villages under consolidation, which is vitally different from that applicable to villages not under consolidation, and there is thus discrimination which offends art. 14 of the Constitution."

In dealing with this ground, Wanchoo, J., made the observations which have been set out above. There was no question there of considering the effect of ss. 46 and 47 of the Arbitration Act, or considering whether s. 39 of the Arbitration Act applies to Arbitrations under s. 12(4) of the Act.

Mr. Goyal also laid a great deal of emphasis on s. 12(6) of the Act which provides that the decision of the arbitrator under sub-s. (4) shall be final. In our opinion, s. 12(6) must be read with s. 37 of the Act, and if it is so read it is quite clear that what is made final is the decision of the arbitrator as it emerges after appropriate proceedings, if any, have been taken under the provisions of the Arbitration Act.

In the result we hold that the High Court is right in holding that the decision of the Civil Judge modifying the award was appealable under s. 39 of the Arbitration Act. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

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