

# PUNJAB AND HARYANA HIGH COURT

Khela Wati

Vs

Chet Ram Khub Ram

(Kapur , J.)

24.05.1951

## ORDER

**Kapur, J.**

1. This is a defendant's revision against an appellate order of the Additional District Judge, Hoshiarpur, allowing the appeal against an order of the Subordinate Judge whereby he refused to pass a judgment in accordance with the award.

2. On the 21st of May 1946, Hira Lal, husband of Khela Wati, is alleged to have made a will by which he left the whole of his estate to a relation of his Chet Ram. Hira Lal belonged to village Jagat Sukh which has a Co-operative Society called "The Anjuman Imdad Bahmi Salsi, Jagat Sukh Limited, of which it is claimed all the inhabitants to the village are members. In accordance with the rules of this Society the question, whether a will had been made by Hira Lal, or not and whether it was genuine or otherwise, was referred to arbitration. The arbitrators gave an award that the will was not proved and dismissed the claim of Chet Ram. Under Rules 35 and 36 of the Society, which are alleged to have been made under Section 43 of the Co-operative Societies Act, an appeal was taken to the Managing Committee of the Society. This Managing Committee, which consisted amongst others of very close relations of Chet Ram, namely, Panna Lal, Jalpu Ram, Chini and friends of Chet Ram namely Indar Singh and Khub Ram, set aside the award of the arbitrators and held that the will was valid. The appellate orders of this Committee ended in the following words "Appeal 'bahal karte hain'" whatever that may mean.

3. On the 14th of January, 1948, Chet Ram made an application for the filing of the award. Really it was the filing of the order in appeal to the Executive Committee of the Society which was dated the 24th October, 1947. The defence was that the award was inadmissible in evidence for want of registration and the arbitrators had been guilty of misconduct as the members of the Society were relatives and friends of Chet Ram. The first Court dismissed the application and an appeal was taken to the Additional District Judge who held that the award was a decree and it did not require registration, that the arbitration was under the statutory rules made under Section 43

of the Co-operative Societies Act and could not be agitated in a civil Court and that as no receipt of illegal gratification was proved there was no misconduct by the Executive Committee of the Society which sat in appeal and he therefore passed a decree in accordance with the award.

4. In revision it is submitted that the proceedings before the arbitrators were without any jurisdiction. A society is formed under Section 4 of the Co-operative Societies Act which provides :

"Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability: Provided that unless the Local Government by general or special order otherwise directs : (1) the liability of a society of which a member is a registered society shall be limited; (2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited."

5. It is submitted that to provide for decision of cases is not an object which comes within the phrase "The promotion of the economic interests of its members in accordance with cooperative principles of a society" as used in Section 4 of the Act. At any rate no arbitration can be provided in regard to genuineness or otherwise of wills. Reliance is placed on page 39 of the Law of Arbitration in British India by N. N. Sarkar where the learned author has said that question of genuineness of a will cannot be referred to arbitration. Counsel also relied on '*Monmohini Guha v. Banga Chandra Das*<sup>1</sup>', , where it was held that even an agreement of compromise as regards the genuineness of a will and its due execution is not lawful if the effect is to exclude evidence in proof of the will, and unless a will is proved in some form, no grant of probate can be made merely on the consent of parties. Counsel then referred to '*Mt. Janakbati Thakurain v. Gajanand Thakur*<sup>2</sup>', where the same rule was laid down as regards the grant of probates. In a Bombay case the Appeal Court presided over by Farran, C. J., held that the question of probate of a will cannot be referred to arbitration and the reason is obvious because where the parties agree by making a compromise or an award is given by an arbitrator the duty of the Court still remains of either granting or refusing to grant a probate.

6. I must, therefore, hold that the question of genuineness of the will is a matter which should be decided by a Probate Court and not by an arbitrator under the Co-operative Societies Act.

7. It is not quite clear as to what exactly was the reference to the arbitrators. The original arbitration agreement has not been produced, nor the award which was made by the arbitrators appointed by the parties, but what has been produced is a copy of the appellate order of the Executive Committee of the Society and it is difficult to say that that is an award. It appears to

me that the Courts below have treated this matter most perfunctorily. Nobody seems to have taken the trouble of finding out what the dispute between the parties was, what the parties were referring to arbitration and what exactly was the award made by the arbitrators. Before me it is submitted that the arbitration is vitiated by misconduct of parties and all that the learned District Judge has said is that this is an arbitration under the rules made under Section 43 of the Co-operative Societies Act and he has referred to certain rules, but the very first clause of Rule 18 under that Act is that any point in difference between the members shall be referred to the Registrar of Co-operative Societies Act who can decide the matter himself or can appoint arbitrators to go into the matter. In this particular case such a thing was not done and the learned Judge has contented himself by referring to Clauses (j) & (k) of Rule 18 of the Rules made under Section 43. If Clauses (j) & (k) of Rule 18 apply, then Sub-rule (a) of Rule 18 also applies. The proceedings taken before the arbitrators, in my opinion are so much against natural justice that they cannot be enforced. The original arbitrators while making the award held the will to be forged and the Appellate Tribunal, which had on it very close relations and friends of Chet Ram plaintiff, upset that finding. The award by these persons in my opinion cannot be upheld.

8. It was next contended that the award sought to be made a rule of the Court is vague. With this submission I agree, In view of these findings it is not necessary for me to go into the other points raised, because in my opinion question of genuineness or otherwise of a will cannot be referred to arbitration but must be decided in accordance with the law dealing with probate of wills under the Indian Succession Act.

9. Even if the arbitration was under the Cooperative Societies Act the conduct of the case and the decision is against all causes of justice and certainly against natural justice. I would be quite prepared to set aside the order of the Tribunal even under Article 227 of the Constitution.

10. In the result this revision is allowed and the rule made absolute. The order of the District Judge making the award a rule of the Court is therefore set aside. The petitioner will have his costs in this Court and in the Court below.

Cases Referred.

131 Cal 357  
220 CWN 986