

TRAVENCORE COCHIN HIGH COURT

Parameswararu

Vs

Narayanaru

A.S. No. 570 of 1124

(Koshi and Govinda Pillai, JJ.)

11.01.1952

JUDGMENT

Govinda Pillai, J.

1. Plaintiffs 2 to 4 are the appellants. Plaintiffs 1 to 4 and defendants 1 to 3 were members of an undivided Namboodiri Illom of which the 1st plaintiff was the Karnavan. There are three branches in the Illom. The 1st branch is represented by the 1st plaintiff, the second branch by plaintiffs 2, 3 and 4, and the third branch by defendants 1 to 3. The plaint schedule properties belonged to the Illom. There were disputes between the plaintiffs and defendants regarding the management of the Illom properties and to settle them the matter was referred to an arbitration by executing an agreement by all the adult members on 17-7-1119. The arbitrators were Messrs. M.R. Madhava Warriar, a senior Advocate of the Mavelikara Bar and K.N. Nilakanta Kaimal and P. Narayana Pillai, Vakils of the Thiruvella Munsif's Court, They considered the question referred to them and passed an award on 17-8-1119 after giving notice to the parties. Copies of the award were also given to the plaintiffs 1 and 2 and the 1st defendant. The copy given to the 2nd plaintiff was produced along with the plaint. All the parties accepted the award and agreed to abide by its terms and accordingly the shares in the money mentioned in schedule E to the award were received by them from the arbitrators by passing the receipts. Under this award the A schedule properties were allotted to the 1st plaintiff, C and D schedule properties to the plaintiffs 2 to 4 and portion of F schedule to plaintiffs 1 to 4. The rest went to the defendants. Subsequently the 1st defendant at the instigation of the interested parties sent notice to the arbitrators objecting to the award. He was attempting to act against the provisions of the award. The petitioners therefore filed a petition purporting to act under rule 20, Order 39 Civil Procedure Code Their prayer was to give notice to the arbitrators to file the original award and then to pass a decree thereon and also to allow them their costs from the first counter-petitioner. The lower court registered this petition as an original suit No. 98 of 1119 and issued summons to the counter-petitioners treating them as defendants. The 1st defendant opposed the plaintiffs. He stated that the points referred to

in the arbitration agreement had no due consideration at the hands of the arbitrators, that no evidence was taken or called for, that the contentions of the parties were not heard, that Sarwaswadanom properties were not included in the agreement, that the self-acquisitions of Krishnaru the father of the 1st defendant were not intended to be included in the arbitration proceedings, that the passing of the award was not notified to all the members of the Illom, that the award was vague and indefinite and was not written according to law, that it was made without the knowledge and consent of the 1st defendant, that he had repudiated the same at the earliest possible opportunity and that the award was not to be accepted. The plaintiffs denied all these statements made by the 1st defendant, by filing a replication.

2. On the contentions raised by the parties, issues were settled and the court took also evidence by examining the witnesses and accepting the documents. When the case was taken up for argument the defendants raised a contention that the petition filed by the plaintiffs to cause the award to be filed was not maintainable, for the same was done under rules 17 to 21 of Order 39 of the C.P.C., that those rules were repealed and Arbitration Act 11 of 1115 had been passed, and that under clause 2 of Section 11 of this Act the parties to the arbitration had no right to put in a petition to cause the award to be produced. The petition was therefore impeached to be not maintainable. The court below accepted the defence contentions raised at the final stage of the case and dismissed the suit without costs. The plaintiffs have come up in appeal.

3. The petition by the plaintiffs 2 to 4 which was filed as a plaint and numbered as an original suit had been filed on 13-11-1119 when rules 17 to 21 of Order 39 of the Civil Procedure Code had been repealed by Section 3 of Act 11 of 1115. Act 11 of 1115 provided for arbitration except through the intervention of the court. Section 11 there provided for the procedure to be followed when the arbitrators had passed the award. It laid down that the award was to be filed by the arbitrators in court at the request of the parties who referred the matters to the arbitration. It was therefore contended that no party could approach the court in the first instance to cause an award to be filed in court and to ask for its enforcement. Opinion is divided as to the propriety of the party approaching the court for an order for the production of the award by the arbitrators without first requesting the arbitrators to file the award. When an award is produced in court under Section 11, the court has only to hear objections as provided for in the subsequent sections and pass an order to have it filed in court. No decree on the same need be passed and the award itself could be executed as if it is a decree. But the provisions in Act 11 of 1115 do not take away the rights of a party to file a suit to enforce the award, so that a decree could be passed by the court on the basis of the award. The rulings in - '*Chanda Pillai v. Chacko*', and - '*John Batt and Co. v. Kanooral and Co*', support this position. Virtually, the plaintiffs' petition was to have a decree passed on the award, which the court could have done, even if it found that the petition filed quoting the repealed provisions of the Civil Procedure Code was not maintainable. The appellants' learned Advocate, when asked, stated that he was prepared to proceed as if the petition itself was a plaint in a suit to enforce the award and for passing a decree. This would necessarily make them liable to pay additional court fees. In order to advance substantial justice

to the parties we think that the plaintiffs must be allowed to treat their petition as a plaint and continue the suit after paying the necessary court fees in the court below. The decree now passed by the lower court is set aside. The case is sent back for disposal in the light of the

¹1947 Trav LR 799

²AIR 1926 Cal 938

directions given above. The costs hitherto incurred by the parties will abide the final result of the suit.

Case remanded.