

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Makund Ram Sukal v. Saliq Ram Sukal, from the Court of the Judicial Commissioner of the Central Provinces of India ; delivered 27th January 1894.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD SHAND.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

Makund Ram, the Appellant, and Tulsi Ram, the father of the Respondent, were brothers, and the suit from which this appeal arises was brought by Makund Ram against Tulsi Ram for partition of moveable and immoveable property in their joint possession, full details of which were given in lists annexed to the plaint. Tulsi Ram, in his written statement, admitted that he and Makund Ram were brothers and were entitled to the property in equal shares, but he submitted that the greater part of it had been partitioned, and that Makund Ram, the Plaintiff, was only entitled to claim partition as regards such of the property as remained unpartitioned, the particulars of which were given in Schedules F. and G. to the written statement. He alleged that by an agreement dated the 14th of May 1874 it was referred to arbitrators appointed by the parties to make partition of all the property ; that the arbitrators

met and proceeded step by step, at the request and with the consent of the parties, to divide the great bulk of the property, and the Plaintiff and Defendant each took possession of what came to his share and prayed that the property which had not been partitioned or divided might be partitioned and divided by the Court.

The agreement to refer is in these terms :

“ We Makund Ram and Tulsi Ram Sukals are zemindars of mouza Bhonas tahsil Harda in the Hoshangabad district. Whereas we, both brothers, are not on good terms with each other, it is evident that it is not proper now to live jointly. Within British dominions each of us two brothers is entitled to half and half share of moveable and immoveable property whether ancestral or self-acquired or standing in the names of sons nominally; and we wish that the aforesaid property may be divided into two equal shares by arbitration. We therefore on our behalf nominate Narain Bhai Seth resident of Timurni, Sukhdeo Seth resident of Harda, and Manik Chand Seth agent of Bhajju Shah Deochand Seth and residing at Hoshangabad, as arbitrators; and we hereby agree and bind ourselves in writing that none of us two will object to the taking and accepting of a thing allotted to his share by the arbitrators above named having equally divided the property into two shares of the two brothers.”

On the 3rd September 1874 the arbitrators made their award, the first part of which is as follows:—

“ 1. On the 15th May we held a meeting at village Bhonas and we allowed both the parties to divide cash, gold silver, jewels, and precious stones, &c., between them. We adopted this measure with a view that strangers may not obtain a knowledge of such property. Both the brothers accepted and agreed to this arrangement and divided the property mutually. They admitted having done so before Mr. Nedham, Assistant Commissioner, and all the arbitrators. Further they took possession of their respective shares.

“ 2. On the 16th May the arbitrators proposed as follows regarding the division of the dwelling-house at mouza Bhonas. We the arbitrators arranged to divide the dwelling-house into two equal parts and to draw the share of each brother by lots. They would have then taken the share falling to their respective lots but Makund Ram Sukal refused to draw lots and stated that if Tulsi Ram paid him half price of the house to be fixed by him he can take the house. And if he does not like to do so he Makund Ram would take the same and pay Tulsi Ram half the price. On this the meeting of the arbitrators closed (for that day). On the 17th day of the same month before Manikchand and Sookhdeo Seth Makund Ram valued the house at

thirty thousand rupees and stated that if Tulsi Ram pays him Rs. 15,000 viz. half of that amount (Rs. 30,000) he can possess the house with its limits. Tulsi Ram accepted the above arrangement and expressed his willingness to pay up Rs. 15,000 and to take possession of the house. On this Makund Ram Sukal backed out of his agreement and the meeting of the arbitrators closed that day in consequence. Again on the 30th May we the arbitrators, except Manikchand, went to mouza Bhonas to divide the house in question. At this time the property of the description of clothes, utensils, &c. was divided. Regarding the partition of the house both the brothers at our advice agreed to divide the house according to the plan drawn up by us on the same day. This plan shows the boundaries of the house. Both the brothers signed this plan and accepted partition according to it. They attested this partition before Mr. Nedham and us the arbitrators in whose presence it took place. They also took possession of their respective shares. Further Makund Ram agreed to receive Rs. 1,000 as damages and cost of building walls &c. and Tulsi Ram Sukal agreed to pay up the sum, and therefore Makund Ram is entitled to get this amount. The above partition took place with our unanimous opinion and full consent of both parties. Northern part of the house came into the share of Tulsi Ram, while the southern into the share of Makund Ram."

The award then proceeds to divide the Harda villages. It states that two lists were prepared by Makund Ram, one of Bhonas circle and the other of Pokharnee, the properties in them being found by the arbitrators to be of equal value. Tulsi Ram agreed to take Bhonas circle and Makund Ram, the award says, accepted Pokharnee of his own free will; that the arbitrators signed the lists, and both the brothers took possession of their shares. The list of the villages in each circle is given in the award. It then states that all the houses situate in Harda were divided on the 29th and 30th June with the unanimous consent of the arbitrators, and a plan drawn in English and Hindi was filed which showed what houses were allotted to Tulsi Ram and what to Makund Ram. One named house was to remain in the possession of Tulsi Ram, he paying Rs. 600 to Makund Ram. The award then states that the houses were divided by two lists being made and lots drawn. It then states that on the 2nd

of August the arbitrators assembled to divide the remaining undivided property, and that they divided all the property according to the lists filed by Tulsi Ram in the manner after stated, but with the exception of grain the remainder of the award does not make a partition of the property, and it has been seen that Tulsi Ram in his written statement admitted this. An application to file the award, under the provisions of Section 327 of the Civil Procedure Code was made by Tulsi Ram on the 21st January 1875, and was refused on the 29th March 1875 on the ground that the award was incomplete and incapable of execution.

In 1877 Makund Ram brought his suit for partition. It was first tried by the Deputy Commissioner of Nimar who gave his judgment on the 18th September 1878. In it he found that soon after the arbitration commenced Makund Ram showed by his general behaviour and various overt acts his dissent from nearly all the decisions of the arbitrators as they were given from time to time, and that it was mainly due to his persistent obstructiveness that a full and complete award was not given, but that whether under protest or no he took possession of the share of the landed property that was awarded to him. The decree was that the Plaintiff's claim for partition for such of the family property as was described in the award of the arbitrators should be dismissed, that the debts due to the family before the partition should be divided under the orders of the Court into two equal shares, and that the property described in the Schedules F. and G. should also be divided into two equal shares.

Makund Ram appealed to the Court of the Additional Commissioner, and the suit was on the 2nd April 1879 remanded by that Court in order that the value of the undivided property might be ascertained in such a manner as might enable

the Lower Court to divide it equally between the Plaintiff and Defendant. The proceedings on this remand were returned to the Additional Commissioner's Court of the Nerbudda Division to which the suit had been transferred, and it appearing that there was a technical objection which invalidated them the suit was on the 3rd January 1880 again remanded. After this there appears to have been great delay on the part of the Deputy Commissioner of Nimar, and the suit was by an order of the 19th April 1883 transferred to the Court of the Deputy Commissioner of Hoshangabad. The record and proceedings with a report of Commissioners of the 16th October 1883 having been returned by the Deputy Commissioner to the Commissioner's Court, Nerbudda Division, judgment was given on the 1st May 1884. In it the Commissioner held that so much of the Plaintiff's pleas in appeal as related to the arbitrators and their award had been disposed of by the Additional Commissioner's judgment of the 2nd April 1879, and made a decree upholding so much of the decree of the Lower Court of the 18th September 1878 as dismissed the Plaintiff's claim for partition of property divided by the award, and modified the rest of that decree by adopting the Commissioner's report of the 16th October 1883, and the lists marked 1, 2.

From this decree the Plaintiff appealed to the Judicial Commissioner, and Tulsi Ram having died, Saliq Ram his son and heir was made Respondent. On the 17th August 1885 on an objection by the Plaintiff that the judgment of the Additional Commissioner of the 2nd April 1879 did not dispose of his objections to the decision of the Deputy Commissioner of Nimar of the 18th September 1878 in respect of the validity of the partition of property made by the arbitrators, and that the Plaintiff was entitled to have those objections in appeal

adjudicated on, the Judicial Commissioner held that the Plaintiff was so entitled and that it was not sufficient simply to ignore them ; and the suit was remanded to the Lower Appellate Court to decide the pleas in appeal against the decision of the First Court declaring that the partitions of property made in 1874 by the arbitrators or otherwise were valid and not liable to be disturbed. The judgment of the Commissioner on this remand was given on the 22nd April 1886 and being a judgment of a First Appellate Court it is as regards the facts found final.

It will be convenient here to notice that the objections taken in this appeal by Mr. Finlay on behalf of the Plaintiff were that the award was bad as it did not deal with all the matters submitted, and was uncertain, and that Makund Ram objected to go on and only did so under pressure. The judgment says " I hold that the Appellant " has altogether failed to show that the reference " to arbitration was made under misapprehension, " and still less under compulsion. . . . As " to compulsion it is absurd on the face of it, " having regard to the Plaintiff's age and position " at the time, and to the fact that no one of the " local authorities had any conceivable interest " in bringing compulsion to bear on either " party. . . . The point for determination " seems to be what weight is to be attached " to the Appellant's own signature of the " document whereby he elected the Pokurni " chuck. On this point the document itself is " the best evidence, and I entirely agree in the " view urged by Respondent's Counsel that this " document represents an amicable division, " voluntarily and deliberately made by both " parties. Some inequality in the net profits of " the chucks was apparent on the face of the " lists when they were signed, but I must hold " that the Plaintiff knew quite well what he was

“ about when he signed them, and that he signed  
 “ deliberately. . . . As to the cash gold and orna-  
 “ ments I agree with the Lower Court that they  
 “ were amicably divided between the parties at  
 “ the arbitrators’ suggestion and instance. . . .  
 “ As regards the house at Bhonas there is every  
 “ reason to believe that the division was amicable  
 “ and complete. As regards the Harda houses  
 “ there is no evidence of inequality or unfairness  
 “ in the award.”

This judgment is a complete answer to the objection that Makund Ram was under pressure and was compelled to agree to the arbitration and to proceed with it. Also it is found as a fact that the parties agreed to and made a division of parts of the property, without any condition that this was not to be final and was to be dependent upon the whole of the property being divided. If the arbitrators had done this by their own authority only, the cases referred to by Mr. Finlay might have been applicable, but it was competent to the parties when they were before the arbitrators to agree to the division being made by steps and that each division should be final. It was a convenient plan and it was for their interest to adopt it. They might waive the condition that a complete partition must be made of the whole of the property. The ground upon which an award which does not dispose of all the matters referred has been held to be invalid appears to be that there is an implied condition that it shall do so. Upon the facts which have been found by the First Appellate Court their Lordships think that the award so far as it makes a division of the property is valid.

A report of Commissioners as to the division of the property not divided by the award having been submitted to the Deputy Commissioner he on the 6th July 1887 submitted the papers to the Court of the Commissioner of the Nerbudda

Division the Judge of which made a decree in these terms:—"It is ordered that—(1) The "arbitration award dated 3rd September 1874 "is upheld with respect to all property said in "that award to have been divided. (2.) That "the undivided property will now be divided in "accordance with the list appended to the "Commissioner's report dated 25th June 1887, "which has been fully accepted except as regards "the three villages of Sonkheri, Lakhanpur, and "Samara. Those three villages will now be "allotted to plaintiff Makund Ram, and de- "fendant Saliq Ram will receive in lieu thereof "Rs. 24,000."

Saliq Ram appealed to the Judicial Commissioner, one of his grounds being that the Lower Appellate Court ought to have awarded to him a half share of the villages and the rents and profits thereof, inasmuch as they were acquired by the use of joint family funds. And Makund Ram filed objections under Section 561 of the Civil Procedure Code. The facts as to these villages are that one Khushal Patel owed a debt of Rs. 48,000 to the joint family of Makund Ram and Tulsi Ram, and that shortly after the award was delivered in 1874 Makund Ram by means of a benami transaction took Rs. 10,000 in cash and a conveyance in his son's name of the three villages in lieu of the joint debt. It was not disputed before the Judicial Commissioner that this was the result of the finding of facts in the Commissioner's report. The Judicial Commissioner modified the decree of the Lower Appellate Court so far as it affected the three villages, and some land situate in the town of Harda, about which there is no question now, and decreed that the three villages should be divided equally between the parties and that Makund Ram should pay to Saliq Ram Rs. 5,000 being half of the Rs. 10,000. Whether this is



right is the only remaining question in this appeal. It seems to have been contended that the taking a conveyance in his son's name shows that Makund Ram intended to buy the villages for himself and not for the family, but the agreement to refer shows that family property might be in a son's name. Makund Ram might as manager of the family property, and honestly, agree to this way of settling the debt of Khushal. He would have no authority and it would be contrary to his duty as manager or as a co-sharer to make use of the debt for a purchase on his own account. It should be presumed in the absence of evidence to the contrary that he did what he might lawfully do and their Lordships think the Judicial Commissioner has taken the right view of the transaction. They will therefore humbly advise Her Majesty to affirm the decree of the Judicial Commissioner, and of the Lower Appellate Court except so far as it is modified by the decree of the Judicial Commissioner, and to dismiss this appeal. The Appellant will pay the costs of it.

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