

## **Jagannath Prasad vs Hazari Lal And Ors. on 31 August, 1951**

**Equivalent citations: AIR1953ALL509, AIR 1953 ALLAHABAD 509**

### **JUDGMENT**

Malik, C.J.

1. There was a reference to arbitration out of Court. The arbitrators gave an award & filed an application in accordance with the provisions of the Arbitration Act in the Court of the learned Civil Judge, Shahjahanpur, that the award be made a rule of the Court. This was opposed on various grounds. We are not concerned with the other grounds, but one ground that came up to this Court was the question whether it was open to the arbitrators to hold that Madho Ram had no share in the partnership assets as he was not a partner. The trial Court had decided the contention against the objectors and had made the award a rule of the Court. In appeal this Court came to the conclusion that Madho Ram was a party to the partnership deed, that the reference was made by Hazari Lal, Jagannath Prasad and Madho Ram as partners, that the reference itself showed that it was admitted that Madho Ram was a partner and that it was, therefore, not open to the arbitrators to go into the question whether Madho Ram was a partner and to hold that he was not a partner. This Court, therefore, allowed the appeal, set aside the order of the lower Court and dismissed the application for making the award a rule of the Court. Against the order this application for leave to appeal to the Supreme Court has been filed.

2. Learned counsel for the appellant has urged that he is entitled to appeal as a matter of right. The application is, however, opposed on behalf of the opposite party for whom it has been contended that the appellant has no such right.

3. The property which was the subject-matter of the award was valued at over Rs. 22,000/-, in which Hazari Lal had admitted an eight-anna share. The question was whether Jagannath Prasad had the remaining eight-anna share of Madho Ram also had a three anna share in the partnership assets, Mr, Harnandan Prasad has urged that it was only the value of Madho Ram's three-anna share that was in dispute in the suit and that was the proper valuation of the suit, as of the application for leave to appeal to the Supreme Court. This, to our minds, is not correct. The application was for making the award a rule of the Court and that application was granted by the trial Court. The result of the decree passed by this Court was that the award was set aside in its entirety. At the time when the appeal was decided by this Court on 10-11-1949, the Code of Civil Procedure, Act 5 of 1908 was in force. Section 110 of the Code provided that the value of the suit must be Rs. 10000 or upwards, or the decree or final order must involve, direct or indirectly, some claim or question to or respecting property of like amount or value. The question for decision by the trial Court as well as by this Court was whether the award should or should not be made a rule of the Court. It cannot, therefore, be said that the value of Madho Ram's share and not the value of the

entire property dealt with by the award was the true criterion for judging the valuation of the suit and the proposed appeal to the Supreme Court.

4. Learned counsel for the opposite party has raised one more point : he has urged that this application for leave to appeal having been filed on 14-2-1950, the proposed appeal must now be valued at Rs. 20,000/- or above. On behalf of the applicant, on the other hand, it has been urged that the appeal having been decided by this Court on 16-11-1949, the appellant had a vested right to file an application for leave in accordance with the provisions of the Civil Procedure Code which was then in force and the mere fact that the application for leave was filed on 14-2-1950, after the Constitution had come into force would not take away that right. A Full Bench of the Calcutta High Court in -- 'Sadar Ali v.

Dalimuddin', AIR 1928 Cal 640 (P.B.) (A), dealing with the amendment of Clauses 15 and 39, Letters Patent of that High Court which required that there was no right of appeal from the decision of a single Judge sitting in second appeal in the absence of a certificate from him that the case was a fit one for appeal, held that in the absence of any provision making the amendment retrospective the proper rule of construction was that the new Letters Patent should operate upon appeals arising out of suits instituted after 14-1-1928, the date from which the amendment came into effect. Their Lordships observed:

"This new clause in the Letters Patent cannot be given retrospective effect. The provision which takes away jurisdiction is itself subject to the implied saving of the litigant's right."

The same view was taken in this Court in --

'Baij Nath v. Doolarey Hajjam', AIR 1928 All 708 (B). In -- 'Nandlal Ganpatsao v. Hiralalsao Ganpatsao', AIR 1950 Nag 222 (C), the same view was accepted by the Nagpur High Court in the manner of an application for leave to appeal to the Supreme Court under Article 133 of the Constitution.

A Bench of the Madras High Court in -- 'Ramaswami Chettier v. Ramanathan Chettier', AIR 1951 Mad 251 (D), has also taken the same view.

The appellant, in our view, has a right of appeal, and we grant him the necessary certificate under Article 133 of the Constitution.