Misri Lal And Anr. vs Bhagwati Prasad on 12 April, 1955

Equivalent citations: AIR1955ALL573, AIR 1955 ALLAHABAD 573

JUDGMENT

Randhir Singh, J.

1. This is an appeal against the order of the Additional Civil Judge of Gonda dismissing an application under Section 14 of the Indian Arbitration Act which was treated as a suit, for the filing of an award and for a decree on the basis of the award.

2. The plaintiffs appellants and the defendant are own brothers, being the sons of Patan Din. They formed a joint Hindu family and were possessed of business and movable and immovable properties. Disputes arose amongst the brothers and ultimately it was agreed that the properties be partitioned. An agreement was executed on the 8th October, 1946, by means of which the parties appointed six arbitrators, including a sarpanch, for the partitioning of the properties and for settling, the dispute.

The arbitrators then entered upon their duty and after examining the parties and their evidence gave an award on 13-1-1947. The award was registered. On 14-7-1947, an application was made by the plaintiffs appellants purporting to be one under Section 14 of the Arbitration Act, though it was wrongly described as an application under Section 51 of the Act, praying that the arbitrators be directed to file the award and a decree be passed on the basis of the award.

Notices were then issued to the respondent and the arbitrators; and Bechchu Lal the sarpanch filed the award in Court along with the registered agreement on 25-8-1947. Objections were, however, raised on behalf of the respondent challenging the validity of the award on various grounds. It was contended that certain properties had been left out and had not been partitioned, that two of the panches--Moti Sonar and Kodai Halwai, were not present on all the sittings of the panches and did not join in the award, that Ganesn Dutt Misir -- one of the panches, refused to act as arbitrator, that the panches showed partiality to the applicant & did not divide the property properly and that no notice of the award was given to the respondent. It was also alleged that the application was barred by time.

3. The learned Civil Judge framed in all 13 issues which covered the various objections raised on behalf of the respondent and finally came to the conclusion that the award had not been proved and was bad on account of judicial misconduct and partiality of the arbitrators. The application made by the plaintiffs appellants, which was treated as a suit, was finally dismissed on the 22nd January, 1948. The plaintiffs have now come up in appeal.

4. It is not disputed that the parties had entered into an agreement on 8-10-1946, by means of which six arbitrators, including Bachchu Lal Sarpanch were appointed for settling the disputes and for the partitioning of the property of the parties. The main grounds of contention on behalf of the defendant, however, were that the theka pi village Beli and a sum of Rs. 5,000/- deposited with Lakshmi Saraf had not been partitioned by the panches.

It has also been contended in appeal that the award had not been proved and that the applica tion was barred by time. The other points raised in the Court below have not been seriously pressed in appeal.

4a. The first point, therefore, which arises for determination is whether the award had been proved. The original award, which is a registered document and is properly stamped, was filed by the sarpanch in Court on 25-8-1947.

5. The plaintiffs appellants had examined two of the panches including the sarpanch, but unfortunately no question was put to either of them with regard to the execution of the award. The point that no award had been made was not specifically taken in the written statement filed by the respondent. The plaintiffs had definitely stated in paragraph 3 of their application "that the panches and the sarpanch made the necessary and proper inquiries and gave the award on 13-1-1947." The defendant respondent in his written statement denied the allegations in paragraph 3 in the following words:

> "Paragraph 3 is not admitted subject to additional pleas."

In paragraph 9 of the additional pleas the defendant stated as follows:

> "All the proceedings were taken in their absence. The award is not according, to their opinion nor did it come to their knowledge. For this reason also the award is invalid and ineffective."

In no other paragraph of the written statement has it been averted by the defendant that no award was made by the arbitrators. No specific issue was framed on this point, and it appears that the plaintiffs appellants were led to believe on this state of pleadings, that the making of the award was not challenged by the defendant.

Reliance has been placed on behalf of the plaintiffs appellants on Order 8, Rules 3 and 5 of the Civil P. C. and it has been contended that if the allegations made in the plaint had not been specifically denied they should be deemed to have been admitted.

Order 8, Rule 5, Civil P. C. runs as follows:

> "Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability."

As pointed out above, the defendant made no specific denial of the execution of the award and there appears to be some force in the contention of the learned Counsel for the plaintiffs that the execution of the award should be deemed to have been admitted by the defendant.

6. Even apart from the contention that the award should be deemed to have been admitted by the defendant in the circumstances mentioned above, it has been argued on behalf of the appellants that the certificate of registration of the Sub-Registrar who registered the document should be taken as proof of execution of the deed.

The procedure which the Sub-Registrar or the Registrar has to follow when a document is presented for registration is detailed in Sections 58 to 63 of the Registration Act. Section 58 of the Registration Act requires the Registrar to make certain endorsements after he has asked the executants if they had executed the document.

He then affixes the date and signature to all the endorsements made under Sections 52 and 58 relating to the document and made in his presence, on the same day, and this is followed by a certificate of registration as provided under Section 60 of the Registration Act. In the present case the usual endorsement of the Sub-Registrar before whom the award was presented for registration is to be found on the back of the first page of the document wherein he states that the execution and completion of the document were admitted by all the four executants of the deed of award who were all personally known to him.

The Sub-Registrar had affixed his own signatures, and the signatures purporting to be the signatures of all the four executants as also their thumb marks are affixed at the foot of the endorsement.

The question as to whether such an endorsement made in accordance with Sections 58 and 60 of the Registration Act amounts to a proof of execution arose in a number of cases and has been the subject of discussion in the rulings of the Privy Council and the various High Courts.

The Nagpur High Court has, however, in --'Bulakidas Hardas v. Sk. Chotu Paikan', AIR 1942 Nag 84 (A), held that an endorsement of the nature mentioned above is not proof of execution of the document. A similar view has also been taken by a single Judge in -- 'Ara Begam v. Deputy Commissioner, Gonda', AIR 1941 Oudh 529 (B). A contrary view has been taken in some other cases vide --'Piara v. Fattu', AIR 1929 Lah 711 (C) and -- 'Nittyanund Kur v. Raj Bullubh Adyapurahit', 25 Suth WR 267 (D).

It may not be necessary to discuss the rulings of the various High Courts in view of the two Privy Couhcil cases in which the question was considered. The point came up before their Lordships of the Privy Council in -- 'Gangamoyi Debi v. Troiluckhya Nath', 33 Ind App 60 (PC) (E) and their Lordships, while considering the evidentiary value of an endorsement by the Registrar, observed as follows:

> "The registration is a solemn act, to be performed in the presence of a competent official appointed to act as registrar, whose duty it is to attend the parties during the registration and see that the proper persons are present and are competent to act, and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order.
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> Of course it may be shown that a deliberate fraud upon him has been successfully committed; but this can only be by very much stronger evidence than is forthcoming here."

In a later case, -- 'Gopal Das v. Sri Thakurji', AIR 1943 PC 83 (F), the question again came up for consideration before their Lordships of the Privy Council and they observed as follows:

> "It seems clear that any objection to the sufficiency of the proof upon this point would have been idle, the circumstances being such that the evidence of due registration is itself some evidence of execution as against the plaintiffs. Wills and documents which are required by law to be attested raise other questions but this receipt was not in that class."

It would, therefore, appear that an endorsement by the Registrar has been held to be some evidence of execution. No doubt it has been observed in all those cases that if there are circumstances which throw a doubt, or where the question as to whether a document was properly attested arises, the endorsement of the Registrar of the admission of the execution by the executant may not be quite sufficient to prove the due execution and attestation of the document.

In AIR 1941 Oudh 529 (B) referred to above, Yorke, J. held, under circumstances of that particular case, that the endorsement was not proof of execution. He summed up his conclusions as follows:

> "To sum up the whole position, as it appears to me, the plaintiffs were in a position to lead evidence of execution without, so far as appears from the record, any difficulty. They have chosen to withhold evidence of execution although it could hardly be said that the surrounding circumstances were free from suspicion.
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> They have elected to rely on the admission of the Raja proved only by the registration endorsement. In my opinion after consideration of all the circumstances of the case, this evidence of admission is not by itself sufficient to establish execution of the two deeds in suit."

Those observations clearly show that Yorkc, J. did not hold it affirmatively that under no circumstances an endorsement of registration was proof of execution. It was only when the surrounding circumstances were not free from suspicion, and the party relying on the document failed to prove execution, that it was held that the endorsement was not by itself sufficient, to establish execution of the two deeds.

In -- 'Gopal Das v. Sri Thakurji', AIR 1936 All 422 (G) a Division Bench of the Allahabad High Court held in a case in which the original document was not produced that the execution of that document by the executants coutd not be proved by the registration endorsement. It was this very case, -- 'Gopal Das v. Sri Thakurii (G)', which ultimately went in appeal to the Privy Council arid became the subject of decision in AIR 1943 PC 83 (F).

Their Lordships of the Privy Council did not agree with the view taken by the Allahabad High Court on the value of the endorsement of registration though the appeal was dismissed on other grounds. A perusal of the rulings mentioned above shows that where the proof of execution depends on circumstances other than the admission of execution by the executants, such as due attestation or identity of the executants who appeared before the Sub-Registrar, the endorsement of the Sub-Registrar may not be sufficient proof of the execution of the deed, but there can be no doubt that the admission of the execution, by the executants, whose identity could not be disputed, and in a case where no question of proper attestation arises, appearing in the endorsement would be evidence of execution of the document, or at any rate would be some evidence of execution.

7. In the present case no definite denial of execution was made in the pleadings and no question challenging the execution was put to any of the two executants who entered the witness box. The executants who appeared before the Sub-Registrar were personally known to him, and the document which was registered did not require attestation. In these circumstances the endorsement of the Registrar should be deemed in this particular case to be proof of execution.

8. The next point which has been raised in arguments on behalf of the appellants is that the arbitrators omitted to make a partition of the theka of village Beli and also omitted to divide a sum of Rs. 5,000/- deposited with Lakshmi Saraf. The sarpanch and one other arbitrator Baijnath were examined on behalf of the appellants. Baijnath P. W. 3 definitely stated that "it is not a fact that any party asked for the partition of any property and that it was not divided."

This statement was made in examination-in-chief and no question was put to the witness challenging the correctness of this statement. There is also no evidence on the record to show that there was any joint theka of village Beli, and reliance has been piaced only on the statement of property mentioned in the agreement in which the word "theka" is to be found.

The appellants' counsel had stated at the time when the issues were framed that the theka of village Beli was not divided as the parties did not so desire. This is capable of several interpretations. The theka may not have been divided as the parties agreed that it was not joint property, or it may not have been divided as it was not feasible to divide it. It is also possible that the parties may not have thought it necessary to have it divided.

The sarpanch stated that the theka was not divided, but no question was put to him as to why the theka was not divided. All this clearly shows that the theka was not divided as the parties did not want it to be divided for any of the possible reasons mentioned above. The defendant did not enter the witness box to state that the parties had put up the theka as joint property but the arbitrators refused to divide it. It would thus appear that the joint property which was placed before the

arbitrators for partition did not include the theka of village Beli.

9. Moreover, even if it be found that the theka of village Beli was joint, it was evidently not property of such a nature as could be capable of division. Theka rights of villages are governed by the U.P. Tenancy Act and are not transferable unless such a provision was made in the terms of the theka, vide Section 213 (b) of the U.P. Tenancy Act.

It was, therefore evidently not such a right as could be the subject of partition. If any of these three brothers held the theka and it was joint family property, it was open to the others to claim a share of the profits from the others by a suit. On this ground also the arbitrators cannot be said to have acted improperly if they did not divide the theka.

10. As regards the sum of Rs. 5,000/- said to have been deposited with Lakshmi Saraf, it is not disputed that this amount was deposited with this man who appears to be the same as Lachhman arbitrator. The arbitrators had, out of this sum which was jointly contributed by the three brothers, set apart a sum of Rs. 1,000/- for payment to the respondent as his jethansi share.

Baij Nath arbitrator states that the rest of the money was spent in the expenses of stamp duty and registration of the award and in payment to creditors who belonged to Lucknow, and all this was done with the consent of all the three parties. Not a single question challenging this statement of the arbitrator was put to him in cross-examination which clearly shows that the money which was held in deposit had been disposed of in the manner stated by the arbitrator. It has, however, been argued that no mention of it is to be found in the award.

It appears that items of property which had been given over to the parties directly at the time of the arbitration, or which had been disposed of in accordance with their wish and consent, have not all been shown in the award. A sum of Rs. 5,000/-or Rs. 6,000/- was found buried in the house & the arbitrators divided this money according to the wishes of the three brothers at the time when the money was found but no mention of it was made in the award.

No objection has been taken on that score to the validity of the award. If the amount of Rs. 5,000/- deposited with Lachhman Saraf had been properly disposed of, the mere fact that it was not mentioned in the award would not make the award invalid, nor would it lead to the conclusion that the arbitrators were guilty of misconduct.

It would thus appear that both the grounds on which the award has been challenged are untenable, and the inference drawn by the learned Civil Judge that the omission to divide the theka of village Belt, or of a mention of Rs. 5,000/- held by Lakshmi Saraf, go to show legal misconduct, is clearly incorrect.

11. The learned Civil Judge has come to the conclusion that the arbitrators were guilty of having shown partiality to the plaintiffs and of legal misconduct on six circumstances detailed in his discussion on issue No. 7. Of these six points, two have already been disposed of. He has also come to the conclusion that the failure on the part of the arbitrators to inform the defendant of the award,

and the division of the property by lots also led to the inference that the arbitrators were guilty of legal misconduct.

The omission to send a written notice of the award to the parties may be due to the ignorance of the arbitrators of the rules of procedure provided in the Indian. Arbitration Act and cannot necessarily be referable to any deliberate misconduct on their part. The division of the properties was, it appears, to be made by drawing lots and the defendant-respondent himself objected to the validity of the award on the ground that the arbitrators had not carried out the partition of all items by drawing lots as agreed to between the parties.

It is a matter of common knowledge that allotment of shares which are equal is done by drawing lots after equal lots have been made, and this mode of division cannot be said to amount to wagering which was opposed to public policy. There is, therefore, no force in the contention that the division of the properties by lots, or that the omission of the arbitrators to serve a written notice of the delivery of the award, on the parties amounted to misconduct.

One of the grounds, which is ground No. 4, for holding the award bad is that the arbitrators partitioned a kothi which had been obtained by a gift deed by the respondent.

It was open to the arbitrators to have found, as they did, that this transaction was farzi and that the property way joint property and no exception can be taken to such a finding in the court. It is not open to a Court to set aside findings of tact arrived at by arbitrators, and the only grounds on which an award can be challenged are those mentioned in the Indian Arbitration Act.

12. I am unable, therefore, to agree that misconduct can be inferred from any of the six circumstances mentioned by the learned Civil Judge in his judgment while discussing issue No. 7 and am clearly of opinion that there was no valid ground to hold that the arbitrators were guilty of misconduct, judicial or otherwise, or of any partiality to any of the parties.

13. The last and the only remaining submission on behalf of the appellants was that the finding of the lower court on the point of limitation was erroneous. Applications for the filing of aa award under Section 14 of the Arbitration Act are governed by Article 178 of the Limitation Act. The period of limitation provided is 90 days, and it starts running from the date of the service of the notice of the making of the award.

It is admitted that no written notice as required by Section 14(2) of the Arbitration Act was sent by the arbitrators to any of the parties to the reference. It has been argued on behalf of the respondent, and in support of the judgment of the lower court, that time began to run from the date when the applicants came to know of the award.

The period of limitation, used to be six months before the Arbitration Act, 1940, came into force, and the period ran from the date of the award. When a specific provision was made in the Arbitration Act for the service of a written notice to the parties to the award, the period of limitation was curtailed to 90 days, and the service of the notice was made the starting point of limitation,

instead of the date of the award.

It could not be the intention of the legislature that the date of the award, or the knowledge of the award, should be the starting point of limitation, when the amendment was made in 1940. It has been argued on behalf of the respondents that if the knowledge of the award is not to be taken as the starting point for limitation it would be open to a party to wait indefinitely and file an application for the filing of the award years after the award is made if no notice in writing was served and such an interpretation would lead to a good deal of inconvenience.

Reliance has been placed on the interpretation of Statutes by Maxwell. No doubt if, of two interpretations, one appears to be more in accord with the intention of the legislature, or if there are other circumstances to infer the intention of the legislature, the interpretation which is consistent with such an intention should be put upon the words of the enactment.

In the present case, however, there is neither any ambiguity nor any absurdity in the plain meaning of the words in the enactment. If a party docs not receive a notice of the award as prescribed by law he would evidently be within his rights to wait for the receipt of such a notice and if he finds after some time that no notice has been received by him, it would he open to him to make an application for the filing of the award even if no notice has been received, hut in all such cases the application would not become barred by time unless it is presented more than 90 days after the receipt of a written notice of the award.

This view was taken by the Patna High Court in a recent case, -- 'Jagdish Mahton v. Sundar Man-

ton', AIR 1949 Pat 393 (H). I agree with the view taken by the Patna High Court, with respect if I may say so, and am of opinion that the application which has given rise to this appeal was not barred by limitation, and the finding of the lower Court on the point of limitation is incorrect.

14. No other point has been pressed in argument.

15. As a result, I find that the award was not invalid as held by the Court below and that a decree should have been passed on the basis of the award. I would accordingly allow the appeal, set aside the order of dismissal passed by the lower Court and direct that a decree be passed in favour of the appellants in accordance with the award. The appellants should get their costs throughout.

Mootham, C.J.

16. I agree.

17. The most important question which has been raised in this appeal is whether the arbitrators' award dated the 13th January, 1947, has been proved. The award was filed in Court on the 25th August, 1943, by the Sarpanch Bachchu Lal, and it bears at" the foot an endorsement made on the same date by the learned Judge "Denied by defendant's counsel".

The endorsement is ambiguous, but a consideration of the objections filed by the defendant and of the course of the proceedings in the lower Court leads me to the conclusion that what was being attacked was not the existence of the award but its validity. In paragraph 3 of the plaintiffs' application that the arbitrators be directed to file the award the plaintiffs said:

> "3. That the panchcs and the sarpanch made the necessary and proper enquiries and gave the award on the 13th January, 1947, although Ganesh Dutt Misir did not affix his signature on the award. The said award was read over to the panches and they accepted it."

and in the objections filed by the defendant the answer to this paragraph is, "Is not admitted subject to additional pleas." The additional pleas referred to are presumably paragraphs 8 and 9. They read as follows:

> "8. The Panch Ganesh Dutt Misir totally refused to work as a panch and did not participate in the sittings of the panchayat except one or two sittings in the beginning. Hence we gave information to the other panches and sarpanch under a notice that Mumtaz Thekedar be appointed panch in place of Ganesh Dutt Misir otherwise the decision will not be acceptable, and this notice was sent under registered post to the sarpanch but the panches and sarpanch did not pay any heed to it and the opposite party did not participate in the panchayat. The above decision is invalid and ineffective and is not fit to be endorsed."

> "9. Besides this, the panches Moti Lal Sonar and Kodai Halwai did not participate in all the sittings nor were they called. All the proceedings were taken in their absence. The award is not according to their opinion nor did it come to their knowledge. For this reason also the award is invalid and ineffective."

18. Nowhere in these objections is it stated specifically that the award was not made by the arbitrators; on the contrary the statements in paragraph 17 that "the panches knowingly did not mention it in the award in order to give benefit to the plaintiffs" and in paragraph. 18 that "the panches having colluded with the plaintiffs did not give any notice regarding the award to the defendant nor did he come to know of it", indicate that it was not the contention of the defendant that the arbitrators had not made an award--the award before the court --but that the award was invalid.

19. In view of the denial of the award by defendant's counsel the plaintiffs would have been well advised to tender evidence is formal proof of the document, but this was not done and, it is to be observed, no issue was framed on the point. Two of the panches gave evidence but no question was put to them by either side for the purpose of proving the document.

This could very easily have been done by the plaintiffs and I have no doubt at all that had it been realised that the point would later be taken in argument the necessary questions would have been asked. The truth, I think is that the proceedings in the lower court until the stage of final argument

proceeded on the assumption that the award filed in Court was in fact the award made by the arbitrators. In my opinion the plaintiffs were, in view of the nature of the objections filed by the defendant, justified in making this assumption.

20. I am further of opinion that in the circumstances of this case the Sub-Registrar's certificate of registration endorsed on the award is sufficient proof of due execution. A number of authorities were cited in the course of argument, but I think it necessary to refer to only two of such cases: 33 Ind App 60 (PC) (E) and AIR 1943 PC 83 (F), both decisions of the Privy Council.

In -- 'Gangamoyi Debi's case (E)' the Board held that it will be presumed that all things done by the Registrar in his official capacity and verified by his signature have been done duly and in order:

> "The registration", it said, "is a solemn act, to be performed in the presence of a competent official appointed to act as Registrar, whose duty it is to attend the parties during the registration and see that the proper persons are present and are competent to act, and are identified to his satisfaction; and all things done before him in official capacity and verified by his signature will be presumed to be done duly and in order."

In Gopal Das's case (F) the plaintiffs claimed as reversioners of one Parshotam Das. In 1881 a person claiming to be Parshotam Das presented a document for registration and the Registrar's endorsement made under Sub-section (2) of Section 60 of the Registration Act, 1877, showed that that person had admitted execution of the document. After stating that there was a presumption that the registration proceedings were regularly and honestly carried out, their Lordships said:

> "It seems clear that any objections to the sufficiency of the proof upon this point would have been idle, the circumstances being such that the evidence of due registration is itself some evidence of execution as against the plaintiffs."

In my opinion the Registrar's certificate is evidence of admission of execution by the executant and that itself is evidence admissible to prove the due execution of the document. The question whether it is sufficient evidence must depend upon the circumstances. In the case before us there is no other evidence either way and there is nothing whatever in the surrounding circumstances to arouse suspicion. In my judgment the award must be held to nave been proved.

21. I agree with the order proposed.

BY THE COURT:

22. We allow the appeal, set aside the order of dismissal passed by the lower Court and direct that a decree be passed in favour of the appellants in accordance with the award. The appellants are entitled to their costs throughout.