

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Muhammed Nawaz Khan and another v. Alam Khan, from the Chief Court of the Punjab; delivered 28th February 1891.*

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Present:

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

The Plaintiffs and Appellants are two of the sons of Maddat Khan, who died on the 6th of June 1883, leaving four sons and the children of a fifth son him surviving. The Defendant Alam Khan is one of the sons.

The Plaintiffs claim two fifths of their father's property, moveable and immoveable. The moveable inheritance is not in dispute, the Plaintiffs being clearly entitled to two fifths thereof. They would be also *prima facie* entitled to the same proportion of the immoveable property. After the death of Maddat Khan the Plaintiffs, for themselves and purporting to be guardians of the sons of their deceased brother, entered into an agreement, dated the 20th of September 1883, with the Defendant, who also purported to be the guardian of his younger brother, Fatteh Khan, whereby it was agreed to appoint a private arbitrator for a decision of the dispute relating to their father's lands and the office of lambardar, and that Mian Sultan Ali,

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who was intimately connected with the circumstances of the family and was their pir, should act as the private arbitrator, and they agreed to accept whatever the said Mian Sultan Ali might decide in respect of the dispute between them. The said arbitrator soon after made his award, whereby he found in effect that the Plaintiffs were not to get any land of the deceased except the portion given to them by him in his lifetime, and that the Defendant Alam Khan should remain the owner of the whole of the remaining landed property. He also awarded to Alam Khan the office of lambardar.

Shortly after Alam Khan applied to the Extra Assistant Commissioner, Mr. Homan, to have the award filed, pursuant to Section 525 of the Civil Procedure Code, and on the 5th November 1883 that Official decreed that the award be filed in Court. Against that decision the Plaintiffs in the present suit appealed, upon several grounds; first, that Mr. Homan, by reason of the value of the subject matter, had no jurisdiction; next, that the award disposed of the lambardari, a matter over which the arbitrator could have no jurisdiction; and also for the misconduct of the arbitrator. The Civil Judge held that the award could not be filed, by reason of the pecuniary limit of the Lower Court's jurisdiction, and by reason of the Lower Court having no jurisdiction to deal with the lambardari, and remanded the case to the Court of the Deputy Commissioner, Colonel Connolly, who transferred the case to the Subordinate Judge, Nawab Alladad Khan, who by his order of the 15th of December 1885 decreed that the claim of the Defendant Alam Khan to file the award should be dismissed. His grounds for the said decree are set forth in his judgment. Some of them are entirely at variance with the function of a Judge. He states that the arbitrator misconducted himself, in making the

award contrary to the custom of the parties and the Mahomedan law, and that he, the Judge, knew that the arbitrator was an intimate friend of Alam Khan, and that he had consequently made his award in Alam Khan's favour. Alam Khan thus failed to have the award filed. On the same day the Plaintiffs filed their plaint, which is the commencement of the present suit. Alam Khan on the 22nd of December 1885 put in his statement in writing in answer to the Plaintiffs' claim. He therein relied on the award of Mian Sultan Ali. Issues were settled, and amongst them is number ten, the issue on the result of which the decision of this case rests, namely, what is the legal effect as against the Plaintiffs of the arbitrator's award. The case came on for hearing before the same Subordinate Judge, who in effect re-affirmed his former judgment on the application of Alam Khan to file the award. He decided that the award was invalid. The Defendant appealed to the Chief Court of the Punjab. That Court reversed the decision of the Subordinate Judge. They held that the award was valid as against the Plaintiffs, and dismissed their claim in respect of Maddat Khan's landed property. Their Lordships concur in the judgment of the Chief Court. The first contention on the part of the Appellants before their Lordships has been that the decree of the Subordinate Judge, dismissing the claim of Alam Khan to file the award, pursuant to Section 525 of the Civil Procedure Code, has the effect under Section 13 of the same Code of a *res judicata*. One of the Judges of the Chief Court says that that contention was not very strongly pressed before them. It has been most strenuously urged before their Lordships, who cannot accede to it. Though the application under Section 525 was refused, that merely left the award to have its ordinary legal validity. It

could not be successfully contended that an award is not valid because the party in whose favour it was had never applied to have it filed in Court. Can then the refusal to file, or of an application made to do so, have the effect that the award can never be relied upon in any suit relating to the subject matter dealt with by it? Their Lordships are of opinion that Section 13 has not that effect. It enacts that "no Court shall try any " suit or issue in which the matter directly and " substantially in issue has been directly and " substantially in issue in a former suit between " the same parties, or between parties under " whom they or any of them claim, litigating " under the same title, in a Court of jurisdiction " competent to try such subsequent suit or the " suit in which such issue has been subsequently " raised and has been heard and finally decided " by such Court." Section 525 says that the application to file the award is to be registered as a suit. Assuming for the purposes of this argument that such an application is a suit such as is contemplated in Section 13, what is decided in it? Only that the award ought not to be filed. That question is not raised in this suit, so that their Lordships have not to discuss how far the refusal is conclusive on that point, or how far the circumstance that one of the two matters referred was beyond the control of the arbitrator constitutes an objection to filing the award. In order to make the refusal to file an award a binding judgment against its validity on the ground of the partiality of the arbitrator it would be at least necessary to show that the point was definitely raised and put in issue and made the subject of trial. The validity of the award as an award was never directly and substantially at issue in that application. In this action respecting the land alone, the award can be separated as to it from the

office of lambardar. Consequently their Lordships are of opinion that the contention of *res judicata* is unsustainable. The Plaintiffs then rely on misconduct of the arbitrator as invalidating his award. There is no independent case or testimony to sustain or, indeed, to give colour to such a charge. They merely rely on the award itself as showing such partiality and making such statements as to amount to misconduct. That contention seems to be mainly founded on an entire misconception of the agreement to arbitrate. It was not an agreement that the arbitrator was to be controlled in his decision by any custom or Mahomedan law or otherwise. It was an agreement to refer the matter in dispute generally to his decision. He appears to have decided according to what he conceived was the wish and intention of the deceased Maddat Khan. He was within his right in so doing. Some criticisms have been offered on some of the reasons assigned by the arbitrator for arriving at his decision. These criticisms, even if justified, could not amount to any proof of misconduct. The arbitrator appears to have acted on the broad view of giving effect to the deceased's intentions. He was selected by reason of his knowledge of the circumstances of the family. Their Lordships see no ground for imputing misconduct to him. They will humbly advise Her Majesty to affirm the judgment of the Chief Court of the Punjab.

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