

*Privy Council Appeal No. 9 of 1921.*

Ramlal Hargopal - - - - - *Appellant*

*v.*

Kisanchandra and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 10TH DECEMBER, 1923.

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*Present at the Hearing :*

LORD DUNEDIN.  
LORD PHILLIMORE.  
SIR JOHN EDGE.  
MR. AMEER ALI.  
SIR LAWRENCE JENKINS.

[*Delivered by* LORD PHILLIMORE.]

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One Mahanand-ram Puranmal, many years ago, opened a shop in Hyderabad in the dominions of the Nizam and carried on a considerable business, which has been continued to this day by his descendants under his name as the name of the firm. He also founded two temples within the dominions of the Nizam, and a third in British India, not however—and this is important—within the District of Berar. Three jagir villages, one within the Nizam dominions and two within British India and the District of Berar, were subsequently granted by Government for the support of the worship in these temples.

Puranmal was succeeded by his son Premasukh, who had three sons, Ramgopal, Hargopal and Chimamram. The family, however, has remained undivided, and the business and landed property have remained in common.

Hargopal seems to have died before his father Preamsukh ; and on the death of the latter, Hargopal's son, Ram Lal, the present appellant, took up the management of the temples, the three villages granted for their support and the family property and business, and his name was entered in the various registers accordingly.

In 1907, the representatives of the other two families brought a suit against Ram Lal claiming that they might be declared co-trustees of one of the temples and entitled to exercise control of the income and expenditure of the two jagir villages in Berar. The District Judge of East Berar in whose court the suit was brought, dismissed it, holding that he had no jurisdiction to try it. An appeal was threatened, and then the parties came together and agreed to refer all their disputes to the award of their family priest. He heard the parties, and finally on the 22nd April, 1907, made his award which was countersigned by all the parties to the dispute. It is a long document, comprising 57 paragraphs, some narrative, some dispositive. He classified the disputes under four heads:—

- (1) Relating to the management of the three jagir villages.
- (2) To the management of the three religious institutions.
- (3) The estate or family property descended from the ancestor Puranmal.
- (4) " Monthly allowances and other miscellaneous matters."

This last head included questions relating to a field bought by the son of Ram Lal, payment of arrears of allowances, and sums to be given for the expenses of marriages and funerals.

The general tenour of the award was the recognition of the equal rights of the three families and the institution of committees of three, comprising a representative of each family, giving in each case precedence to some one named member, making Ram Lal the principal or managing member of the committee for the jagir villages, and a representative of one of the other branches, managing member of the committee for the religious institutions and provisions of a similar nature with regard to the family property: the effect being to establish the rights of all the branches with certain advantages of precedence and priority given to Ram Lal.

Notwithstanding that Ram Lal had submitted all matters in dispute to the arbitrator and had signed the award in apparent consent to its provisions, he refused to carry it out, and thereupon the application which is the subject of this appeal, was made in the Court of the District Judge of East Berar.

It was an application on behalf of the respondents under Section 525 of the Code of Civil Procedure that the award should be filed in Court, and it was resisted by the present appellant on a great number of grounds. Upon this there followed a litigation which by reason both of its complexity and its length, is open to very serious criticism as it carefully avoided a question which lay *in limine*, and which if decided as it ought to have been would have saved all further proceedings. In a matter

which ought to be of a short and summary nature, no less than seven separate orders or decrees have been made and judgments have been delivered and read to their Lordships.

The application for an award having under the section to be treated as a suit, pleadings were delivered by both parties and issues were raised. Some of the objections to the filing of the award have been finally disposed of, a remarkable one being the contention that the family priest was not the real arbitrator, but a name put in as a cloak for or benami for that of a judge of a Hyderabad court, and that the judge did not actually take part, as according to the real agreement of the parties it was intended that he should.

The other serious issues were that as the matter concerned a public charity, there could be no reference to arbitration, that the District Court of Berar had not jurisdiction over the matter to which the award related and was therefore the wrong court to which to make application under Section 525 ; that the previous decision of the District Court of Berar had already determined these two points in favour of the present appellant and thus had made each of them *res judicata* as between the parties ; that the previous consent of the Commissioner of Berar was necessary, and lastly that the arbitrator had exceeded his powers by having made orders for which he had no warranty given to him by the submission to arbitration.

The District Judge in his first judgment delivered on the 31st May, 1910, confined himself to deciding certain issues, of which the material ones were number 2, the question of jurisdiction, and number 15, the question of the necessity of the sanction of the Commissioner before the suit as being a suit relating to a charity, could be maintained. On issue number 2, he decided that he had jurisdiction, and as regards issue number 15, he said that the point had not been up to that date properly raised.

The matter then came before another District Judge to determine whether, as contended, there could be no award as the property constituted a public charitable trust, and as an additional point whether this question had not already been determined adversely to the applicant by the decision in the previous suit and, therefore, must be deemed *res judicata*. Some other issues also came before the judge, but the only one he deemed it necessary to decide was that concerning *res judicata*. This point he decided adversely to the applicant, and therefore he dismissed the suit. His decree is dated the 30th April, 1913.

There was then an appeal to the Court of the Judicial Commissioner of the Central Provinces. The learned judges said that there were many pleas in defence, but that they were at present only concerned with the reasons which led the judge of the court below to dismiss the suit. They even declined to determine whether the trust was or was not a public charitable trust, saying that the only thing they were going to decide was whether the District Judge was right in holding the question to be *res judicata*.

They held that he was wrong and remanded the suit to the District Court. This was on the 30th June, 1915.

When the case next came on, before another District Judge, he addressed himself to the question of the jurisdiction of the Court, and as on the previous occasion, as to whether this point had been already decided in the former suit and had become *res judicata*. These points he decided in favour of the appellant on the 3rd December, 1915.

The next stage of the case seems to have been reached on the 2nd September, 1917, when another District Judge decided that the trust was not one for public purposes, and that in any case the award was not bad as dealing with any public right in respect of such a trust ; but he held that the arbitrator had exceeded his powers, and that a subsequent agreement between the parties, or the subsequent action of the arbitrator, had superseded or vitiated the award, and therefore the suit was dismissed again.

From this judgment there was another appeal, and the Court of the Judicial Commissioner gave its decision on the 13th January, 1919.

The first point dealt with in this judgment was the question whether the arbitrator had exceeded his powers. It is here necessary to state that the arbitrator, when dealing with the management of the three religious institutions, did not confine himself to settling the disputes between the three branches of the family, but proceeded to express his opinion that the business of such institutions does not go on well as long as they are not placed in the hand of a public committee, and that it seemed to him proper that they should be made over to a public committee after four years' time, namely in 1911 ; and he accordingly directed that in 1911 a public committee should be appointed, and that the management of the temple should be entrusted to it, and the movable and the immovable property made over to it.

As to this direction, the Appeal Judges said that the parties were agreed that this clause meant to secure the rights of the public, was *ultra vires*, inasmuch as the object of the reference was to settle which members of the family should have the management, and the parties did not intend to surrender their rights to a public body. But they proceeded to hold that these clauses were separable from the rest, and that under the new Code of Civil Procedure of 1908 the court could separate them and enforce the rest.

As to the point that the award was vitiated or superseded by the action of the arbitrator or the agreement of the parties, they held that in substance the parties had agreed to an amended or additional reference upon which the amended award followed, and that therefore it was not bad.

The judges next held that a suit to remedy a particular infringement of an individual private right in regard to trust property, did not fall under Section 92 of the Civil Procedure Code of 1908 and therefore did not require the sanction of the commissioner of Berar before it was begun. They then dealt with

some minor points and with the extraordinary objection that the family priest was not the true arbitrator intended by the parties—points which have not been relied upon before their Lordships. They said that these were all the matters which had been argued before them, and they therefore thought that the award—with the exception of the portion admitted to be *ultra vires*—should be filed, and they allowed the appeal.

Even then, the matter was not ended, because the parties objecting to the award presented an application for a review of the judgment, urging first that the award so far as it was binding, dealt only with the management of the temples up to 1911, and as this year had long since been past, the award was now fruitless; secondly, that at any rate the award left undetermined the question of management after 1911 and was therefore incomplete; and thirdly, that the arbitrator had exceeded his powers because he was only authorised to deal with the management and not with the legal transfer of the property, and he had ordered mutation of names upon the revenue register.

As to these matters, the Appeal Court said that their view of the award was that while intending to provide for a public committee which should have begun in 1911, the arbitrator had also provided for the management of the institutions by divers members of the family until that committee should be appointed, and that if the provision for the appointment of a public committee was *ultra vires*, the management would remain with the family in the manner directed by the award. They also held that the arbitrator had implied authority to direct the mutation of names, and they dismissed the appeal.

In the application for review which contained also other matters which the Court seems to have passed by as futile—as they probably were—there occurs the following paragraph 8:—

“That the pleas of absence of jurisdiction and maintainability of the suit in the absence of the sanction of the Advocate General should have been decided in favour of the applicant.”

This paragraph is not noticed in the judgment upon review which was given on the 3rd September, 1919.

As regards the maintainability of the suit in the absence of the sanction of the Advocate General, whose place for this purpose is taken by the Commissioner for Berar, that matter had been in substance already determined by the High Court in its first judgment, though it is true that technically the Court only applied itself to the contention that this point was already determined as between the parties and had become *res judicata*.

As to the plea of absence of jurisdiction, it seems very uncertain what the applicants for review intended to convey by this phrase. They may have meant that the Court at Berar was not the Court which had jurisdiction to file the award. They may have meant that there would be no jurisdiction unless the Commissioner for Berar gave his previous sanction. They may

have meant that the Court had no jurisdiction because the award dealt with a public charity. At any rate, their advocate apparently failed among the mass of points which he must have presented on review, to bring the question of jurisdiction as such before the Court on this last occasion; and accordingly there is no pronouncement upon it, and their Lordships are left in this respect without assistance. From this final order the present appeal was brought.

For the respondents, a preliminary objection was taken. It was said that by virtue of the Code of Civil Procedure of 1908, no appeal lay from this particular order or decree to His Majesty in Council, unless special leave should be given by virtue of His Majesty's general prerogative. Under Section 104 of the Code, no appeal is to lie from any order passed in appeal on the question of filing or refusing to file an award, and it was said that the order of the Court of the Judicial Commissioner was an order passed in appeal from the decision of the District Judge refusing to file the award. To this it was replied that under Section 109, an appeal lies to His Majesty in Council from any decree or final order passed on appeal by any Court of final appellate jurisdiction, such as the Court of the Judicial Commissioner.

It was contended for the respondents that if these two clauses were in seeming variance, the particular would supersede the general, and that Section 104 dealt with particular cases.

Their Lordships think that the objection fails. They construe the provision in Sub-section 2 of Section 104 as dealing with internal appeals within the limits of British India. The application to file an award may be made in the Court of the Subordinate Judge. If any dispute arises, and the amount at stake is below a certain figure, the appeal would lie from him to the District Judge. If it were above that figure, it would lie to the High Court. The provision is intended to prevent any appeal beyond the District Judge where the sum in dispute is small. In this respect it runs parallel with Section 100, which limits second appeals from appellate decrees by District Judges. That section deals with decrees only while the decisions on these arbitration questions are styled orders. There is therefore nothing in Section 104 to take away the general right of appealing to the Crown given by Section 109, and the preliminary objection taken on behalf of the respondents fails.

The points urged before their Lordships were as follows :—

- (1) The District Judge of Berar had no jurisdiction to deal with the award, this point being sub-divided into two branches—absence of local territorial jurisdiction and absence of previous sanction by the Commissioner.
- (2) As supplementary to 1, that no argument to the contrary could be listened to by their Lordships because the points had previously been determined between the parties and were *res judicata*.

- (3) That the management of a public religious trust could not be referred to arbitration.
- (4) That the arbitrator had exceeded his powers.
- (5) That the subsequent variations vitiated the award.

It is clear that if the objection that the Court of the District Judge of Berar had no jurisdiction over the subject-matter of the award, as required by paragraph 20 of the 2nd Schedule of the Code of Civil Procedure, is good, no further points can arise. This point was taken on behalf of the present appellant at the outset, but seems nevertheless never to have been directly insisted upon during the numerous subsequent proceedings. No doubt it was urged that the point must be deemed to have been already decided in favour of the appellant in the previous suit. But their Lordships have not been referred to any place in these lengthy proceedings where they might find an argument in favour of the appellant's contention, if it were to be decided upon as *res integra*. It seems clear to their Lordships that the Judges in the Court of the Judicial Commissioner never imagined that they had to deal with the point, and it is not—except in the indirect and derivative way already mentioned—taken in the printed case lodged on behalf of the appellant before this Board.

If it was any other point except a point of jurisdiction, their Lordships would pay no attention to it; but they are bound to take notice of an objection to the jurisdiction, however late in the day it may be raised, if it be that on the facts admitted or proved it is manifest that there is a defect of jurisdiction; and their Lordships find this defect in the present case.

It was contended on behalf of the appellant that if an award relates to more than one subject matter and only one is within the jurisdiction of the Court, it cannot be filed in that Court; in fact, that it can be filed in no Court, because no one Court would have jurisdiction over the whole subject matter. Their Lordships deem it unnecessary to rest their judgment on any such general proposition. In their view there is no substantial question decided by the award which affects property within the jurisdiction of the Berar Court. No one of the three temples is within that jurisdiction, and two of them are within the dominions of the Nizam and outside British India. A large part of the award relates to family questions and money payments to be made by members of the family; and all the members of the family are within the Nizam's dominions. It was urged that two of the villages which form the principal endowments of the temples are situated in Berar. But their Lordships cannot find that there was any dispute concerning the ownership or management of the villages nor any denial that the revenues must be appropriated to the three temples.

It can hardly be said that there was any dispute as to the application of the revenues, but if there were any, it was a dispute as to their application after they had reached Hyderabad.

It is the duty of the Court in which an award has been filed, to proceed to pronounce judgment according to the award, and upon that a decree is to follow. Their Lordships cannot see that any decree could be framed upon this award which would affect any person or property within the jurisdiction. The result is that on this ground the appeal succeeds, and the judgment of the Court of the Judicial Commissioner must be reversed, and the suit must be dismissed ; but inasmuch as this point was never properly insisted upon in the Courts below, or, indeed, in the appellant's printed case here, their Lordships are of opinion that there should be no costs either of this appeal or in the Courts below, and they will humbly advise His Majesty accordingly.





In the Privy Council.

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RAMLAL HARGOPAL

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KISANCHANDRA AND OTHERS.

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DELIVERED BY LORD PHILLIMORE.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1923.