

Privy Council Appeal No. 36 of 1942.

Mohindar Singh - - - - - *Appellant*

v.

Ramindar Singh and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH APRIL, 1944

Present at the Hearing:

LORD RUSSELL OF KILLOWEN

LORD JUSTICE GODDARD

SIR MADHAVAN NAIR

[*Delivered by LORD JUSTICE GODDARD*]

This appeal is from a judgment and decree of the High Court at Lahore upholding the award of an arbitrator dated 11th December, 1937. The circumstances under which the arbitration came to be held are that in the year 1931 the present appellant took proceedings in the Court of the Senior Subordinate Judge at Amritsar claiming possession of 132 kanals of land which he alleged were sold to him by the first respondent who was originally the sole defendant. His case was that the land had been bought for him by Ujagar Singh, as benamidar, for the sum of Rs.15,500, and this person was subsequently added as a second defendant. The defendant's case was that he had never sold anything to the plaintiff; he had sold the occupancy but not the proprietary rights in his land to Ujagar Singh who was a real purchaser and not a benamidar for the plaintiff but who had practised a fraud upon him. Then he said that under a threat of criminal proceedings Ujagar had cancelled the sale deeds and the money which had passed was returned. Ujagar Singh filed a written statement denying that the land was sold to the plaintiff or that he (Ujagar) was benamidar for him. It was not till 31st August, 1936, that judgment was given in the suit. It was tried before the Subordinate Judge Third Class at Amritsar, who found for the plaintiff. He found that the sale to Ujagar Singh was benami, that the plaintiff was the real purchaser, that the defendant had received Rs.15,500 as the purchase price and that no fraud was proved, but disapproving of the plaintiff's conduct in several respects he awarded no costs. On 1st October, 1936, the first defendant appealed to the Court of the District Judge and on 3rd February, 1937, the plaintiff filed a cross-objection as to costs; but on 27th November, 1937, the parties came to an agreement to refer their disputes to arbitration and petitioned the Court to remit the appeal to the arbitrator they had chosen. The agreement is in these terms: "We, the parties, of our own accord have appointed S. Amar Singh, Police Inspector, C.I.A. Railway Police, Lahore, as our sole arbitrator for settlement of all our disputes in this case. We therefore pray that the appeal case may be handed over to the said arbitrator. The award given by him shall be accepted by us without any objection."

The same day the court made an order in these terms: "This case is referred to the arbitration of S.S. Sandra Amar Singh, Inspector of Police, Lahore. He would submit his award by 13th December, 1937."

The parties attended before the arbitrator on 6th and 8th December and were represented by counsel. It is to be observed that the arbitrator was a relation, a second cousin, to both parties. According to the evidence of the arbitrator he gave both parties an opportunity of calling evidence, but they did not desire so to do but seem to have read to him the papers in the case and to have gone into all the facts from the beginning of the dispute between them. On 11th December the arbitrator made his award. He awarded that the land should be given to the defendant, the present first respondent, and ordered him to pay back Rs.15,000 by two instalments. In substance therefore he cancelled the sale and put the parties back into their original position except as to the difference between Rs.15,500 and Rs.15,000.

The appellant here filed objections to the award in the Court of the District Judge. The only objection material for the purpose of his appeal was that the arbitrator was bound to find whether or not the title to the land had passed to the appellant and that he had no jurisdiction to award him money instead of land. Compendiously, his contention was that the arbitrator could only deal with the appeal and decide whether the judgment of the learned Subordinate Judge was right, whereas the respondent contended that the whole dispute between them was referred to the arbitrator, though no doubt his award would in one way or another have to dispose of the appeal. The Additional District Judge decided in favour of the validity of the award but remitted the matter to the High Court as it involved a sum of Rs.15,000 which was beyond his jurisdiction. On the 18th December, 1939, the High Court delivered judgment, upholding the award and it is from this judgment that the present appeal is brought.

Their Lordships are of opinion that the subject of the submission to arbitration clearly was the whole dispute and not merely the matter of the appeal, and the order of the Court referring the matter confirms this view. Had the parties meant only to refer the appeal it would have been quite easy to say so, but the words they have used indicate that the whole case was to be heard de novo by the arbitrator who was to settle "all our disputes in this case." It is hardly probable that had the parties intended to refer only the question whether the judgment of the learned Subordinate Judge was right they would have selected a layman as their arbitrator, whereas if, weary of the delay involved in litigation, they wanted a decision on the merits it was quite natural for them to select an arbitrator of equal relationship to both of them who from the position that he held might be trusted to give an impartial decision. True the decision he gave was not one that a court could have given, nor was it one that perhaps would have been given by an arbitrator who was also a lawyer. But for better or worse they chose to submit their disputes to a relative whom they trusted and who was not a lawyer, and he has given just the sort of award that might be expected from a lay arbitrator in the circumstances. In their Lordships' opinion there is no ground for impugning the validity of this award and they will humbly advise His Majesty that this appeal should be dismissed with costs.

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