Privy Council Appeal No. 121 *of* 1924.

Ram Protap Chamria - - - - - - - - *Appellant*

v.

Durga Prosad Chamria and Others - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH OCTOBER, 1925.

Present at the Hearing:

LORD BLANESBURGH.
LORD DARLING.
SIR JOHN EDGE.

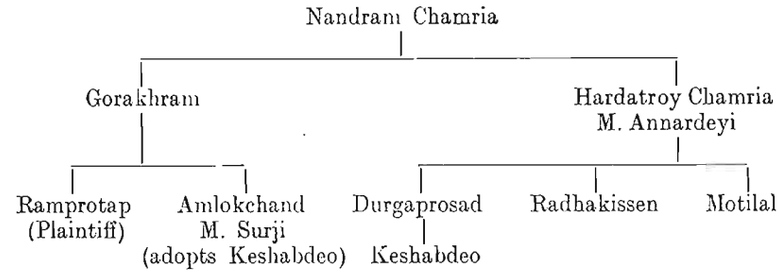
[*Delivered by* LORD BLANESBURGH.]

This appeal is from an order of the High Court of Judicature at Fort William in Bengal, exercising appellate jurisdiction and in effect affirming an order made by Mr. Justice Greaves, sitting in the exercise of the ordinary original civil jurisdiction of the Court. Both were orders propounded in a suit for the dissolution of a partnership, and their result was to set aside an award of arbitrators so far as that award affected to deal with matters in question in the suit. The appellant upholds the award and asks that the orders setting it aside be discharged.

The circumstances are somewhat involved and, in detail, elaborate. It will be possible, however, as their Lordships hope, to state the facts in a summary form without endangering such accuracy as is requisite for the purposes of their judgment.

The disputants are descendants of one Nandram Chamria, and their disputes are to a large extent, although not altogether, traceable to questions concerning the division of the estate of one of his sons—Hardatroy Chamria—whose position in the family

with his relationship to the parties before the Board appears in the following pedigree, taken from the judgment of Mr. Justice Mookerjee in the Appeal Court.



The suit, No. 120 of 1922, related to a business of brokers and bankers carried on under the style of Hardatroy Chamria and Company. The business originally had been started by Hardatroy alone. Some years later he took into it, first as an assistant, then as a partner, his nephew, the plaintiff and present appellant, Ram Protab Chamria. The appellant's share as a partner was, in its origin, two annas; subsequently, it became one of five annas. Later still, the appellant's brother, Amlokchand, was admitted a partner with a two annas' share. He died, however, in 1911, and after his death the business was carried on by Hardatroy and the appellant together, Hardatroy being treated as possessed of an eleven annas' share and the appellant of the remaining share of five annas. By an indenture dated the 1st October, 1916, and made between Hardatroy and the appellant, it was agreed that this partnership should continue for 20 years. There is no further reference in the appellant's plaint to the two annas' share which belonged to Amlokchand at the time of his death. The appellant appears to treat it as merged in the shares of himself and Hardatroy. This position, however, is not accepted by the representative of Amlokchand's estate, as will later appear.

Amlokchand left no issue but he was survived by his wife, the respondent, Musammat Surji, and on her expressing a desire to adopt as a son to her deceased husband, Hardatroy's youngest son Motilal, Hardatroy, so it was alleged by the appellant, agreed, with the appellant's consent, to admit Motilal to the firm setting aside for his benefit a two annas' share out of his own share of eleven annas. This arrangement, however, if it became effective at all, was almost immediately superseded by an agreement in writing dated the 16th November, 1916, to which Hardatroy, his three sons, the appellant and Musammat Surji were privy or parties and under which in effect Hardatroy retired from the firm and it was agreed that the business should, as from 1st January, 1917, belong in stated shares to the appellant, to the son to be taken in adoption by Musammat Surji, and to the three sons of Hardatroy, viz., Durga Prosad, Radhakissen and Motilal—with a variation in interest as between these three, if Motilal proved to be the son to be taken in adoption to Amlokchand as contemplated.

By an agreement of even date entered into by Musammat Annardeyi, Hardatroy's wife, and his three sons, but to which the

appellant was not a party, an arrangement was embodied with reference to the division of his property on the death of Hardatroy, an event then apparently regarded as imminent. The property dealt with by this agreement in terms extends to Hardatroy's interest in the partnership, although that interest appears to have been disposed of, and differently, by the agreement already set forth. It is stated in this second agreement that it had become necessary in order to settle the disputes which had arisen regarding the rights of Durga Prosad who, unlike each of his younger brothers, was an adopted son and not a natural son of Hardatroy.

In the following month Hardatroy died. The appellant's case, as set forth in his plaint, then was that the business, since the date when the first agreement of the 16th November, 1916, became operative, had been carried on upon the basis of that agreement but that Musammat Surji had not adopted Motilal. On the contrary, she had put forward Keshabdeo, a son of Durga Prosad, as the son whom she had adopted to her late husband. The appellant disputed both the factum and the validity of such adoption, further alleging that Durga Prosad had drawn out of the firm about twenty-one lacs without the knowledge of any of the parties, that he had taken forcible possession and refused inspection of the partnership books, that he was making unauthorised entries therein to suit his own purposes and that he had been guilty of gross misconduct in the affairs of the partnership and towards the partners. Accordingly, the appellant claimed dissolution of the partnership, accounts and a receiver. He cited as defendants to the suit, Durga Prosad, Radhakissen and Motilal, Musammat Surji and Keshabdeo. It will be noted that Annardeyi, Hardatroy's widow, is not a party to the proceedings.

The plaint was filed on 12th January, 1922. No written statements have ever been put in, but it may, their Lordships think, be fairly gathered from his plaint that the only questions which the appellant, at all events, desired to raise in the suit were, first: whether the adoption of the infant defendant Keshabdeo had ever taken place; whether it was valid if it had; and who, on either view, were the persons interested and in what shares in the partnership, which was treated as one constituted by the agreement of the 16th November, 1916; and secondly: whether the allegations made by the appellant against Durga Prosad were, if established, sufficient to entitle the appellant to the decree of dissolution which he sought.

But these did not comprise all the matters of difference then existent in the family of Nandram Chamria. First of all, in the appellant's own immediate branch of it, there was apparently a serious dispute between him and Musammat Surji upon the question whether the appellant and Amlokchand were joint or separate in estate; there was another as to the rights of each brother in the ancestral or self-acquired property of their father Gorakhram; there was a third as to the claim of Musammat

Surji to certain company shares standing in the name of the appellant. Next there was a question with Amlokchand's representatives in which not only the appellant but the estate of Hardatroy was concerned : namely, whether Amlokchand's estate was entitled to his two annas or some other share in the partnership as carried on prior to the 1st January, 1917, and at whose expense. In Hardatroy's branch of the family again there were further serious questions, as to the validity of the second agreement of the 16th November, 1916, as to the extent of his widow Annardeyi's property, and as to the rights and interests in the property of Hardatroy, both of his widow and his three sons respectively.

The most striking feature of this second and third sets of disputes in relation to the question now before the Board is the interest in them of Annardeyi who, as, has been pointed out, was not a party to the suit at all. Nor can it fairly be gathered from its terms, as their Lordships think, that any of these questions are either raised or foreshadowed in the appellant's plaint. It may well be that some of them would have been mooted in one or other of the written statements of the defendants when put in. But this must still remain in the region of conjecture. It suffices to say that none of them have so far become matters in question in the suit.

After the plaint was filed the adult members of the family appear to have come to the conclusion that all the questions in difference amongst them should be referred to arbitration, and on the 11th May, 1922, Annardeyi, Ram Protap, Durga Prosad, Radhakissen, Motilal, together with Keshabdeo, by Musammat Surji on his behalf, executed a document addressed to Rai Sew Prosadji Toolsan Bahadur, Rai Narang Raiji Khaitan Bahadur, Banshidharji Khaitan, Jugal Kissoreji Birla and Sew Prosadji Gorodiya, appointing them arbitrators " for the settlement of all matters in dispute amongst ourselves " agreeing to accept whatever the arbitrators might decide with reference to the said disputes and " in respect of the proceedings taken in Court with regard to this matter before this day " agreeing that the proper parties would make in accordance with the directions of the arbitrators such applications as the arbitrators might think necessary.

The terms in which this document is couched suggest very cogently to their Lordships' minds that it was so far, at all events, the intention of all the parties to it that the proceedings in the suit should become merely ancillary to the arbitration, if indeed they were not thereby to be entirely superseded. And if the application made to the Court had been that all proceedings in the suit should be stayed and an order in these terms had been made thereon, that doubtless would have been the result. But the application actually made to the Court was not of that nature. It took the form of a petition presented in the suit by the appellant purporting to act with the approval of all parties and referring to the agreement of the 11th May, 1922, as " an agreement to refer all matters in dispute between them " : and it prayed, in effect, that the matters

alluded to in the agreement should all be remitted to arbitration in accordance with its terms.

But whatever may have then been the desire of the parties, including it may well be even Annardeyi, and whatever may have been the belief of the arbitrators as to the terms of the order actually made, the Court had on that application no power to refer to arbitration any questions between the parties to the suit other than those in question in the suit or any questions in which was concerned anyone not a party to the suit. Nor did it exceed its powers in this matter for by its order made on the 23rd May, 1922, although not actually drawn up until the following month, what the Court did was to refer all matters in difference *in the suit between the parties to the suit* to the final decision of the arbitrators named in the agreement of the 11th May, 1922, in terms of that agreement, with consequential directions applicable to such a reference, the minor defendant, Keshabdeo, being given liberty to appear in the proceedings through his attorney.

In their Lordships' judgment the decision of this appeal really turns upon the effect of that order properly interpreted. It was an order made in pursuance of paras. 1 and 2 of the Second Schedule to the Code of Civil Procedure, and in the exercise of a power thereby given to the Court to refer to arbitration matters in difference in a suit defined by itself in the order of reference. It is incumbent upon arbitrators acting under such an order strictly to comply with its terms. The Court does not thereby part with its duty to supervise the proceedings of the arbitrators acting under the order. An award made otherwise than in accordance with the authority by the order conferred upon them is, their Lordships cannot doubt, an award which is " otherwise invalid " and which may accordingly be set aside by the Court under para. 15 of the same schedule.

The difficulties in this case have all arisen from the fact that the arbitrators (misled it may well be by the attitude of the parties at the time of their appointment) have not fully appreciated the importance of the fact that some of the questions consensually submitted to them were already the subject-matter of a pending suit to which one of the persons appointing them was not even a party.

The arbitrators did not wait for the Court's formal order on the application of the 23rd May. They proceeded at once with the arbitration, and on the 27th May, 1922, they published their award. That award not only dealt with all the disputes above detailed but it is clear on its face that the arbitrators in no way discriminated between those disputes which were at issue in the suit and those which were not. The order of the 23rd May is recited as one :—

> " By which all matters in dispute between the parties were referred to our arbitration provided that the arbitration is to be in terms of the said agreement dated the 11th May, 1922, and that the attorney for the guardian *ad litem* of the infant defendant be allowed to represent him."

And it is clear to their Lordships from the terms of the award itself—and there is extrinsic evidence to the same effect—that in reaching their conclusions the arbitrators took a comprehensive view of the family situation and made an award which doubtless they regarded as just on the whole and as a whole, but which probably they would not, in any of its parts, have themselves made precisely in the same terms, if the dispute thereby dealt with had alone or separately been submitted to them for adjudication.

To illustrate by a striking example what their Lordships mean, they would point to the shares to be taken in the new partnership provided for by the award. These precise shares have apparently no counterpart in the shares taken in the dissolved partnership according to either of the agreements with reference thereto which the arbitrators themselves find to be binding on the parties.

The award, an elaborate document, has been carefully analysed by the learned Judges in the Courts in India. It is not necessary that their Lordships should again go through it in detail. It finds both of the agreements of the 16th November, 1916, to be binding: it declares that the appellant and Amlokchand were not joint but separate in estate and—a finding which vitally concerns the estate of Hardatroy—that they are respectively entitled to a five annas' and a two annas' share in the partnership business up to the 31st December, 1916: that the adoption of Keshabdeo was valid: while, with special reference to the partnership business, the award declares that the partnership is to be dissolved with effect from the 30th June, 1922: it provides for a new firm being constituted as from the 1st July, 1922: it prescribes the shares in which the old partners are to be interested therein, and with reference to that partnership declares that in case any of the partners do not agree to the prescribed conditions he shall inform the firm in writing, whereupon his capital will be returned to him and his connection with the firm shall cease and his share be taken up equally by the remaining partners. This last is the only provision in the award for the satisfaction of the claims against the property and assets of the dissolved partnership of any partner who does not choose to come into the new partnership. The award contains elaborate further provisions for the adjustment of the other disputes above referred to.

In their Lordships' judgment such an award is in no true sense one made in obedience to the order of the 23rd May, 1922. While it would not be easy to segregate the findings with reference to the matters in question in the suit from those not so in question—the findings in which Annardeyi was interested from those in which she was not— it is, their Lordships think, impossible to uphold an award in relation to a suit the conclusions of which were plainly coloured, if not dictated, by the view taken by the arbitrators of other questions between the parties or some of them to which the suit had no reference.

Taking even a narrower view of the matter the award so far as it purported to constitute a new partnership, giving to a party who refused to come into it only rights which were far below those to which as a member of a dissolved partnership he was entitled was not in their Lordships' judgment an award in any way contemplated or authorised by the order of reference.

To the award when published Musammat Surji, as guardian *ad litem* of Keshabdeo, took strong exception, and on the 5th July, 1922, gave notice to the other parties to the suit of an application by her for an order that the award should be set aside or modified or corrected by expunging therefrom all passages relating to matters that were not in question in the suit. On that application Mr. Justice Greaves by order dated the 24th July, 1922, set aside the award in so far as it purported to deal with matters referred to in the suit. His order, as above stated was affirmed by the Appellate Court by an order dated the 19th of July, 1923. Mr. Justice Greaves based his decision primarily upon the view that the provisions of the award relating to the new partnership were quite unauthorised and invalid. The Appellate Court based their decision upon the ground that it was really impossible according to the Statute Law of India that one and the same arbitration should be held as Rankin J. expresses it :—

> " As to matters within the jurisdiction of the Court and matters without the jurisdiction of the Court; between the parties to the suit and between them and other persons ; under the code provided by the Indian Arbitration Act and under the code provided by the Second Schedule ; under the superintendence and control of the Judge who has seizin of the suit and of the Judge disposing of business under the Indian Arbitration Act ; partly upon an order of reference and partly under an agreement."

Their Lordships desire to reserve their opinion upon the question whether there may not be exceptions to that comprehensive statement.

They are satisfied, however, for the reasons they have given, that the order actually made by one Court and affirmed by the other was, in this case, the proper order to be made.

They will accordingly humbly advise His Majesty that this appeal therefrom should be dismissed and with costs.

In the Privy Council.

RAM PROTAP CHAMRIA

v.

DURGA PROSAD CHAMRIA AND OTHERS.

DELIVERED BY LORD BLANESBURGH.

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