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Har Prasad and anr. Vs. Raghubar Dayal

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Court : Allahabad

Decided On : May-14-1923

Reported in : AIR1924All62; (1923)ILR45All628; 74Ind.Cas.817

Judge : Walsh and ;Kanhaiya Lal, JJ.

Appellant : Har Prasad and anr.

Respondent : Raghubar Dayal

Judgement :

Walsh and Kanhaiya Lal, JJ.

1. In this case, in the course of an application in execution to enforce a decree passed in terms of an award, the learned Judge has gone into the merits, and finding on the evidence that a mistake had been made in the demarcation of a dividing line as shown upon a map which became a part of the decree, he has endeavoured to amend the mistake by giving effect to what he considers the real intention of the arbitrators. It is quite clear that no execution court has any jurisdiction to do anything of the kind. It may be that by an unfortunate chapter of accidents, the decree-holder has suffered loss by reason of the decree not in fact representing the true intention of the arbitrators, and at first sight it may seem illogical for a court of justice to refuse to remedy a mistake of that kind, but when the matter is carefully considered, it is clear that no such critcism can really be made. The decision of arbitrators is final. If there is on the face of the award a patent inconsistency, such as a flat contradiction in measurement, or a mistake of arithmetical calculation, it is open to the court to which application is made for filing the award, on a patent error of that sort being pointed out, to send the award back to the arbitrators to correct it, before a decree is passed in accordance with it. But anything of this kind cannot be done in execution proceedings, and there is, therefore, a preliminary objection to the order of the learned Judge in any case. In this case a description of the dividing line is to be found in the language of th6 award itself and a further demonstration of the dividing line has been shown upon a map accepted by the arbitrators and made part of the award; therefore, it is extremely doubtful whether a court would have jurisdiction to go into the question whether the line as shown by the map was correct. That would mean really rehearing the arbitration on the merits so far as this particular point is concerned. The vice of the court taking upon itself the decision of such a question as that is illustrated in this case by the learned Judge having taken the evidence of what is called the head arbitrator, who says, looking at the map, that he accepted it in a hurry and that, in his opinion, now looking at the terms of the award, the map is incorrect. But, whatever his opinion may be today, it by no means follows that that opinion so expressed by him, looking at the document afterwards, was the unanimous opinion of the arbitrators, and, therefore, in any case, it would appear that the only

course open to a court, under such circumstances, would1 have been to set aside the award and to send it back to the arbitrators to re-hear and to re-decide the question of this dividing life. However, it is not really necessary to express a final opinion on that point, because this award, including the map, was filed by the judicial act of a competent court after all the parties had been heard. A decree was passed and the map now in question became a part of the decree. It is quite clear that such a decree, including the map, cannot be altered by the court exercising jurisdiction in execution. The appeal, therefore, must be allowed and the order set aside with costs.

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