

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Kembell,
and Mr. Justice West.*

AMARSI, PLAINTIFF, *v.* DAYA'L, DEFENDANT.*

Stamp—Arbitration—Award—Partition.

1884
September 11.

An award directing partition of property if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition and should be stamped accordingly.

THIS was a reference by the Subordinate Judge of Alibág under section 49 of the Indian Stamp Act, No. I of 1879, who stated the case thus :—

“In suit No. 5 of 1884 a document named *panchanáma* or an award is produced on behalf of the plaintiff as evidence in support of his claim. It is written on plain paper, and the question is, whether it requires to be stamped and under what article of the Stamp Act I of 1879. The document in question purports through four arbitrators to divide property between plaintiff Amarsi and defendant Dayál, who stand to each other in the relation of nephew and uncle. It appears from the examination of both parties that the matter of division was referred by them to the decision of the arbitrators named in the document. It may be looked at in the light of a partition-deed of an award made by arbitrators. An instrument of partition as defined in the Stamp Act, means ‘any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes also a final order for effecting a partition passed by any Revenue authority’. Under this definition it seems the division must be made by the co-owners themselves. At the end of the document in question it is said that the *panchanáma* is made under the direction or authority of the arbitrators and the two co-sharers; but it is signed by the arbitrators only; the co-sharers signing it simply by way of their assent to it. I think, therefore, that it is not a partition-deed according to the above definition. I think it comes under ‘award’ which means any decision in writing by an arbitrator

* Civil Reference No. 34 of 1884.

or umpire on a reference made otherwise than by an order of the Court in the course of a suit. See art. 10, Sched. I of the Stamp Act. In this case the reference was made by the parties to four arbitrators, whose decision with regard to the division of their common property is embodied in the document under notice. Of course under the General Clauses Act, 1868, words in the singular also include the plural. As, however, I am not free from doubt in the opinion I have formed regarding the stamping of the document in question, I deem it advisable to refer the question to the High Court."

There was no appearance in the High Court.

WEST, J.—As the instrument in question is signed by the parties interested by way of assent to the award it thus becomes an instrument of partition and should be stamped accordingly.

Order accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

THE MUNICIPALITY OF THE CITY OF POONA (ORIGINAL DEFENDANTS),
 APPLICANTS, *v.* MOHANLAL LILA CHAND AND OTHERS, MANAGERS OF
 THE FIRM OF VITHALDA'S MANCHAND (ORIGINAL PLAINTIFFS), RES-
 PONDENTS. *

September 2.

*Municipality—Bombay Act VI of 1873, Sec. 21—Octroi duties—Imposition of
 tax—Inhabitants' objections—Consideration by Municipality and opinion.*

The requirements of clause 2, section 21 of Bombay District Municipality Act VI of 1873, which enacts that "any inhabitant of the Municipal District objecting to such tax, toll, or impost, may within a fortnight from the date of the said notice, send his objection in writing to the Municipality and the Municipality shall take such objection into consideration and report their opinion thereon to the Governor in Council," is not satisfied by the Chairman of the Managing Committee considering the objections of the inhabitants and reporting his opinion to the Governor in Council or his representative the Commissioner of a Division. The provision for forwarding the opinion of the Municipality on the objections is an essential part of the machinery provided by that section for the legal imposition of a tax.

THIS was an appeal from the decision of Ráo Bahádur Gopál Govind Phatak, First Class Subordinate Judge of Poona, partially awarding the claims.

* Regular Appeal, No. 23 of 1883.