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decision in *In re Stapleford Colliery Company* shows that as between the company and Mr. Dadyshe the three shares must be treated as paid up, and that he could make a good title to a purchase whether with or without notice. It appears that they were sold to the appellant Gulabdas, who was the managing director of the company, and it has been urged that, as such, he must have known that the shares had been issued as fully paid up shares without complying with s. 28 of Act VI of 1882, and cannot, therefore, take advantage of the rule which protects a purchaser with notice taking from a purchaser without notice. This argument, however, was addressed to the Court in *In re Stapleford Colliery Company* (1), where the appellant and his father, whose executor he was, had been the solicitor and chairman of the company at the time of the agreement with the contractor; and yet the appeal Court held that the fact of their being such officers made no difference in their title.

We are unable to distinguish the present case from the one referred to, and must, therefore, discharge the order of the Court below placing the name of Mr. Gulabdas on the list of contributories. Appellant to have his costs throughout.

Ord er reversed.

17 B. 674.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

VENKATESH KHANDO AND ANOTHER (*Plaintiffs*) v. CHANAPGAVDA (*Defendant*).* [15th September, 1892.]

Award—Civil Procedure Code (XIV of 1882), s. 525—Application for filing the award registered as a suit—Objections taken by the defendant—Court precluded from filing award.

An application for filing an award being registered as a suit, the defendant raised objections, and the following issues were raised:—

(1) Whether a certain arbitrator was nominated or accepted as one of the arbitrators by the defendant?

[675] (2) Whether there was any and what illegality apparent on the face of the award?

(3) Whether the proceedings conducted by the arbitrators were illegal?

Held that the objections taken by the defendant, which were the subject of the above issues, precluded the Court from filing the award.

[R., 17 A. 21 (24) = 14 A.W.N. 187; 20 B. 596 (600); 28 B. 287 = 6 Bom. L.R. 15 (16); 18 C.P.L.R. 53 (56).]

THIS was a reference made by Rao Bahadur Vithal Vaikunth Vagle, First Class Subordinate Judge of Dharwar, under s. 617 of the Civil Procedure Code (XIV of 1882).

The reference was as follows:—

“This was an application registered as a suit under s. 525 of the Civil Procedure Code (XIV of 1882) for filing an award made by arbitrators appointed by the parties without the intervention of the Court.

“The defendant objected to the award being filed, on the following grounds:—

“(1) The application was time-barred.

* Civil Reference, No. 12 of 1892.

(1) 14 Ch. D. 482.

"(2) The award was made without authority and was illegal.

"(3) His signature to the agreement of submission to the arbitration was obtained on 18th April, 1891, without mentioning the names of the arbitrators. One Krishnaji Tirko's name was fraudulently inserted in the margin of the agreement in the place of Shripad Naik, and the parties were the same day examined by the other two arbitrators in the absence of the said Krishnaji Tirko. The appointment of Krishnaji thus made was illegal.

"(4) Shripad Naik having refused to act as an arbitrator, he (defendant) prayed for the appointment of a Lingayat arbitrator whom he considered trustworthy. He was, however, told that it could be subsequently done, and that for the present nothing beyond the examination of of accounts would be done. Under this misrepresentation his signature was taken to a stamped agreement on 28th April, 1891, without disclosing the contents thereof. From that day up to the last, the arbitrator Balkrishna Shastri never took any part in the arbitration.

"(5) The proceedings conducted in the absence of Krishnaji and Balkrishna are illegal: *a fortiori* the award based thereon was also illegal and void.

"[676] (6) The award was not made on the 15th June, 1891, as it purports to be, but was made in the month of September.

"(7) He (defendant) repeatedly protested against the proceedings taken by the remaining arbitrators without appointing proper persons in the place of Balkrishna, who was absent, and of Shripad, who refused to act, but they paid no heed to it and refused to receive the written application given by him. He thereupon sent his application by post on 15th June, 1891. They made an award on plain paper and fraudulently antedated it. Balkrishna Shastri's signatures to the proceedings were afterwards taken, and no copy of the award was given to him.

"(8) The plaintiffs have been awarded time-barred items and have wrongly discredited the receipts passed by the plaintiffs' deceased father for certain payments.

"(9) The two arbitrators, who really conducted the proceedings, did not take down his statements correctly and did not examine him fully. They rejected what evidence he tendered, and having accepted inadmissible evidence from the plaintiffs made the award with partiality in collusion with the plaintiffs.

"(10) The award could not be filed, the proceedings of the arbitrators being illegal, fraudulent and unjust."

The Court thereupon raised, in all, eight points for decision, out of which points Nos. 1, 2 and 3 were as follows:—

"(1) Whether Krishnaji Tirko was nominated or accepted as one of the arbitrators by the defendant?

"(2) Whether there is any and what illegality apparent on the face of the award?

"(3) Whether the proceedings conducted by the arbitrators were illegal?"

The Subordinate Judge referred the following point for decision:—

"Whether the Court has power to enquire into the allegations made by the defendant, and then to file the award, or refer the applicants to a separate suit, as it thinks fit according to the circumstances disclosed in the enquiry?"

[677] The Subordinate Judge's opinion on the point was in the affirmative.

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Dhondu M. Sanzgiri (amicus curiæ) for the plaintiffs.*Narayan G. Chandavarkar (amicus curiæ)* for the defendant.

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JUDGMENT.

SARGENT, C. J.—The decision in *Samal v. Jaishankar* (1), which was followed in *Hirijibhai v. Jamsetji* (2) and is in accordance with the remarks of the Calcutta Court in *Bijadhur v. Manohur* (3), is conclusive that the objections taken to the award by the defendant, which are the subject of issues 1, 2 and 3, preclude the Court from filing the award, unless, indeed, as Mr. Justice West expressed it in *Samal v. Jaishankar* (1), the Court considers the objections "obviously unfounded," which there is no ground for doing in the present case. The question, therefore, raised by the decision in *Dandekar v. Dandekars* (4) does not arise and need not be considered.

Order accordingly.

17 B. 677.

APPELLATE CIVIL.

Before Mr. Justice Bayley Chief Justice (Acting), and Mr. Justice Candy.

PURUSHOTTAM YAMAN SOMAN, (*Original Defendant*), Appellant v.
KASHIDAS JEYCHANDSHET (*Original Plaintiff*), Respondent.*

[16th September. 1892.]

Khoti lands—Mortgage—Sale in execution of decree in mortgage—Suit for possession by assignee of purchaser at such sale—Consent of Khot to alienation.

One Babsha, the registered occupant of certain lands situate in a *khoti* village mortgaged the lands to one Velji, who got a decree on the mortgage. In execution of the decree the lands were sold to Panachand, who assigned them to the plaintiff. In January, 1878, the defendant, as *khot*, took possession of the land, alleging that Babsha had no right to mortgage; that he had left the village and forfeited his occupancy; that he (the defendant) had thereupon rightfully taken possession of the land in 1878, and that the occupancy had been declared forfeited by revenue authorities in August, 1887, under ss. 86 and 153 of the Bombay Land Revenue Code, Bombay Act V of 1879. In 1888 the plaintiff brought this suit to recover the lands. The lower Court held that the defendant by accepting rent from the mortgagee was proved to have "consented to the mortgage and its necessary consequences."

[678] On appeal to the High Court.

Held, reversing the decree of the lower Court, that the plaintiff on the strength of his purchase from Panachand in 1887 had no right to eject the defendant.

[R., 30 B. 290 (303) = 7 Bom. L.R. 941.]

SECOND appeal from the decision of M. P. Khareghat, Assistant Judge of Thana.

Suit to recover possession of certain lands. The lands in dispute were *khoti* lands, of which one Babsha *alias* Babaji Hir Mehtar was the registered occupant. He had mortgaged the lands with possession to Velji, the brother of the present plaintiff. The mortgagee got a decree on his mortgage, and the lands were sold under the decree at a Court sale and were purchased by one Panachand Girdhar, who subsequently assigned his rights under the purchase to the plaintiff. The plaintiff thereupon let

* Second Appeal, No. 307 of 1891.

(1) 9 B. 254. (2) P.J. for 1890. 250. (3) 10 C. 11. (4) 6 B. 663.