

CIVIL REFERENCE.

*Before Mr. Russell, Acting Chief Justice, Mr. Justice Beaman
and Mr. Justice Heaton.*

1906.
September 28.

KALIDAS LALBHAI AND ANOTHER (PLAINTIFFS) *v.* TRIBHUVANDAS BHAGWANDAS (DEFENDANT).*

Indian Stamp Act (II of 1899), section 2, clause 15†—Instrument of partition—Award—An award by an arbitrator directing a partition.

An award began by saying "We decide as below. The parties should act accordingly." It went on, the defendant "should take into his possession as below after passing a legal release." It added other directions with regard to the action of the defendant, and provided "in connection with whatever is settled to be given to the 'defendant' and to be taken by him, we direct that the 'defendant' should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered."

Held, that the award came within the meaning of the words "an award by an arbitrator directing a partition" within the meaning of section 2, clause 15, of the Indian Stamp Act (II of 1899).

Per BEAMAN, J.—The terms of section 2, clause 15, of the Indian Stamp Act (II of 1899), provide for all the cases, for parties having divided, or agreed to divide; for arbitrators, to whom reference has been made, directing a partition; and last for the Courts effecting a partition.

THIS was a reference under section 60 of the Indian Stamp Act (II of 1899) made by Jehangirji Edulji Modi, First Class Subordinate Judge of Surat.

The facts which gave rise to the reference were as follows:

One Bhagwandas Tapidas died in 1900, after having made a will and a codicil. He left him surviving a son and two grandsons by a predeceased son.

After Bhagwandas' death his son Tribhuvandas (defendant) raised disputes about the validity of the will and sued his

* Civil Reference No. 3 of 1906.

† Section 2, clause 15, of the Indian Stamp Act (II of 1899) runs as follows:—

"Instrument of partition" 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 or any Civil Court and an award by an arbitrator directing a partition.

nephews for the property of his deceased father. Subsequently, however, the suits were withdrawn, and the matter was referred to arbitration.

By a submission out of Court the son and the grandsons referred to two arbitrators the decision of the suits between them and of all disputes whatsoever between them relating to their properties.

The arbitrators gave an award allotting certain properties and moneys to the son and the rest to the grandsons of the testator, and directed that the son should pass a release before he took the properties given to him. The award was written upon a stamp paper of the value of five rupees, and was signed by the arbitrators only. Its main provisions were as follows:—

“We Vakils Balvantrao Tripurashanker and Thakurram Kafilram were appointed arbitrators under a reference paper, dated the 20th January 1904, to decide their disputes about property by Tribhuvandas Bhagwandas on one part and by Kalidas Lalbhai for himself and as the guardian of Balubhai on the other part We decide as below. The parties should act accordingly.

“Bhagwandas in his will referred to above has separately shown the properties to be taken by Tribhovandas, out of which Tribhovandas should take into his possession as below after passing a legal release.

* * * * *

“In connection with whatever is settled to be given to Tribhuvandas and to be taken by him we direct that Mr. Tribhovandas should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered to his nephew Balubhai Nathubhai So long as Mr. Tribhovandas does not pass and get registered a full release of his entire claims as directed above, we do not give him any right either of taking possession of any of the properties or their profits or to claim to demand the money or the ornaments in short, if Mr. Tribhovandas delays or fails to pass the release, for so much of time, he shall not get the profits of the properties or interest on the amounts awarded to him.”

When the award was brought before the Court, a question arose whether it should not have been stamped as an instrument of partition as defined in section 2, clause 15, of the Stamp Act.

The Subordinate Judge felt a doubt on the point and in referring the question to the High Court for decision remarked as follows:—

1906.

KALIDAS

v.
TRIBHU-
VANDAS.

"The plaintiffs in this case contend that it is not an order or award 'directing a partition' hereafter; the partition is made by the order or by the award itself. Thus it will be seen that to escape from the difficulties caused by sections 27 and 64 of the Act, the plaintiffs lay stress on the word 'directing' used in the definition clause.

"If the words used had been 'an award making, or effecting a partition' then the meaning would have been clearer, though the language may or may not have been correct. To direct a partition is to order others to make a partition. The language of proviso (c) to article 45 of the Stamp Act, Schedule, shows that the Legislature has understood the phrase 'directing a partition' in the sense contended for by the plaintiffs, namely, that the award itself does not effect the partition but orders others subsequently to make it.

"But at the same time to me it seems strange that a mere direction or order to others to make a partition should be within the definition whilst an award actually making and effecting a partition should go duty free. I am afraid the Legislature intends to include in the definition actually making the partition; and the words used are capable of that construction.

"The other objection taken by the plaintiffs is that it is no partition at all which is contained in the award, which does nothing but interpret and construe the will submitted to the arbitrators. Even if the arbitrators do nothing more than order the bequests in the will to be given effect to, it is submitted, that would be effecting a partition."

The reference came up for arguments before a Bench composed of Russell, acting Chief Justice, Mr. Justice Beaman and Mr. Justice Heaton.

The *Government Pleader* for the Government:—I submit that the document in question is an instrument of partition within the meaning of section 2, clause 15, of the Indian Stamp Act, 1899. The document if examined closely shows that it directs a partition; and an award even if it directs a partition is all the same an instrument of partition.

N. V. Gokhale for the plaintiffs :—The legislature in section 2, clause 15, of the Indian Stamp Act, 1899, draws a distinction between documents “dividing or agreeing to divide,” and Article 45 of the Act brings that distinction prominently into relief. If section 2, clause 15, was intended to include documents effecting as well as those directing a partition, the legislature could have expressly said so. The Indian Stamp Act being a fiscal enactment should be strictly construed and in favour of the subject.

The defendant was absent.

RUSSELL, AG. C. J. :—We have no doubt whatever in this case that the question whether the document should have been stamped as an instrument of partition as defined in section 2, clause (15) of the Stamp Act, must be answered in the affirmative.

It appears that one Bhagwandas Tapidas died in 1900 after having made a will and a codicil. He left behind him a son and two grandsons by a predeceased son. Then it appears that there were disputes between the son and the grandsons, and by a submission paper, the disputes were referred to arbitration, and it appears from that submission paper that Balvantrao Tripurashankar and Thakorram Kapilram were not to divide the property but to make an award.

Accordingly they made their award; and the question that arises is, whether that award directs a partition or not.

Now with regard to that we have only to refer to the terms of the award itself.

It begins by saying “we decide as below.” The parties should act accordingly.” It further goes on “Tribhuvandas should take into his possession as below after passing a legal release.” It adds other directions with regard to the action of Tribhuvandas, and in Clause II, it says, “In connection with whatever is settled to be given to Tribhuvandas and to be taken by him, we direct that Mr. Tribhuvandas should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered to his nephew Bhulabhai Nathabhai and Kalidas Lalabhai.”

1906.

KALIDAS
v.
TRIBHU-
VANDAS.

1906.

KALIDAS
v.
TRIBHU-
VANDAS.

It is plain, therefore, in our opinion, that this award comes directly within the meaning of the words "an award by an arbitrator directing a partition."

BEAMAN, J. :—I should like to add that, in my opinion, the words "an award by an arbitrator directing a partition" precisely fit the case. In ordinary cases, arbitrators have no power to do more than direct a partition. The terms of section 2, clause 15, provide for all the cases, for parties having divided or agreed to divide, for arbitrators, to whom reference has been made, directing a partition, and last for the Courts effecting a partition. It lies with the parties themselves to agree to make or actually to make a partition. But it is not competent to arbitrators to do more than direct a partition. It is the same for all practical purposes, whether they merely direct a partition to be made, or go further and define the manner in which to the best of their judgment it should be made, nor in the latter case does it seem to me to matter in the least, whether after having carefully set forth the precise way in which they think the parties should make the partition, they do or do not add a further direction to them to make it so. The latter would in no case have any legal effect, *per se*. But, whether with or without a previous reference to arbitration, parties may be obliged to have recourse to the Courts, and in that case the Court either by adopting the award of arbitrators, which one party disputes, or where there has been no award, by its own decree makes an effectual partition. The question referred must, I think plainly, be answered in the affirmative.

HEATON, J. --I concur.

R. R.