Privy Council Appeal No. 22 of 1948

Ratanlal Chamaria - - - - - - - - - *Appellant*

v.

Keshardeo Chamaria - - - - - - - - - *Respondent*

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 21ST MARCH, 1949

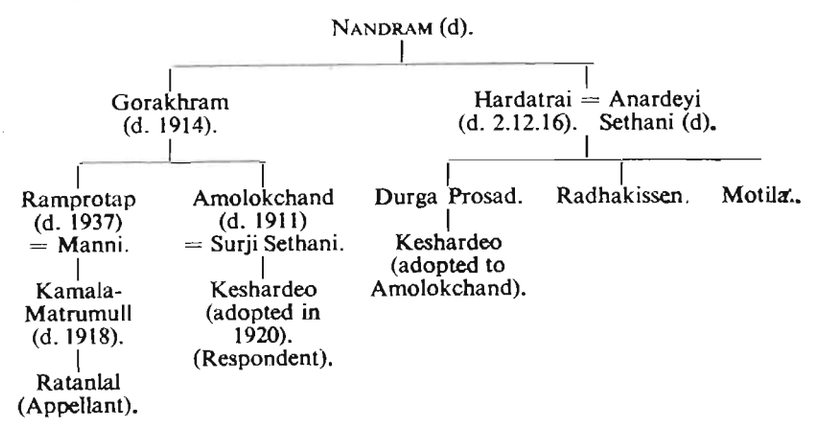
Present at the Hearing:
LORD PORTER
LORD MACDERMOTT
SIR JOHN BEAUMONT
[*Delivered by* LORD MACDERMOTT]

This is a consolidated appeal, by special leave, from a judgment and two orders of the High Court of Judicature at Fort William in Bengal in its civil appellate jurisdiction, dated the 17th May, 1945, which affirmed two judgments and two orders of the said High Court in its original civil jurisdiction dated, as to one judgment and order, the 31st May, 1944, and as to the other judgment and order, the 2nd June, 1944. The judgments and orders appealed from set aside, under section 30 of the Indian Arbitration Act, 1940, two arbitration awards made in two High Court suits between the parties, superseded the references to arbitration and directed that the suits should proceed in the normal manner.

These suits were No. 183 of 1929 and No. 1869 of 1937. They will be referred to in greater detail later.

The present dispute relates only to some of the numerous differences which have arisen between various members of the Chamaria family and which have already produced a long and complex story of litigation. For the purposes of this judgment this need not now be traced fully, but it is necessary for an understanding of the comparatively simple issues which ultimately emerge for determination in this appeal to refer at some length to the facts and circumstances leading up to the two suits just mentioned and to the arbitration proceedings therein.

The relationship between the parties appears from the following genealogical table:



Hardatrai Chamaria carried on business in Calcutta and other parts of India as a merchant and banker in his own name. In 1910 he took his nephew Ramprotap into partnership. Ramprotap and his brother Amolokchand constituted a joint Hindu family. Amolokchand died childless in 1911 leaving Surji Sethani his sole widow. Hardatrai and Ramprotap continued the business and, on the 1st April, 1916, executed a partnership deed for carrying it on for a period of twenty years under the style of Hardatrai Chamaria & Co. Towards the end of that year, and shortly before his death, Hardatrai apparently decided to retire and on the 16th November, 1916, an agreement in writing was made between the members of the family for the continuation of the business as from the 1st January, 1917, by a new partnership. The name was to remain Hardatrai Chamaria & Co. and the partners and their shares were agreed as follows: Ramprotap, 3½ annas; Amolokchand's widow, or son to be adopted, 3½ annas; and Durga Prasad, Radhakissen and Motilal (sons of Hardatrai) 3 annas each. The partnership thus constituted will be referred to hereinafter as "the firm". In 1920 Surji Sethani adopted Keshardeo, the present respondent, as a son to her deceased husband Amolokchand and it is now agreed that Keshardeo thereupon became entitled to a 3½ annas share in the firm under the agreement of the 16th November, 1916. In 1922 Ramprotap sued the other partners for dissolution and accounts. This suit was eventually referred to the arbitration of Mr. Jugal Kishore Birla (the arbitrator whose awards are the subject of the present proceedings) and others, but their award was set aside by a decision of the High Court, which was upheld on appeal to this Board [L.R. 53 I.A. 1], as going beyond the order of reference, and in 1928 Ramprotap withdrew this suit as against Keshardeo, the present respondent. Meantime, about 1923, Ramprotap had started a new business with Anardeyi Sethani, the widow of Hardatrai, and her sons Radhakissen and Motilal. This business went under the name of Hardatrai Chamaria & Sons and was distinct from that of the firm.

Shortly after Ramprotap had withdrawn his suit the present respondent, then of age, brought proceedings for dissolution of the firm and for accounts against the other parties to the agreement of the 16th November, 1916. This was suit No. 2472 of 1928. It is still pending and has not been referred to arbitration by Mr. J. K. Birla, the arbitrator hereafter mentioned. On the 23rd June, 1930 a preliminary decree was made on consent directing accounts to be taken but this task has not yet been finally accomplished. This suit will be referred to hereinafter as "the dissolution suit".

On the 25th January, 1929, the present respondent brought another suit against Ramprotap and his grandson Ratanlal, the present appellant, for partition of the joint family property. This was the suit No. 183 of 1929 already mentioned. It will be referred to as "the partition suit". In it Keshardeo sought, *inter alia*, a declaration that he was entitled to a half share in the joint estate, an enquiry as to what the estate consisted of and the taking of the necessary accounts. On the 23rd May, 1930, a consent decree was made in this suit which, *inter alia*, (*a*) declared the present respondent to be the validly adopted son of Amolokchand, (*b*) provided that out of the joint estate there be set apart Rs.11 lacs to be allotted to Ramprotap, and two properties, 178 Harrison Road and 71 Cross Street, to be dedicated to a charitable trust under the name of the Gorakhram Ramprotap Trust, and that the residue of the joint estate be divided between Ramprotap and the present respondent in equal shares, and (*c*) appointed commissioners to effect the division and take accounts.

The next matter of importance in the course of the relevant Chamaria litigation relates back to 1918. In that year, if not earlier, it appears that one Tawker of Madras pledged a substantial amount of valuable jewellery with the firm. This had not been redeemed and had come, it was said, to form part of the assets of the firm. Keshardeo, the present respondent, alleged that Ramprotap had got this jewellery or a considerable part of it into his possession and, further, that on the 8th December, 1934, Ramprotap had signed a document, known as the Marwari document,

admitting this and agreeing, *inter alia*, to divide the Tawker jewellery equally with Keshardeo and to treat certain properties including the Salkia godowns (which Ramprotap had bought in his own name) as belonging jointly to Keshardeo and himself.

On the 16th January, 1937, Ramprotap died, leaving him surviving his grandson Ratanlal, the present appellant, who now stands in his shoes for the purposes of these proceedings. On the 7th December, 1937, the present respondent sued Ratanlal on the Marwari document, claiming a declaration that the properties therein mentioned (including the jewellery) were joint properties or that the plaintiff was entitled to a half share thereof, an order that the agreement evidenced by the Marwari document be performed, and, alternatively, that a certain trust deed alleged to have been executed on the strength of that agreement be cancelled. He also sought damages for breach of the agreement. The appellant denied the allegations on which this claim was based and, in particular, challenged the genuineness and validity of the Marwari document. This was the above mentioned suit No. 1869 of 1937. It will be called " the Marwari suit ".

After various further proceedings which are not now material, the High Court, by orders made on consent on the 25th and 26th May, 1943, referred all outstanding matters in the partition suit and in the Marwari suit to the sole arbitration of Mr. J. K. Birla. Similar orders were made in other suits with which this appeal is not concerned and about which no more need be said save to repeat that they did not include the dissolution suit.

On the 28th July, 1943, Mr. Birla made separate awards in the partition and Marwari suits. That in the partition suit was the main award, the award in the Marwari suit being confined to the statement that " These matters have been taken into consideration by me in suit No. 183 of 1929 of Calcutta High Court. My award is that this suit be dismissed. The parties to bear and pay their own costs."

The award in the partition suit is cast in a somewhat laconic form and may be said to state conclusions rather than the processes of allocation and accounting on which they were based, but the nature of its structure is plain enough. The arbitrator deals first with moveables and jewellery thus: " Whatever moveable properties and jewellery are in possession of either party shall belong absolutely to the said party." The Courts in India held, and their Lordships agree, that " jewellery " here does not refer to the Tawker jewellery which is specifically mentioned later in the award. Then the arbitrator proceeds to partition and allot the immoveable joint properties. Next comes a list of properties which he declares are to continue to belong to the present appellant, Ratanlal, absolutely. These include the Salkia godowns in which, it will be remembered, Keshardeo claimed a half share in the Marwari suit. The award goes on to direct that certain payments be made to the Gorakhram Ramprotap Trust and, with reference to the firm, provides that: " . . . the balance of the assets received out of the said Company either on account of Amolokchand Chamaria or Ramprotap Chamaria or otherwise shall be divided by the parties in equal shares ". Tawker's jewellery is the subject of a separate paragraph which reads as follows:

> " With regard to Tawker's jewellery, I understand that the same were pledged with Messrs. Hardutrai Chamaria & Co., and that there is a suit going on for accounts of that firm. I also understand that three boxes of jewellery are already with the Official Receiver. Whether any jewellery was concealed by any party or what is the liability of any party with regard to any such jewellery will be finally determined in that suit ".

The ultimate adjustment between the parties made by the award is a direction that Ratanlal shall pay Keshardeo Rs.3 lacs, less Rs.39,168-8-0, with interest at 4 per cent. from the date of judgment on the award. The arbitrator makes clear that in so awarding he has taken into consideration the Rs.11 lacs allotted to Ramprotap by the consent decree of the 23rd

May, 1930, as well as withdrawals from the firm and certain other credits or payments. Only two further provisions of his award need now be noted. By the first of these the arbitrator, recognising that the accounts in the dissolution suit had yet to be completed and, presumably, with a view to securing any final balance that might become due in working out the award, directed on consent that the immoveable properties allotted to each party should remain charged until the accounting was finalised. The other provision which comes almost at the end of the award reads: "Except as aforesaid neither party will have any claim as against the other."

Keshardeo, the present respondent, then moved to set aside the awards on numerous grounds. The applications came before Das J. who, though rejecting most of the grounds relied upon, thought that the awards did not finally settle all the matters in dispute which had been referred and ordered that both be set aside, his judgment in the partition suit award being delivered on the 31st May, 1944, and that in the Marwari suit award on the 2nd June, 1944. On appeal, the High Court in its civil appellate jurisdiction (Derbyshire C.J. and Gentle J.) affirmed the decisions of Das J. and approved his reasoning. Before the Board the appellant, by his counsel, contended that the Courts in India were wrong in holding that the awards were defective and that in any event, they ought not to have been set aside having regard to the terms of the Indian Arbitration Act, 1940. For the respondent, on the other hand, it was submitted that the Courts in India were right in the opinion they had formed of the awards and had acted properly and within their jurisdiction in ordering as they did.

The main question for consideration, therefore, is whether the awards adequately covered the field of controversy submitted to the adjudication of the arbitrator.

It is obvious that, on any view, the partition and Marwari suits raised certain common issues—a circumstance which finds reflection not only in the fact that the awards are related but also in the judgments of the Courts in India which are unanimous in holding both awards bad for the same reason. This reason raises what is now the real issue for consideration. It is stated by Das J. in his judgment in the partition suit award thus: "The award does not finally settle the disputes between the parties regarding Tawker's jewellery." After quoting the paragraph from the partition suit award relating to this jewellery which has already been set out, the learned judge adds: "From the above extract it is quite clear that the arbitrator has not gone into and decided the question of Tawker's jewellery." On the appeal Derbyshire C.J. says: "With regard to Tawker's jewellery, it seems clear to me that the arbitrator has declined to deal with it. . . . In my view the arbitrator ought to have dealt in one way or other with the Tawker jewellery;" and Gentle J. puts it thus: "The arbitrator, Mr. Birla, has refused to adjudicate upon the Tawker jewellery, his reason being that it will be determined in the partnership suit. What requires decision is whether Ramprotop removed the jewellery, its value, and whether his son (**sic**) Ratanlal, must account to the partnership in respect of it and be debited with its value."

On the true construction of the awards and having regard to the terms of reference their Lordships are unable to consider these views as well founded. They are of opinion that the paragraph in the partition award dealing with this jewellery amounts to a finding that, whatever its value and wherever it may be, it is not the property of either of the parties or portion of the joint estate, but is part of the assets of the firm. Though this is not stated in terms, the paragraph is not intelligible on any other view. When the arbitrator says: "Whether any jewellery was concealed by any party or what is the liability of any party with regard to any such jewellery will be finally determined in that suit" he must be speaking on the basis that the Tawker jewellery belonged to the firm and had to be accounted for in the determination of its assets in the course of the dissolution suit. It is to be observed that this interpretation of

the paragraph accords with the other findings of the arbitrator. In the Marwari suit Keshardeo had claimed a half share in Tawker's jewellery on the gound that it was joint property or that it fell to be divided under the Marwari document. The arbitrator, however, did not uphold this claim and it is clear that he thought right not to act upon the Marwari document, for as well as dismissing the suit he found in the main award that the Salkia godowns were the absolute property of Ratanlal though Keshardeo had included them in the alleged Marwari agreement. It is also clear that the arbitrator did not find that Tawker's jewellery was part of the joint estate. Had he done so he would either not have dismissed the Marwari suit in its entirety or else he would have provided for the partition of this jewellery in the main award. It, however, does not refer to this item save in the paragraph quoted above.

Now if the Tawker jewellery was not part of the joint estate and was not divisible under the Marwari agreement, the only way in which it might remain to affect the matters in dispute which were referred to Mr. Birla was if it were assets of the firm, for the partition suit was concerned with the shares in the partnership which formed part of the joint estate. The arbitrator appears to have taken this view, but having found that the Tawker jewellery belonged to the firm—a finding which their Lordships think was almost inevitable on the evidence—it is now said that he should have gone further and decided whether Ramprotap had misappropriated some of this jewellery and, if so, the extent of the misappropriation. It seems likely that Mr. Birla was reluctant to deal with these matters in view of the fact that the issues in the dissolution suit had not been referred to him and of the fate which had befallen the earlier award, in which he had arbitrated, in Ramprotap's suit of 1922. But, whatever his reasons, their Lordships think he was right in not embracing these questions. Once he had held that the Tawker jewellery was assets of the firm these very matters were bound to arise in the dissolution suit as matters in controversy between the present parties, if for no other reason, and had he dealt with them he would, in their Lordships' view, have strayed beyond his terms of reference.

It remains to consider one further point on this aspect of the case. The main award has directed that the balance of the assets "received" in the dissolution proceedings by the parties is to be divided equally. In so ruling the arbitrator took into account the withdrawals established before him. But it was said, and the Courts in India were of this opinion, that this provision would not meet the situation if jewellery appropriated by Ramprotap had to be accounted for in the dissolution proceedings as, in that event, Ratanlal's share would be reduced, it might be very considerably, by a corresponding debit and the sum divisible between him and Keshardeo would thus be diminished with the result that the latter would get less than would have been the case had the jewellery remained in the possession of the firm. Their Lordships think this view is misconceived and due to some confusion as to the appropriate method of accounting. If Ramprotap took this jewellery and it or its value has to be brought back to the firm, the resultant increase in the distributable assets will enure for the benefit of all the members according to their shares. In such event what will be "received" by the appellant for the purposes of the award will be what he should receive on the basis that the Tawker jewellery or its worth has been got in. In the view of the Board the award does not leave him free, in such circumstances, to reduce the amount of the firm's assets to be divided thereunder with Keshardeo by the device of a set-off or debit of the value of the jewellery. If an obligation to restore the jewellery or recoup its value is established the terms of the award must be finally worked out on the footing that that obligation has already been discharged.

For these reasons their Lordships are of opinion that the awards are not defective and should not have been set aside because of the manner in which the arbitrator dealt with the Tawker jewellery.

This suffices to dispose of the case so far as the award in the partition suit is concerned. In the case of the award in the Marwari suit Das J. was of opinion that it was also defective in that neither it nor the related main award dealt with the claims made in respect of the trust deed and for damages for breach of agreement. Their Lordships are unable to share this view. As already indicated it is evident that the arbitrator did not accept Keshardeo's story of the Marwari agreement and having reached that conclusion and dismissed the suit it cannot be said that he failed to deal with these claims, both of which had to fall with the agreement.

On these grounds their Lordships consider that the awards were not lacking in any material respect and must be regarded as valid and effectual. They do not, therefore, find it necessary to consider whether the orders appealed from were beyond the powers conferred by the Act of 1940.

Their Lordships will accordingly humbly advise His Majesty that the appeals be allowed and the judgments and orders of the High Court in its original and appellate jurisdictions be set aside. The respondent must pay the appellant's costs here and in the courts in India.

(64448) Wt. 8084—42 190 4/49 D.L.

In the Privy Council

RATANLAL CHAMARIA

v.

KESHARDEO CHAMARIA

[DELIVERED BY LORD MACDERMOTT]

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1949