

of this case the learned District Judge could not have come to a different conclusion on issue No. 4, which was rightly decided against the defendant-appellant.

S. Anup Singh
v.
Sardarni
Harbans Kaur
Tek Chand, J.

Lastly, there is no convincing proof, forthcoming on the record, as to the improvements claimed to have been made by the defendant, and, of their exact or even approximate value. The benefits obtained by him as a result of his wrongful possession, spread over many years, abundantly compensate him for such expenses as might have been undertaken by him in making unauthorised improvements.

In conclusion I agree with the findings of the District Judge, being of the view that a decree for possession, of 33 *bighas* 5*biswas* comprising of the garden near the Motibagh Palace, Patiala, was correctly passed in favour of the plaintiff and the rest of her claim was rightly dismissed. I find no force in the appeal and in the cross-objections, both of which are dismissed. I leave the parties to bear their own costs throughout.

BHANDARI, C. J.—I agree.

B. R. T.

Bhandari, C. J.

REVISIONAL CIVIL.

Before Bhandari, C. J.

LAKHA SINGH AND OTHERS,—*Petitioners*

versus

HARBHAJAN SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 315 of 1954.

The Indian Trusts Act (II of 1882)—Sections 43 and 48—Whether one of the trustees is competent to refer a matter in which the trust is interested to arbitration without obtaining the concurrence of his co-trustees.

1957
Sept., 26th

Held that it is not within the competence of one of the trustees to refer a matter in which the trust is interested to arbitration without obtaining the concurrence of his co-trustees. Section 43 of the Trusts Act makes it quite clear that it is open to two or more trustees acting together to submit to arbitration any dispute relating to the trust. When two or more trustees are appointed for the administration of a trust, they all form but one collective trustee and they must exercise jointly all those powers that call for their discretion and judgment unless the instrument of trust authorises a sole trustee to execute the trust and the powers thereof. It is open to the body of co-trustees to authorise one of them to perform acts which have been agreed to by all and which cannot conveniently be performed by them all, but the trustee who is so authorised is considered to be an agent of all co-trustees and not as an individual trustee.

Petition under Section 115, Civil Procedure Code, for revision of the order of Sh. William Augustine, Senior subordinate Judge with Enhanced Appellate powers, Amritsar, dated the 30th June, 1954, reversing that of Sh. Om Parkash Aggarwal, Sub-Judge, IV Class, Amritsar, dated the 8th January, 1954, passing a decree in accordance with the terms of the award Ex. A/1 in favour of the plaintiff-respondent Harbhajan Singh.

D. K. MAHAJAN, for Petitioner.

F. C. MITTAL, for Respondents.

JUDGMENT

BHANDARI, C. J.—This petition under section 115 of the Code of Civil Procedure raises the question whether it is within the competence of a trustee to refer a matter in which the trust is interested to the arbitration of two or more arbitrators without obtaining the concurrence of the co-trustees.

It is alleged in the plaint that one Dayal Singh created a trust in a plot of land measuring 28 *kanals* 1 *marla* and appointed his grandson Harbhajan Singh plaintiff and two other persons,

namely Radha Singh and Sohan Lal, as trustees. On the 7th April, 1952, Harbhajan Singh brought a suit against Lakha Singh defendant No. 1 and impleaded Radha Singh and Sohan Lal his co-trustees as defendants Nos. 2 and 3. On the 26th June, 1952, the co-trustees admitted the plaintiff's claim and took no further interest in the proceedings. On the 3rd July, 1952, Lakha Singh, defendant No. 1 filed a written statement in which he claimed ownership in the entire property which was the subject-matter of the dispute. On the 4th August, 1952, both the plaintiff and defendant No. 1 submitted an application to the Court requesting the Court to refer the matters in controversy between the parties to the arbitration of Dev Raj and Amir Singh, who happened to be present in Court. The arbitrators entered upon the arbitration and gave their award on the 14th September, 1952. They held that the plaintiff was full owner of 12 *kanals* 16 *marlas* of the land, that Lakha Singh was the owner of the remaining 15 *kanals* 5 *marlas* of the land and that Lakha Singh was not at liberty to claim a partition of the property. This award was filed in Court on the 29th September, 1952. Lakha Singh raised a number of objections to the award and the Court accordingly framed an issue with the object of determining whether the reference was beyond the jurisdiction of the trial Court. The trial Court came to the conclusion that it had jurisdiction to deal with the matter and made the award the rule of the Court. On appeal, however, the lower appellate authority came to a contrary conclusion and remanded the case for fresh decision in accordance with law. On remand the trial Court set aside the award, but the Senior Sub-Judge, to whom an appeal was preferred, allowed the appeal and upheld the award. It is against this decision that Lakha Singh defendant No. 1 has presented a peti-

Lakha Singh
and others
v.

Harbhajan Singh
and others

Bhandari, C. J.

Lakha Singh and others v. Harbhajan Singh and others
 Bhandari, C. J.

tion under section 115 of the Code of Civil Procedure.

Section 43 of the Trusts Act is in the following terms:—

“43. Two or more trustees acting together may, if and as they think fit—

(a) * * * * *

(b) * * * * *

(c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and

(d) * * * * *

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorised to execute the trusts and powers thereof.”

Mr. F. C. Mital, who appears for the plaintiff, contends that the suit in the present case was properly presented inasmuch as it was brought by Harbhajan Singh, who was one of the trustees and inasmuch as Radha Singh, and Sohan Lal, the other two trustees, were impleaded as defendants. Radha Singh and Sohan Lal admitted the claim of the plaintiff and the only parties which were at variance were Harbhajan Singh plaintiff on the one hand and Lakha Singh defendant on the other. As Radha Singh and Sohan Lal physically and metaphorically walked out of the litigation, it was within the competence of Harbhajan Singh

plaintiff and Lakha Singh defendant to refer the matters in controversy between them to the arbitration of Dev Raj and Amir Singh. They were empowered to refer this dispute to arbitration and if they did so their action cannot be said to have been in contravention of the provisions of law.

Lakha Singh

and others

v.

Harbhajan Singh
and others

Bhandari, C. J.

I regret I am unable to concur in this contention. Section 43 makes it quite clear that it is open to two or more trustees *acting together* to submit to arbitration any dispute which may arise between them. The suit as instituted originally was properly instituted, for all the three trustees figured as plaintiff and defendants and it was within the power of the Court to adjudicate on the matters in controversy between the trustees and Lakha Singh.

But it is contended on the authority of *Firm Joint Hindu Family Gogan Ram Lachminarain Narsang Das and others* (1), that it was open to one of the trustees in agreement with Lakha Singh defendant to refer the matter to arbitration. In this case the plaintiff instituted a case against Narsang Das and his two sons. Later on a reference was made to an arbitrator by the plaintiff and Narsang Das. The plaintiff applied that the two sons be removed from the record. Kapur, J., held that the award given by the arbitrator was binding on the plaintiff and Narsang Das. It was held further that where the interests of the defendants may be served, some of the defendants may join with the plaintiff in referring the matters in difference between them to arbitration; but where the interests of the defendants cannot be severed, such as in a partition suit, a reference by some of the defendants would be invalid.

(1) 55 P.L.R. 231.

Lakha Singh and others
 v.
 Harbhajan Singh and others
 Bhandari, C. J.

This decision came up for consideration before a Division Bench of this Court under clause 10 of the Letters Patent in *Nar Singh Das v. Firm Joint Hindu Family Gogan Ram Lachmi Narain* (1), the learned Judges of the Letters Patent Bench held that in view of the provisions of section 21 of the Indian Arbitration Act it is necessary for a valid reference that all the interested parties should join the application for reference. If a party interested in the dispute is not a party to the application for reference, the reference is void and without jurisdiction. In this view of the case the learned Judges accepted the appeal and set aside the order of the learned Single Judge.

The legal position appears to me to be fairly clear. When two or more trustees are appointed for the administration of a trust, they all form but one collective trustee and they must exercise jointly all those powers that call for their discretion and judgment unless the instrument of trust authorises a sole trustee to execute the trust and the powers thereof. It is open to the body of co-trustees to authorise one of them to perform acts which have been agreed to by all and which cannot conveniently be performed by them all, but the trustee who is so authorised is considered to be an agent of all co-trustees and not as an individual trustee. It may be that Radha Singh and Sohan Lal admitted the claim of Harbhajan Singh but they never agreed that the matters in difference between Harbhajan Singh and Lakha Singh should be referred to and be decided by arbitrators. They agreed only that the matter should be decided by a Court of law. If therefore, Harbhajan Singh, was anxious that the matter should be decided by arbitrators and that the trust should be bound by the decision given by them, it

was incumbent upon him to join the other two trustees in the submission to arbitration. He failed to do so, and it seems to me, therefore, that his action was contrary to the express provisions of sections 43 and 48 of the Trusts Act.

Lakha Singh
and others
v.
Harbhajan Singh
and others

Bhandari, C. J.

For these reasons I would accept the petition, set aside the order of the Senior Sub-Judge and restore that of the trial Court. There will be no order as to costs.

The parties have been directed to appear before, the trial Court on the 25th October, 1957.

B. R. T. ,

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

FIRM GULAB SINGH, JOHRI MAL,—Plaintiff-Appellant.

versus

UNION OF INDIA, NEW DELHI,—Defendant-Respondent.

Regular First Appeal No. 50-D/52.

Indian Post Office Act (VI of 1898)—Section 6—Indian Post Office Rules, 1933—Rules 31 to 46-A, Rules 72 to 83-A and Rule 126—Liability of postal authorities in regard to uninsured and insured parcels—Extent of—Rule 76(2)—Effect of non-compliance—Rule 81—Liability of postal authorities—When arises—Postal authorities offering delivery of insured parcels in the condition received without allowing the consignor to prepare inventory—Consignor refusing to take delivery without making inventory—Whether at fault for not taking delivery—Post and Telegraph Guide—Whether an authentic book.

1957

Sept., 26th

Held, that Rules 31 to 46A of the Indian Post Office Rules, 1933, relate to uninsured parcels in the case of which there is no liability of the postal authorities. These rules are, therefore, not relevant to determine the liability of the postal department in respect of insured parcels. The rules relating to insured parcels are contained in Part IV of the same Rules beginning with rule 72 and ending with rule 83-A. In the case of an insured postal parcel packing is to