

1964

*Present : Herat, J.*

S. KRISHNAN, Appellant, and VAIRY (Wife of K. Kanapathy) and another, Respondents

*S. C. 53/60—C. R. Mallakam, 15,667*

*Compromise of action—Rei vindicatio action—Agreement of parties that the Court should decide the case after inspection—Questions of law involved—Applicability of provisions relating to reference to arbitration—Civil Procedure Code, s. 676 (1) (2).*

Plaintiff-appellant sued the 1st and 2nd defendants-respondents for declaration of title to a certain allotment of land. On the trial date the plaintiff and the 1st defendant, and their respective lawyers, signed the record and consented to all matters arising and in issue between them to be decided by the Commissioner after the latter had inspected the land. The pleadings showed that complicated questions of law as to inheritance were involved in the case.

*Held*, that the agreement to allow the Commissioner to decide the case on the inspection constituted the Commissioner an arbitrator and not a judge, and amounted to an application to refer to arbitration to which the provisions of sub-sections (1) and (2) of section 676 of the Civil Procedure Code were applicable.

**A**PPEAL from an order of the Court of Requests, Mallakam.

*C. Ranganathan*, for Plaintiff-Appellant.

No appearance for Defendants-Respondents.

*Cur. adv. vult.*

January 29, 1964. HERAT, J.—

The Plaintiff-Appellant sued the 1st and 2nd Defendants-Respondents for declaration of title to a certain allotment of land depicted in the Plan filed of record. The Plaintiff-Appellant also stated that his boundary had become confused with the boundary of the Respondents' land

and claimed a definition of boundaries. On the trial date the Plaintiff-Appellant and the 1st Defendant-Respondent, and their respective lawyers signed the record and consented to all matters arising and in issue between them to be decided by the learned Commissioner of Requests after the latter had inspected the land. A perusal of the pleadings shows that complicated questions of law as to inheritance etc. arose between the parties. How the learned Commissioner was going to decide these questions after an inspection of the land staggers one's imagination. The learned Commissioner, however, after inspecting the land heard some argument from Counsel and dismissed the Plaintiff-Appellant's action with costs. From the order and decree dismissing that action the Plaintiff-Appellant now appeals.

Section 676 (1) of the Civil Procedure Code is as follows : " If all the parties to an action desire that any matter in difference between them in the action be referred to arbitration, they may at any time before judgment is pronounced apply, in person or by their respective Proctors, specially authorised in writing in this behalf, to the Court for an order of reference.

(2) Every such application shall be in writing, and shall state the particular matters sought to be referred, and the written authority of the proctor to make it shall refer to it, and shall be filed in Court at the time when the application is made, and shall be distinct from any power to compromise or to refer to arbitration which may appear in the proxy constituting the proctor's general authority to represent his client in the action."

I am of opinion that the agreement to allow the Commissioner to decide the case on the inspection constituted the Commissioner an arbitrator and not a judge, and amounted to an application to refer to arbitration. In that case the application was bad for two reasons. All the parties did not apply, the second Defendant-Respondent did not sign the record. There was also an obvious error in compliance with the imperative requirement of Section 676 Sub-Section 2 quoted above. The subsequent proceedings and order are therefore rendered illegal and void. When the Civil Procedure Code lays down in clear unmistakable terms how any matter should be done, slipshod arrangements should not be entertained. I therefore set aside the order and decree appealed from and allow the appeal.

The case is sent back to be set down for trial in the normal course before another Commissioner.

The Plaintiff-Appellant is entitled to the costs of Appeal.

*Order and decree set aside.*