

1954

Present : Gratiaen J. and Gunasekara J.

MRS. W. JAYASUNDERA, Appellant, and KATULIYADDE
CO-OPERATIVE SOCIETY LTD., Respondent

S. C. 88—D. C. Kandy, X 1,456

Co-operative Societies Ordinance (Cap. 107), as amended by Ordinance No. 21 of 1949, s. 2, 45—Dispute between co-operative society and ex-officer's heirs—Assistant Registrar's unauthorised reference to arbitration—Validity of award.

Where an Assistant Registrar of Co-operative Societies acted in excess of his powers by referring to arbitration a dispute between a co-operative society and the heirs of an ex-officer of the society—

Held, that the award of the arbitrator was a nullity.

APPEAL from a judgment of the District Court, Kandy.

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the 6th defendant appellant.

H. V. Perera, Q.C., with *S. W. Jayasuriya*, for the plaintiff respondent.

Cur. adv. vult.

March 25, 1954. GRATIAEN J.—

A person named J. M. Jayasundera was, until he died intestate on 13th February, 1949, the Treasurer of the Katuliyadde Co-operative Society Ltd. (the respondent to this appeal). His heirs are the appellant (his widow), three minor children, and three children by a former marriage.

After the death of Jayasundera, the respondent Society claimed from the appellant and the other heirs a sum of Rs. 1,571.49 alleged to represent a debt to the Society incurred by Jayasundera as its Treasurer. This claim was not admitted, and a "dispute" accordingly arose between the Society and the heirs of an ex-officer of the Society within the meaning of section 45 of the Co-operative Societies Ordinance (Cap. 107) as amended by the Co-operative Societies (Amendment) Act, No. 21 of 1949.

An assistant Registrar of Co-operative Societies purported to refer this dispute on 8th August 1949 to the decision of an arbitrator in terms of section 45 (2) of the Ordinance; the arbitrator purported to make an award in favour of the Society on 10th September 1949; and the Registrar,

on appeal, purported to affirm the award on 23rd January 1950. I may add in passing that throughout these extra-judicial proceedings the minor children against whom an adverse decision was successfully obtained were unrepresented.

On 22nd April 1950 the Society made an *ex parte* application in the District Court of Kandy to have the purported award enforced as if it were a decree of Court. In due course the appellant and the other heirs took steps to have the *ex parte* order against them vacated, but the learned District Judge held that their objections to the validity of the award were devoid of merit. The present appeal is from his order dated 2nd August 1951 in favour of the Society.

The arbitrator's purported award has been challenged on various grounds, but it is sufficient for the purposes of this appeal to refer to one fundamental reason for deciding that the award was a nullity from its inception.

In my opinion the Assistant Registrar of Co-operative Societies (Mr. T. D. L. Peiris) had no power to refer the dispute to arbitration under section 45 (2) of the Ordinance on 8th August 1949. The only person who was vested with this statutory power at that date was the Registrar himself.

Section 2 of the Ordinance authorised the (then) Governor of Ceylon to issue a general or special Gazette notification conferring on any Assistant Registrar "all or any of the (statutory) powers of a Registrar". On 19th July 1946 Mr. Peiris was specifically given power under section 45 to "refer any dispute for disposal to an arbitrator or arbitrators"—*vide* Gazette notification No. 9,581 dated 19th July 1946. This is the power which Mr. Peiris purported to exercise on 8th August 1949.

It is important to note that the Gazette notification empowered Mr. Peiris only to make a reference to arbitration in respect of disputes of the kind particularised in section 45 *in its unamended form*; a dispute between a Society and the heirs of an ex-officer did not fall within any of these categories, and did not become subject to the special machinery of the Ordinance until the amending Act No. 21 of 1949 passed into law on 24th May 1949. In fact, Mr. Peiris did not receive authority from the Governor-General to exercise the powers of a Registrar in respect of disputes of the latter kind until 30th June 1950—*vide* Gazette notification No. 10,115 dated 30th June 1950. It follows that Mr. Peiris had acted in excess of his powers when he referred this dispute to arbitration. The purported award was therefore a nullity, and could not lawfully be recognised or enforced by a Court of law. I would allow the appeal and order the respondent Society to pay the appellant's costs in both Courts.

SWAN J.—I agree.

Appeal allowed.