girdawari were to the contrary. One of the disputes involved in the case was whether the old well existing in the land in question was in such a condition as to make the land non-*chahi*. This question has not been decided by the Rehabilitation authorities on the facts of the case or on the evidence before them. It has been decided only on account of the entries in the *jamabandi* by which the Rehabilitation authorities felt themselves bound on account of executive instructions. For the reasons already given by me in *Kanshi Ram's case* it is impossible to sustain the impugned orders in this case also. It would of course be for the authorities under the Act to decide as a question of fact whether the land in this case is actually *chahi* or not. In doing so they may certainly take into consideration the relevant entries in the revenue records but not rule out the facts as they may stare the authorities at the side.

Both these writ petitions are, therefore, allowed, but no order is made as to costs.

K.S.K.

APPELLATE CIVIL

Before D. Falshaw, C.J., and Daya Krishan Mahajan, J.

SADHU RAM AND OTHERS,—*Appellants*

versus

UDE RAM,—*Respondent*

F.A.O. No. 78 of 1964

March 21, 1966

Evidence Act (I of 1872)—S. 20—Scope of—Statement made by parties to a suit referring all their disputes for decision to a third person—Whether a reference under S. 20 or a reference to arbitration.

Held, that all that section 20, Evidence Act, says is that if a party to a suit agrees to be bound by a statement of fact made by a their party, the statement of that third party, when made, is to be treated as an admission by the party who made the offer, and if both parties agree to refer a matter to a third party, his statement will be binding on both of them. The word "information" in the section means a statement of fact not a decision of any kind. But when parties to a suit make a statement that the refer all their disputes to a third person for decision, such a reference is a reference to arbitration and not merely a reference

under section 20 of the Evidence Act because the reference is not made for "information" based on a belief or knowledge of the so-called reference but for a decision of disputes. It makes no difference that the referee instead of saying that his "decision" on certain point is so and so, he uses the words that his "statement" is that such and such property is given to such and such party.

Case referred by the Hon'ble Mr. Justice R. S. Narula on 19th July, 1965, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble the Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice D. K. Mahajan, after considering the question referred to them, finally disposed of the case on 21st March, 1966.

First Appeal from the order of the Court of Shri H. S. Ahluwalia, Sub-Judge, 1st Class, Ambala Cantt., dated 11th May, 1964, directing that the reference to arbitration to Dewan Sham Lal is superseded and further ordering that an enquiry may be made from L. Lakshmi Chand as to where his award is and if it is filed, to make it a rule of the Court and a decree be passed in accordance with that and for the statement of L. Lakshmi Chand directing the case to come up on 15th May, 1964.

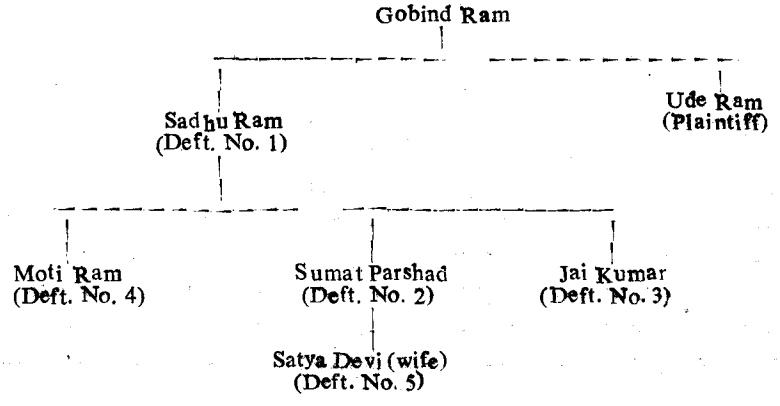
J. N. KAUSHAL AND D. C. GUPTA, ADVOCATES, for the Appellants.

H. L. SIBAL, R. C. SETHIA AND G. P. JAIN, ADVOCATES, for the Respondents.

JUDGMENT

FALSHAW, C.J.—These are two appeals filed under section 39 of the Arbitration Act which have been referred to a larger Bench by Narula, J.

The manner in which they have arisen is as follows. The parties are related as shown in the following pedigree table:—



On the 30th of June, 1962, Ude Ram filed a suit for a declaration that the joint Hindu family comprising the parties had disrupted and claiming a half share by partition of the joint properties listed in a schedule attached to the plaint and for rendition of accounts regarding the income from the properties, or in the alternative for dissolution of certain alleged partnership firms which the plaintiff alleged had been formed only to evade income tax and in which he claimed a half share. On the first date of hearing the defendants, on the basis of an arbitration agreement contained in the partnership deed under which the firms above referred to came into existence, filed separate applications under section 34 of the Arbitration Act for stay of the suit and on the 7th of September, 1962, the Court passed an order staying proceedings in that part of the suit which referred to the dissolution of the partnerships and rendition of accounts of those firms, but the plaintiff at the same time was allowed to bifurcate the suit and to proceed, if he so desired, with the suit so far as it related to the partition of joint Hindu family property. The plaintiff elected to do so subject to the result of an appeal to be filed by him against the order staying the other part of the suit under the Arbitration Act. Such an appeal was in fact filed and dismissed *in limine* by this Court on the 5th of November, 1962, and so the plaintiff was left to proceed with the suit for the partition of the joint family property.

In the meantime the plaintiff had filed an application under section 8 of the Arbitration Act, which was registered as a separate case, for the appointment of an arbitrator in respect of the matters relating to the alleged partnership on the ground that the parties had failed to agree on the choice of an arbitrator. On the 5th of June, 1963, the trial Court appointed Diwan Sham Lal, Advocate, to arbitrate on the disputes arising out of the partnership agreement.

Both the suit and the proceedings under the Arbitration Act came up for hearing on the 19th of August, 1963, and in connection with the arbitration proceedings it was directed that a copy of the previous order be sent to Diwan Sham Lal. In the suit, a statement was made by or on behalf of all the parties by which all the disputes between the parties were to be placed before Mr. Laxmi Chand, the Senior Advocate of Ude Ram, plaintiff, as referee. The statement was made by the plaintiff himself and his Advocate Bakhshi Sawan Singh, by Sadhu Ram and Sumat Parshad, defendants 1 and 2 in person, and on behalf of the others who were not actually present by their counsel

Mr. Ram Sarup, Advocate, and Mr. Mohan Lal, Advocate. The statement reads—

> "Let L. Laxmi Chand be appointed as a sole referee for the disputes between the parties. Whatever decision he arrives at will be wholly or solely acceptable to us. He may hear the parties, record evidence or may not do so. The defendants do know the fact that L. Laxmi Chand is counsel for the plaintiff."

Mr. Laxmi Chand was present in Court at the time and gave his consent to act as referee and the Court passed the order—

> "L. Laxmi Chand is present and he has been informed of the proceedings to which he has accepted. For decision on 20th September, 1963. The question of returning Rs. 500 shall be decided after L. Laxmi Chand has given the decision."

It appears that the so-called referee took some time in giving his decision and the proceedings were adjourned on the 18th and the 21st of October, 1963, because according to the orders of the trial Court "the award" was not ready. On the 28th of October Mr. Laxmi Chand filed his written statement in Court in which he set out the history of the litigation between the parties and proceeded to give his decisions on all the points in dispute between them both regarding the matters which were still before the Court in the suit for partition of the joint property as well as the matters regarding which the suit stood stayed and which were the subject-matter of the reference to the arbitration of Diwan Sham Lal, Advocate. The referee gave a decision about shares of the parties and partitioned the property between them by metes and bounds and also made a sum of Rs. 60,000, payable by one party to the other in a certain contingency. It may be mentioned that in the proceedings before him the referee had taken written statements of claims and counter-claims from the parties and had recorded their evidence and he placed the record of the proceedings conducted before him before the Court. It is clear from the record that the defendants actively participated in the proceedings and never raised any objection to the jurisdiction or the manner in which he was proceeding.

However, after the statement of the referee had been filed in Court the defendants treated it exactly as if it had been an arbitrator's award and filed objections against it purporting to be under the

Arbitration Act. Ude Ram opposed the objections on pleas which gave rise to the following issues:—

(1) Whether L. Laxmi Chand was not appointed as a referee?

(2) Whether he could not be appointed as a referee?

(3) Whether the appointment is otherwise invalid?

(4) Whether the referee is guilty of misconduct?

(5) Whether this question can be raised?

(6) Whether the counsel for the absentee parties, that is defendants Nos. 3, 4 and 5 had no power to appoint a referee?

(7) Whether it was necessary for L. Laxmi Chand to make a statement in Court and what is the effect of this omission?

It is the order of the lower Court passed on the 11th of May, 1964, which has given rise to these two appeals filed by the defendants in the suit. The findings of the lower Court may be summed up as follows. Mr. Laxmi Chand had in fact been appointed by the defendants as referee, he could be so appointed and his appointment was valid and the question that the referee had been guilty of misconduct did not arise since he was not an arbitrator. Thus no decision at all was given on the merits of the allegations of misconduct. It was found that the matters which had been previously referred to arbitration could not be decided without superseding that reference and therefore, the reference of the partnership disputes to the arbitration of Diwan Sham Lal was superseded and finally, in order to meet the objection that the written statement of the referee was not a statement within the meaning of section 20 of the Evidence Act, it was directed that Mr. Laxmi Chand should be called in person and asked to make an oral statement in accordance with the written statement filed by him on the 15th of May, 1964. Before this could be done the appeals were filed in this Court and the record had been sent for.

The learned Single Judge in his referring order has summarised the arguments advanced on behalf of the appellants as follows:—

(1) That on the facts and in the circumstances of this case it is clear that Shri Laxmi Chand was an arbitrator within the meaning assigned to that phrase in the Arbitration Act and was not a referee from whom any information had been sought within the meaning of section 20 of the Evidence Act.

(2) That the appointment of Shri Laxmi Chand relating to the matters which had already been referred to arbitration was wholly without jurisdiction and absolutely void and ineffective, and since these matters were not severable from the other matters, the whole reference to Shri Laxmi Chand was invalid;

(3) That the parties could neither appoint a referee nor an arbitrator without the statement of all the parties. If he is found to be a referee, power had been given to the Advocates for defendants Nos. 3 to 5 to appoint one, but if he is an arbitrator, the *vakalatnama* executed by defendants Nos. 1, 2 and 5 in favour of Shri Ram Sarup, Advocate and by defendants Nos. 3 and 4 in favour of Shri Mohan Lal, Advocate, did not authorise them to make any reference to arbitration. Therefore, the reference itself would be bad. If it is found that he was an arbitrator, the case need not be sent back to the trial Court for deciding the objections against his award and his award and appointment both be set aside as not having been made by all the parties to the suit;

(4) That so long as the first arbitration relating to the partition matter had not been superseded, the same dispute could not be referred to a referee; and

(5) That if the original appointment of Shri Laxmi Chand was not in order, the mere appearance of defendants Nos. 3 to 5 before him and their mere submitting to his jurisdiction would not in any way confer authority on Shri Laxmi Chand to decide the matter as there could be no ratification of something which did not exist.

It was chiefly on account of difficulties regarding the first of these points that the learned Single Judge referred the case to a larger Bench, and it is clear that he had in mind the fact that owing to the appeals being under section 39 of the Arbitration Act, no appeals would lie under clause 10 of the Letters Patent against his decision.

It is clear that the so-called reference by the parties to Mr. Laxmi Chand as referee was not based on any provisions of the Civil Procedure Code, which in fact does not contain any such provisions, and

generally references are regarded as being made under section 20 of the Evidence Act which reads—

> "Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admission."

The section itself is thus brief, and there is only one illustration which reads—

> "The question is, whether a horse sold by A to B is sound.
>
> A says to B—"Go and ask C, C knows all about it. C's statement is an admission."

It is hard to read into this section any more than that if a party to a suit agrees to be bound by a statement of fact made by a third party, the statement of that third party, when made, is to be treated as an admission by the party who made the offer, and if both parties agree to refer a matter to a third party, his statement will be binding on both of them, but I cannot regard the word 'information' as meaning anything but a statement of fact, and not a decision of any kind. In the present case, however, it would seem from the statement recorded on behalf of all the parties that they were referring all their disputes to Mr. Laxmi Chand for decision and this is borne out by the terms of the so-called statement furnished to the Court by Mr. Laxmi Chand in spite of the fact that instead of saying that his "decision" on certain points is so and so, he uses the words that his "statement" is that such and such property is given to such and such party, and in the absence of any authority, I should have no hesitation in holding that the reference did not fall within the scope of section 20 of the Evidence Act, and that it was to all intents and purposes a reference to Mr. Laxmi Chand to decide the disputes between the parties as an arbitrator.

However, authorities are not lacking and the decision of their Lordships of the Privy Council in *Chhaba Lal* v. *Kallu Lal and others* (1) appears to be directly in point. In that case, as in the present, the plaintiff in the suit was the son of one Mukta Parsad, while the defendants were the sons and grandsons of the only other son of Mukta

(1) A.I.R. 1946 P.C. 72.

Parsad, and the plaintiff had brought a suit for partition of the joint family property. In that case one Shri Swami Ramanand Ji, who was the Guru of the parties, was appointed as a referee for a decision on all the facts in dispute; and also regarding costs, under section 20 of the Evidence Act, and he was directed after deciding the case to present himself in Court or send in writing his statement in respect thereof. He submitted his report dividing the family property into two parts, one of which was allotted to the plaintiff and the other to the defendants. Objections were raised on behalf of the minor defendants, one of which related to the validity of the appointment of the referee while the other was that Shri Swami Ramanand Ji, being a referee under section 20 of the Evidence Act could only make statements and had no authority to make a division of the property. The trial Court held that the so-called reference was a reference to arbitration and that both the reference to arbitration and the award were valid, a decree being passed in accordance with the terms of the award. In appeal, the Allahabad High Court allowed the appeal, set aside the decree and sent the case back for a decision in accordance with law. The appeal before their Lordships was against that order and Sir John Beaumont delivering their decision observed—

> "Neither the learned Subordinate Judge nor the High Court dealt with the objection that the reference was not justified by section 20, Evidence Act. That section is in these terms—
>
> 'Statements made by persons to whom a party to a suit has expressly referred for information in reference to a matter in dispute are admissions.'
>
> It is obvious that a reference to an outside party to decide matters in dispute in a suit and the question of costs is not a reference to that party for information in reference to a matter in dispute, and if the reference is to be regarded as made only under section 20, it was a bad reference."

The rest of the judgment is concerned with the question whether there was any valid reference of the dispute to arbitration on behalf of the minor defendants in the suit, on which point the decision of the High Court was upheld. There is also the decision of the Full Bench of Sulaiman, C.J. and Mukerji and King, JJ. In *Mt. Akabari Begam* v. *Rahmat Hussain and others* (2) on which reliance is also

(2) A.I.R. 1933 All. 861.

sought to be placed on behalf of the plaintiff-despondent in this case The facts there were that two daughters of Ahmed Hussain, deceased instituted a suit against their three brothers, Rahmat Hussain, Shafqat Hussain and Azmat Hussain claiming their shares of the movable and immovable property of the deceased. The defendants contested the suit and chiefly relied on several alleged gifts made by their father in their favour or in favour of their sons. A statement was made on behalf of all the parties which ran—

> "The parties rely on the statement of defendant 1 as regards all the disputed questions in the case including costs. Whatever statement the aforesaid defendant makes will be accepted by the applicants and the case be decided in accordance therewith. The parties do not desire to lead any other evidence in the case."

Thereafter, the eldest brother Rahmat Hussain made a statement in which he factually supported the case of the defandants regarding all the alleged gifts on all points and no right of cross-examination was claimed, nor was any opportunity sought to lead any evidence. The matter was referred to a Special Bench of three Judges because of differences of opinion between two learned Judges who first heard the appeal. The only disputed question with which we are now concerned was formulated as follows—

> "Can the parties to a suit agree, apart from the Indian Oaths Act, that they will abide by the statement of a witness including one who is a party to the suit and can they leave the decision of all points including "costs arising in the case to be according to his statement?"

It was held that there was in fact a valid reference under section 20 of the Evidence Act since the parties had offered to be bound by the statement of one of them on matters of fact and I do not think it can possibly be said that any decision was referred to the eldest brother, who was merely asked to make a statement on the question of fact involved which both parties agreed to treat as binding, The following passage occurs in the judgment of Sulaiman, C.J.:—

> "In concurrence with the opinion of the learned Judges who have made this reference, I hold that an agreement to

abide by the statement of a particular witness is in substance not a reference to arbitration. The essence of arbitration is that the arbitrator decides the case and his award is in the nature of a judgment which is later on incorporated into a decree of the Court. The arbitrator can either proceed on the basis of his own knowledge or make enquiries and take evidence and then give his decision on such evidence, but where parties agree to abide by the statement of a third person or a referee, the referee marely makes a staement according to his knowledge or berief and the Court then decides the case and pronounces its judgment on the basis of such a statement and passes a decree thereon. The referee is not authorised to make enquiries and take evidence, and then announce his decision on the basis of such evidence. He is called upon to make a statement according to his knowledge or belief. In the case of an arbitrator as the arbitrator's award is an expression of an opinion and his procedure resembles that of a Court, a party is entitled to file objections and challenge the validity of the award. The making of a statement by a referee or a third person has no resemblance to a proceeding conducted by him as if he were a Court of law, and accordingly, there can be no procedure for filing objections as to its validity. It is for the Court in pronouncing judgment to consider its effect. But under section 20 of the Indian Evidence Act statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are deemed to be admissions of the party himself. If the parties have agreed to abide by the statement of a third person to be made in Court, he may well be a person to whom the parties have expressly referred for information in reference to the matter in dispute."

Although, as I have said reliance was sought to be placed on this decision on behalf of the plaintiff, in my opinion it clearly supports the case of the defendants since in the present case it is admitted that the so-called referee proceeded exactly in the manner of an arbitrator and took written statements of claims and counter-claims from the parties and then recorded evidence before he delivered his decision, which is clearly not a statement of the kind referred to in section 20 of the Evidence Act.

Some attempt was made to contend that the observations made by Sir John Beaumont in the Privy Council decision were merely *obiter*, but even if they were so they would, like pronouncements of the Supreme Court not necessary for the decision of the immediate case, be binding on the lower Court, but I do not consider that they are *obitor* since their Lordships clearly considered that both the trial Court and the High Court had acted rightly in treating the reference as a reference to arbitration and not one made under section 20 of the Evidence Act, and they merely gave a reason for this which was not given by the Courts below.

As against this the learned counsel for the respondents could only rely on the decisions in *Partap Talkies Padrauna* v. *Narain Talkies Distributors and another* (3) and *Ram Narain and others* v. *Santosh Kumar and others* (4), both of which are decisions of J. L. Kapur, J. In the first of these cases there was a triangular dispute between a firm of film distributors, a cinema and the Governor-General representing one of the railways, and in a suit instituted by the distributors for the recovery of damages the parties made a statement which reads—

> "Let Mr. Brij Lal, Advocate, for the Railway be appointed a referee. He may hear the evidence orally and make a statement. His statement will be binding on the parties. He should hear the evidence today."

Some evidence was thereafter recorded by the so-called referee who about six weeks later made a statement in Court to the effect that he had heard the statements of the plaintiffs and their witnesses, that the defendants had produced no evidence and that after considering the evidence his opinion was that the defendants were liable to pay Rs. 1,475.00 with proprotionate costs, and a decree was passed then and there on the above lines. It does not seem that either the decision of the Privy Council or the observations of Sulaiman, C.J., in the decision of the Allahabad Full Bench were brought to the notice of the learned Judge, who held that where the parties to a dispute make a statement that certain Advocate be appointed as referee and that he may

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(3) A.I.R. 1951 Punj. 416.
(4) A.I.R. 1952 Punj. 344.

hear the evidence orally and make a statement which will be binding on the parties, the agreement does not amount to an arbitration agreement when the evidence shows that it was not the intention of the parties to appoint the Advocate as an arbitrator, and that such an agreement amounts to an adjustment of the suit and no party could be allowed to resile from it.

The later case arose out of a suit instituted for partition of certain property and for dissolution of partnership and rendition of accounts, and the parties made a statement in Court appointing one Jagat Narain as a referee for the decision of the matters in dispute. In that case the Court actually recorded an order that an arbitration agreement has been completed and signed, but at the same time it was written that Jagat Narain was appointed as "referee" for the decision of the matters in controversy. It was again held that this was an appointment of a referee and not an arbitrator. This time it is clear from the judgment that the decisions in *Chhabalal's* and *Akbari Begam's cases* were cited, but the learned Judge did not choose to follow them. With the utmost respect, I am of the opinion that these two decisions were not correct, and that in both cases there was a reference to arbitration and not merely to a referee under section 20 of the Evidence Act since the reference was not made for "information" based on a belief or knowledge of the so-called referee, but for a decision of disputes.

In the circumstances I am of the opinion that the lower Court has erred in treating the statement of Mr. Laxmi Chand as a statement made under section 20 of the Evidence Act, and that in effect the reference made to him was a reference to arbitration. If any authority is needed for the proposition that in an agreement to refer disputes to arbitration it is not necessary to use the terms 'arbitration' or 'arbitrator', it is to be found in the recent decision of the Full Bench of Dua, Shamsher Bahadur and Narula, JJ., in C.R. No. 189 of 1964, *Ram Lal Jagan Nath* v. *The State of Punjab and others* decided on the 4th of March, 1966. In that case a construction contract contained a provision to the effect that "in matters of dispute the case shall be referred to the Superintendent Engineer of the Circle whose order shall be final," and the learned Judges of the Full Bench have overruled the decision of Mehar Singh, J., and myself in *The State of Punjab* v. *Jagan Nath Vig*, F.O.R. 47 of 1957, decided on the 24th of April, 1959, to the effect that similar words did not mean a reference to arbitration.

In the circumstances I am of the opinion that both the orders of the lower Court treating the statement of Mr. Laxmi Chand as made on a valid reference under section 20 of the Evidence Act and superseding the appointment of Diwan Sham Lal as an arbitrator must be set aside and the cases sent back to the lower Court for a decision on the merits of all the objections raised against the statement of Mr. Laxmi Chand treating this statement as the award of an arbitrator. The appellants will be entitled to costs from the respondents.

D. K. MAHAJAN, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

M/S R. G. GOVAN & CO. PRIVATE LTD. AND ANOTHER,—*Petitioners*

versus

THE COMMISSIONER OF INCOME-TAX (CENTRAL) AND OTHERS,—*Respondents*

Civil Writ No. 1592-C of 1965.

March 22, 1966

Finance Act (X of 1965)—S. 68—Interpretation and Scope of—Specification of the period for payment of tax due—Whether necessary to be made by the assessee—Amount of which disclosure is made—Whether to be excluded from assessment—Taxing statute—How to be interpreted.

Held, that a plain reading of clauses (i) to (iii) of sub-section (1) of section 68 of the Finance Act, 1965, shows that a person making a disclosure is entitled to take benefit under any of the three clauses. An assessee is entitled to make a disclosure at any time before 1st day of June, 1965, but after 28th February, 1965, as is provided in the proviso to sub-section (2) of section 68. Having done so, he may wait till 31st day of May, 1965, to pay any amount, not less than 50 per cent of the tax due, and furnish adequate security for payment of the balance by the said date as provided in clause (iii) of sub-section (1) of section 68.

Held, that the requirement as to specification of period in sub-section (2) of section 68 does not apply to an assessee choosing to take the benefit of clause (iii) of section 68(1). Period is required to be specified by clause (ii) with