

LAKSHMI-  
NARASIMHAM  
v.  
SOMA-  
SUNDARAM.

that decision goes, it supports the contention of the present appellant, that the real test is whether the time was in fact extended so as to validate the award which the arbitrators would otherwise have had no jurisdiction to make at the time when they made it. The award in the present case was made after the time had been enlarged and within the time so enlarged.

The dictum in *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar*(1) that the Court had the fullest power to enlarge the time under the section (514), so long as the award was not completed, supports the appellant's contention. The construction put by the Privy Council on section 549 in *Budri Narain v. Mussummat Sheo Koer*(2) also favors the same view. As there stated the intention must be held to be to confer on the Court a power to enlarge the time "according to any necessity which may arise, when it is just and proper that the Court should do so."

For the above reasons we allow the appeal, and, setting aside the order appealed against, dismiss the civil revision petition No. 32 of 1890 with costs in this appeal and in the revision petition and restore the decree of the District Judge.

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## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice  
Muttusami Ayyar and Mr. Justice Shephard.*

REFERENCE UNDER STAMP ACT, s. 46.\*

*Stamp Act—Act I of 1879, s. 3, cl. 16, s. 7, sched. I, art. 50 (e)—Power-  
of-attorney—Trust.*

Ten mirasidars of a village executed an instrument authorizing the person therein mentioned to recover for them from their former agent the perquisites and other communal income appertaining to their mirasi rights, to cultivate their maniams, to distribute to them proportionately to their shares the profits of certain common land, &c. :

*Held*, that the instrument was a power-of-attorney and should bear a stamp of Rs. 5.

REFERENCE by the Board of Revenue under Stamp Act, 1879, s. 46.

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(1) L.R., 18 I.A., 55.

(2) L.R., 17 I.A., 1.

\* Referred Case No. 21 of 1891.

The instrument in question bore Rs. 5 stamp. Its terms were as follows :—

REFERENCE  
UNDER  
STAMP ACT,  
s. 46.

“ General power-of-attorney executed this 2nd day of July 1890, in favour of O. P. Rangasami Iyengar, Brahmin, Vishnavite, occupation—servant, aged 25, residing in Orathi village, No. 118, attached to the sub-district of Madurantakam, in the district of Chingleput, jointly by ten pangu mirasidars of the same village, viz. :

[here follow names.]

“ As Appan Vijayaragavachari, Brahmin, Vishnavite, mirasidar and servant, aged 45, and a resident of the above-mentioned village, who was appointed an agent to collect and distribute among us all swatantrams, and profits of samudayam belonging to pangu mirasi of the village, has not, for the last three years, given us each his share of the profits and swatantrams, as he has not properly accounted to us for these incomes or shown accounts, and, as a notice has now appeared in the *District Gazette* prohibiting village officers from collecting swatantrams and profits on behalf of pangu mirasidars of the village, we have appointed you our general agent for recovering, from the said Appan Vijayaragavachari, by instituting against him suits in civil and revenue courts all pangu, incomes, and samudayam profits, as well as all incomes of nunja, punja, maniem enjoyed in common, except nunja maniem enjoyed according to shares; for signing on behalf of us vakalats, plaints, statements, &c., and conducting affairs in our behalf in connection with the institution of suits and proceedings in civil, criminal, revenue, &c., courts *re* all other rights, incomes, honors, &c., belonging to mirasi; for signing public records and receiving incomes, &c., due to us; for collecting swatantram, &c., due to mirasidars for payment to Government at the rate of 2 annas in the rupee from the mirasidars and payakaris of the village; for putting in objection-petitions and taking proper measures in connection with durkhasts, which may be presented by pangu-mirasidars and payakaris for land required for the common benefit of several mirasidars and payakaris; for acting as agent to the devasthanams, and protecting from being misappropriated by others the nunja, punja, maniem, house-site and other property belonging to them, as also the nunja, punja, maniem, house-site and other property of the Parasuram Easwara temple which have

REFERENCE  
UNDER  
STAMP ACT,  
S. 46.

“been resumed, there being no worship; for continuing without interruption the worship carried on in the temples from time immemorial with the incomes of the devasthanams; for letting out under lease, &c., the different samudayam trees, and collecting and distributing the produce to us according to shares; for getting the samudayam nunja, punja, maniems cultivated or letting them out and collecting and distributing the tirva; for distributing to us each his share of the profits of fishery, vilal, korai, &c., grass, vattam, &c., produce, which we have been enjoying from time immemorial; for protecting our rights to turns of dung, cattleherd, oil-mill, weaving, *katta pai* right to water in times of scarcity, irrigation turns; and you are requested to co-operate with us and act up to the opinion of the majority of the shareholders. If you fail to distribute to us each year swatantram, profits of produce, &c., which may be collected by you as stated above, this general power-of-attorney will be cancelled, and the dues, together with costs, recovered by proceeding against your person and property. Otherwise it will not be cancelled. You are required to advance out of your pocket all sums required for conducting the suits, &c., referred to above, and, after rendering to us proper accounts, recover them from the profits and distribute the remainder among us.

“This general power-of-attorney was executed in these terms at our own free will and consent.”

The question referred for the opinion of the High Court was whether the stamp was sufficient. It had been impounded by a Sub-Registrar as being chargeable as an instrument of trust. The Sub-Collector of Chingleput reported on the instrument as follows:—

“The document, which was impounded by the Sub-Registrar of Madurantakam, is a power-of-attorney executed by ten mirasidars of the village of Orathi in favour of the petitioner, and authorizes him to recover for them the swatantrams and other communal income appertaining to their mirasi rights, to cultivate or lease out their nunja and punja maniems, as also the rents of fisheries, &c., and to divide the income between them in proportion to their shares. The words ‘எங்கள் பாகாபாடம்’ (according to our shares) which occur in several places in the document, clearly show that each of the executants has a distinct and separate interest. Ten separate powers-of-attorney should,

“therefore, have been executed, each bearing a stamp of Rs. 5  
 “(vide Board’s Proceedings, dated 6th November 1877, No. 4930 ;  
 “and Board’s Proceedings, dated 29th July 1885, No. 2222 ; and  
 “article 50 (c) of sched. I of Act I of 1879). The document  
 “is, therefore chargeable under section 7 of the Act with the  
 “aggregate amount of the duties with which separate instruments  
 “are chargeable.”

REFERENCE  
 UNDER  
 STAMP ACT,  
 s. 46.

V. C. Desikachariar for Rangasami Ayyangar.

The Government Pleader (Mr. Powell) for the Board of Revenue.

JUDGMENT.—We are of opinion that the document is a power-of-attorney and must be stamped with a five rupees stamp.

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## APPELLATE CIVIL.

Before Mr. Justice Wilkinson and Mr. Justice Subramanya Ayyar.

SUBBARAYUDU (DEFENDANT NO. 1), APPELLANT,

v.

KOTAYYA AND OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 2  
 AND 3), RESPONDENTS.\*

1892.  
 Jan. 28, 29.  
 Feb. 4, 12.

*Civil Procedure Code, ss. 292, 311—Suit to set aside Court sale—Duty of vakil purchasing at Court sale—Fraud—Parties—Assignment of religious trusteeship.*

A hereditary dharmakarta of a temple, who had assigned his office to a Zamindar and consented to a decree being passed on the footing of such assignment, is competent nevertheless to bring a suit to set aside a Court sale of temple lands, treating such assignment as a nullity.

A mortgagee having obtained a decree on her mortgage brought the mortgage property to sale ; and her vakil bid through an agent at the Court sale and became the purchaser. It appeared that the vakil had not informed his client that he intended to bid nor obtained the sanction of the Court, but he had been instructed by his client and had obtained the permission of the Court to bid on her account, and he was found to have acted in an underhand manner towards her. In a suit to set aside the sale, brought by the mortgagor, who had sought unsuccessfully to obtain the same relief by means of a petition under section 311 in which fraud was not alleged against the purchaser :

*Held* (on its appearing that the vakil had not discharged the burden which lay on him of proving that the transaction was free from suspicion), that the sale should be set aside.

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\* Appeal No. 100 of 1891.