

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

LAKSHMINARASIMHAM (DEFENDANT), APPELLANT,

v.

SOMASUNDARAM (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, ss. 514, 521—Enlargement of time for award.

A suit was referred to an arbitrator, who did not make his award within the period limited for that purpose. After that period had expired, an application was made for its extension, both parties consenting; the application was granted and the award was made within the time so extended, and a decree was passed in its terms:

Held, that the order extending the time was not illegal, and the party dissatisfied with the decree was not entitled to have the award and the decree made upon it set aside.

PETITION under Civil Procedure Code, s. 622, praying the High Court to revise the proceedings of G. T. Mackenzie, District Judge of Kistna, in original suit No. 3 of 1886, in which he had passed a decree in accordance with the terms of an award. The period fixed for the award had expired, but had subsequently been extended with the consent of both parties, and the award was made within the extended period.

The District Judge said:—"The award bears a date which has been altered from 5th to 6th March. If the award was made on 5th March, it is invalid under the decision in *Simson v. Venkatagopalam*(1). The High Court held in *Kula Nagabushanam v. Kula Seshachalam*(2) that when five arbitrators signed a rough draft, that was a final award although a fair copy was made afterwards. In the present case the arbitrator's petition of 6th March shows that the award was then unfinished, and I have no evidence that the award had been completed before that date.

"The application for extension was made after the time had expired, and the question is whether that vitiates the award. If the application had been made within the time, the award would be valid, *Suppu v. Govindacharyar*(3). I can see nothing

* Letters Patent, Appeal No. 21 of 1891.

(2) 1 M.H.C.R., 178.

(1) I.L.R., 9 Mad., 475.

(3) I.L.R., 11 Mad., 85.

“in section 514 that forbids an application to be made after the
“time had expired.

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“Moreover, both parties consented to the application. They
“did not then know how the award would be. Plaintiff, finding
“the award against him, now objects to the extension for which
“he himself applied.”

The plaintiff preferred this petition.

Rama Rau for petitioner.

Bhashyam Ayyangar for respondent.

SHEPHERD, J.—I think there is no doubt that the power to extend the time within which an award is directed to be made can only be exercised before the time limited has expired. The language of section 514 giving power to “enlarge the period” shows that this is the case, and I am further confirmed in this view by the decision in *Simson v. Venkatagopalam*(1). Consent cannot alter the matter, for the reference derives its force from the order of the Court and not the will of the parties. I think the District Judge was wrong, and that the decree must be set aside with costs. The District Judge will proceed to try the case.

The defendants preferred an appeal under Letters Patent, section 15, against the above judgment of SHEPHERD, J.

The appeal came on for disposal before MUTTUSAMI AYYAR and BEST, JJ.

Bhashyam Ayyangar for appellant.

Ramachandra Rau Saheb and *Venkatarama Sarma* for respondent.

JUDGMENT.—There is nothing in the wording of section 514 to limit the period within which the time may be extended by the Court to the period mentioned in the previous order, nor would it be reasonable to so limit it. In the case reported as *Simson v. Venkatagopalam*(1) no order extending the time had been obtained before the award was given. The award in that case was, therefore, properly held to be invalid under the express terms of section 521. All that was decided in *Suppu v. Govindacharyar*(2) was that, as the application for extension of the period had been made within the time originally fixed, the mere fact of the order having been passed after such time did not invalidate the award. It was not then necessary to consider the point now raised. But so far as

(1) I.L.R., 9 Mad., 475.

(2) I.L.R., 11 Mad., 85.

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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.

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.

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

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

* Referred Case No. 21 of 1891.