

(1905) 11 MAD CK 0001
In the Madras High Court

Thiruvengadathiengar and Others

APPELLANT

Vs

Vaidinatha Ayyar and Another

RESPONDENT

Date of Decision : 23-11-1905

Acts Referred:

Citation : (1906) ILR (Mad) 303

Hon'ble Judges : Moore, J;Benson, J

Bench : Division Bench

Judgement

1. It has been urged here that no appeal lay to the Subordinate Judge from the order of the District Munsif directing the award to be filed. The decision, however, of the Pull Bench of this Court in Ponnusami Mudali v. Mandisundara Mudali ILR Mad. 255 removes any doubt that there might be as to this. It is there held, following the decision of the Privy Council in Ghulam Jilani v. Muhammad Hussain L.R. 29 IndAp 51 that an order made on an application to file an award u/s 525 of the CPC would seem to be a decree within the meaning of that expression as defined by the Civil Procedure Code. It is therefore clear that when an application is made to a Court to file an award, an order granting the prayer and an order refusing the prayer are both decrees. We must hold that there was an appeal to the Subordinate Judge. The Subordinate Judge has found that the award has determined a matter not referred to arbitration. If this can be shown to be the case it follows that, under the provisions of Sections 520 and 526 of the Civil Procedure Code, the Subordinate Judge was bound to refuse to file the award. It is shown that in the two muchilikas in which the parties referred the matter in dispute between them to the arbitrator the western boundary of the land in dispute is stated to

be certain land belonging to the plaintiff. The arbitrator, however, in the award altered this and mentioned a certain channel as the western boundary. This he was clearly not entitled to do. The result is that he has decided the right to some 20 guries of land regarding which no reference was made to him. Such being the case we are of opinion that the Subordinate Judge was bound to refuse to allow the award to be filed and we accordingly dismiss this second appeal with costs.