

**Gurupathappa and anr. Vs. Narasingappa and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/785432](http://sooperkanoon.com/785432)

**Court :** Chennai

**Decided On :** Sep-24-1883

**Reported in :** (1883)ILR7Mad174

**Judge :** Muttusami Ayyar and ;Hutchins, JJ.

**Appellant :** Gurupathappa and anr.

**Respondent :** Narasingappa and anr.

**Judgement :**

1. This suit was originally referred to five arbitrators, two of whom were named by the plaintiffs and two by the defendants, while the fifth was a common arbitrator, or utara-panchayattar.
2. The plaintiffs' arbitrators declined to act and the common arbitrator died. Thereupon the Munsif appointed two new arbitrators upon the plaintiffs' nomination and another utara-panchayattar with the consent of both parties. On the date ultimately fixed for the return of an award, the utara-panchayattar and defendants' arbitrators delivered an award dismissing plaintiffs' claim, while the plaintiffs' arbitrators put in a petition, stating that they had withdrawn from the proceedings as the utara-panchayattar had treated them discourteously, and that they had not met together or examined witnesses.
3. The Munsif thereupon superseded the arbitration, and, after hearing the suit on the merits, gave a judgment partly in favour of the plaintiffs.

4. The defendants appealed, and the Subordinate Judge held that the award of 'a majority of the arbitrators, including the umpire,' was binding, and dismissed the suit in accordance therewith.

5. In second appeal it has been contended that the utara-panchayattar was not an umpire within the meaning of the Code, and that the award was not binding.

6. We think that this objection must prevail. There was no provision in the order of reference that the decision should be with a majority, either including the utara-panchayattar or not including him. We have ascertained that utara-panchayattar is a term generally used as the equivalent of umpire, but it does not necessarily mean more than a common arbitrator, and the arbitrator so called in this case was not an umpire to be appointed by the other arbitrators in case of a difference of opinion, but simply a fifth arbitrator to whose nomination both parties agreed. The order of reference does not say that his opinion is to prevail, and makes no provision whatever for the contingency of a difference of opinion. That being so, neither the award of a majority, nor the decision of the common arbitrator, nor both combined, can have the effect of a valid award binding on the parties.

7. We reverse the decree of the Lower Appellate Court and remand the appeal for a decision on the merits. The cost of this second appeal will abide and follow the result.