

FULL BENCH.

*Before Sir W. Morgan, C.J., Mr. Justice Holloway and
Mr. Justice Innes.*

1876.
August 21.

PROCEEDINGS, 21ST AUGUST 1876.

IN THE MATTER OF CHINNIMARIGADU.

*Criminal Procedure Code, sec. 46—Conviction—Order of 1st-class Magistrate—
Reference.*

A magistrate to whom a case is referred for enhancement of punishment under Sec. 46 of the Criminal Procedure Code may order the committal of the case for trial by the Sessions Court.

UPON reading a letter, dated 1st May 1876, from the Acting Sessions Judge of the Kistna Division, referring the proceedings of the Acting 2nd-class Magistrate of Jaggayapett in cases Nos. 95 and 96 of 1876 as contrary to law, Counsel not appearing, the Court made the following

RULING:—In these two cases the 2nd-class Magistrate of Jaggayapett found the accused guilty of receiving stolen property, and, being of opinion that he ought to receive a more severe punishment than he was competent to adjudge, submitted his proceedings, under section 46 of the Code of Criminal Procedure, to the 1st-class Magistrate of the Division.

The latter officer retransferred the cases to the 2nd-class Magistrate, with directions to commit them to the Court of Session, as they were intimately connected with a case already tried in that Court, and the prisoner was committed accordingly.

The Sessions Judge now submits that the commitment of the accused after conviction by the 2nd-class Magistrate was illegal.

The Sessions Judge had before him a person committed by a competent Magistrate and primarily his duty is to try him. The ground stated by the Judge for not doing so is that he has already been convicted.

The High Court are of opinion that the order of the superior Magistrate, made upon the reference to commit the case, as effectually removed that conviction as if it had been an acquittal of the prisoner.

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A majority of the Court are, further, of opinion that the words of the section enabling the Magistrate to pass such judgment, sentence or order, &c., expressly provide for the disposal of the case otherwise than by acquittal or sentence, and they are of opinion that it was quite competent to the Magistrate, to whom the case was referred, to say that, either from the gravity of the matter or for any other sufficient reason, the Session Court was the proper tribunal for the disposal of the case, and to make an order in accordance with that opinion.

PRIVY COUNCIL.

GAJAPATHI NILAMANI, PETITIONER, *v.*
GAJAPATHI RADHAMANI, COUNTER-PETITIONER.

P.C.*
1877.
June 30 &
July 3.

[On appeal from the High Court of Judicature at Madras].

Hindu law of succession—Co-widows.

According to the Hindu law of inheritance the separate property of a person dying without male issue, and leaving more than one widow, is taken by all the widows as a joint estate for life, with rights of equal beneficial enjoyment and of survivorship.

The view that, according to the custom prevailing in Southern India, the senior widow by date of marriage succeeds in the first instance, the others inheriting in their turn as they survive, but being only entitled in the meantime to be maintained by the first, is not supported by the decisions of the Courts, nor by the sanction of any text writer of paramount authority in the Madras Presidency.

Widows who take a joint interest in the inheritance of their husband have no right to enforce an absolute partition of the estate between themselves. But where, from the conduct of one or more of their number, separate possession of a portion of the inheritance is the only likely means to secure for each peaceful enjoyment of an equal share of the benefits of the estate, an order for separate possession and enjoyment may be made.

Jijoyamba Bai Saba v. Kamaichi Bai Saba (1), referred to and approved.

THIS was an appeal from a judgment of the High Court of Madras, dated the 11th March 1874, and from an order of the same Court dated the 2nd December of the same year.

The material facts of the case and the issues therein raised are set out in their Lordships' judgment. The main question

* Present : Sir J. W. COLVILLE, Sir BARNES PEACOCK and Sir M. E. SMITH.

(1) 3 Mad. H. C. Rep., 424.