of indulgence to the raiyat. Nor is the tenant entitled to claim a reduction of assessment in the case of lands watered by wells constructed at his own expense prior to the date of Act VIII of 1865. I do not think that section 11, clause 1, can be so applied as to deprive the tenant of the benefit of the improvement made at his own expense.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

1885. February 12. March 19.

KRISHNA (PLAINTIFF), APPELLANT,

and

READE (DEFENDANT), RESPONDENT.*

Act IX of 1861—*Civil Procedure Code, ss.* 11, 15—*Parent and child—Suit for recovery of minor by parent—Jurisdiction.*

Act IX of 1861 does not debar a District Múnsif's Court from entertaining a suit by a Hindú father to recover possession of his minor son alleged to be illegally detained by the defendant.

THIS was an appeal against the decree of J. Hope, District Judge of South Arcot, reversing the decree of C. Suri Ayyar, District Múnsif of Cuddalore, in suit 21 of 1884.

The plaintiff, Krishnáchári, a Bráhman, sued the defendant, Miss F. M. Reade, a Christian Missionary, to recover possession of the person of his son Subba Ráu, alleged to be a minor, and for Rs. 100 damages, being the cost to be incurred in taking his son to Raméswaram to perform expiatory ceremonies before he could be received into the family. The suit was valued at Rs. 100.

The defendant pleaded that the suit was only cognizable by the District Court, that Subba Ráu was not a minor, that he had attained full discretion and was at liberty to choose his own religion, that he was not illegally detained by defendant, but resided in her house voluntarily, that he had been baptized at his own request in public and without any pressure on the part of defendant. It was contended for the defendant that, under s. 1 of Act IX of 1861, the District Court only had jurisdiction. The Múnsif held that the Act did not make it compulsory to file a regular suit for the custody of a minor in the principal civil

* Second Appeal 968 of 1884.

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court of original jurisdiction in the district; found that the boy was fifteen years old; and held that, under Hindú law, the plaintiff was entitled to the custody of his son during minority whatever his religion might be. As the boy admittedly resided in the defendant's house against the father's wish, the Múnsif held that this amounted to illegal detention. The claim for damages was disallowed and delivery of Subba Ráu to the plaintiff was decreed.

At the final hearing, a further objection was taken by the defendant that the amount at which the plaintiff valued the claim for Subba Ráu was not stated in the plaint, and therefore it was impossible to determine whether the court had jurisdiction or not.

The Múnsif overruled this objection on the ground that the plaintiff having paid a further court-fee stamp of Rs. 10 for the value of his claim for the recovery of the boy, the value of the suit should be taken to be about Rs. 130.

He held that the boy had no market value and that the court-fee payable should be computed according to the amount at which the relief sought was stated in the plaint. On appeal, the District Judge reversed the Múnsif's decree. His judgment was as follows:—

"I am of opinion that it was not within the competence of the District Múnsif to pass the decree appealed against. Act IX of 1861 is a special enactment governing all suits relating to the custody and guardianship of minors. It prescribes the course to be followed by any relative or friend of a minor who may desire to prefer any claim in respect of the custody and guardianship of such minor. There is nothing in the Act to show that it was intended to provide a summary remedy, which, it is at the option of the claimant to seek instead of having recourse to a regular suit. It is the law provided for dealing with claims relating to the custody and guardianship of minors, and those who prefer such claims must follow the procedure laid down in that Act.

"It is, therefore, unnecessary in disposing of this appeal to go into the merits of the case. I find the Lower Court had no jurisdiction to decree the delivery of the so-called minor to the plaintiff and so far the decree must be reversed with costs."

The plaintiff appealed on the following grounds:—

(1) The District Múnsif has jurisdiction to entertain the suit.

(2) Act IX of 1861 is only permissive and is no bar to the present suit.

Hon. *Rámá Ráu* for appellant.

This was a suit for damages and for custody of the minor. Two questions arise—

(1) Is the plaintiff bound to proceed under Act IX of 1861?

(2) Ought the plaint to be returned?

The Act is only permissive—see the preamble and s. 1.

A summary remedy is provided. The word used is 'may'—ss. 4, 5, 6. There is also a common law remedy. *In re Kashi Chunder Sen*,(1) and the cases there cited—*Balmakund* v. *Janki*,(2) *Nehalo* v. *Nawal*,(3) *Pakhandu* v. *Manki* (4). There is nothing to take away the right of the Court to entertain this suit. The Civil Procedure Code only excepts suits barred by some express provision of law, see ss. 11 and 15.

Mr. Wedderburn for respondent.

If the District Judge is right, the plaint ought not to be returned, (1) because this objection is not taken in the grounds of appeal, (2) because Subba Ráu has left the defendant's house. The District Court certainly has jurisdiction—Civil Courts' Act, 1873, s. 12. In Act XXI of 1855 and Act XIV of 1858, it is only the District Court which has got jurisdiction with regard to the custody of the minors referred to therein. There might be great inconvenience if a Múnsif's Court entertained a suit for the custody of the minor for whom the District Judge had appointed a guardian.

Múnsifs' Courts were not originally invested with any such jurisdiction—Regulation VI of 1816.

In *Shannon's case* (5) Act IX of 1861 is said to have amended the procedure in hearing suits relating to the custody of minors. There is nothing summary in this procedure.

The Civil Procedure Code is to be followed. Orders are appealable.

A concurrent jurisdiction in the Múnsif could hardly have been contemplated.

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(1) I.L.R., 8 Cal., 271. (2) I.L.R., 3 All., 403.
(3) I.L.R., 1 All., 428. (4) I.L.R., 3 All., 506.
(5) 2 N.W.P., 81.

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In *Mussamat Harasundari Baistabi* v. *Mussamat Jayadurga Baistabi*(1), it was held that the Múnsif's Court had no jurisdiction. A suit for winding up a partnership under s. 265 of the Indian Contract Act may be brought in the District Court. The plaintiff may apply if he likes to the District Court, but to no other Court —*Rámáyya* v. *Chandra Sékara* (2).

Judgment was reserved.

On the 19th March the Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT.—A Hindú, the father of a male minor, is the natural guardian of such minor, and is *primâ facie* entitled to its custody and guardianship.

This right is certainly one of a civil nature, and there is, it appears to us, nothing exceptional in a suit brought by a Hindú father for the custody and possession of a minor son, alleged to be wrongfully detained and withheld from him, though it is open to the defendant in such a suit to show special circumstances having regard to which a Court would refuse to make a decree or order for removal of the minor from his care and custody.

The plaintiff in the case before us does not ask to be appointed guardian, but asks for a finding that the detention of the minor by the defendant is illegal as against him, the parent, and as such the legal guardian of the minor, and for relief or reliefs to which he may or may not be entitled on such finding.

The Courts of District Múnsifs in this Presidency, though not specially invested under the Regulations and Acts passed prior to Act VIII of 1859 with power to try such a suit as the present, were under that Act, and under Act X of 1877, and are under the present Code of Civil Procedure invested with power to take cognizance (within the limits of their pecuniary jurisdiction) of all suits of a civil nature excepting suits of which their cognizance was or is barred by any enactment for the time being in force.

It is not contended that the jurisdiction of the District Múnsif in respect of a suit like that before us is barred by any enactment subsequent to Act VIII of 1859, unless it be by Act IX of 1861.

The question then is whether such jurisdiction is barred by that Act or not.

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(1) 4 B.L.R., App. 36. (2) I.L.R., 5 Mad., 257.

The Act appears to us to be an enabling Act only, and not to deprive any Court of any jurisdiction or powers which it before possessed. "It does not," as was held by the High Court, N. W. P., "alter jurisdiction nor transfer from one tribunal to another powers previously belonging to the former."—*in re Shannon.*(1) It relates to procedure only, as appears from the preamble. It confers on District Courts and on District Courts only, power to entertain and pass orders upon "applications by petition," which power was not before possessed by those Courts or by any Courts subordinate to them, but it does not either expressly or impliedly take away from any Court cognizance of claims in respect of the custody and guardianship of minors preferred in the form of regular suits, and otherwise cognizable by such Court.

The words in s. 1 "by which such application, if preferred in the form of a regular suit, would be cognizable" must be read in connexion with, and interpreted by, s. 7, and when so read present no difficulty: the meaning is that the application by petition which may be made under s. 1 shall be entertained by the principal Civil Court of original jurisdiction in the district in which it is made, provided that the jurisdiction of such Court would not be barred in a regular suit framed with a view to like relief, by reason, *e.g.*, of the minor being a European British subject, or being subject to the superintendence of the Court of Wards, or resident within the limits of the original jurisdiction of the High Court.

The other sections of the Act have no material bearing upon the question before us.

The true construction of the Act then seems to us to be that it provides a special and prompt remedy by application on petition instead of by regular suit, and was, it may be assumed, passed *inter alia* to meet cases in which a speedy decision by a competent Civil Court on the right to the custody of a minor, and an effectual order, are necessary to prevent action which might cause great, and perhaps irretrievable, injury to the minor, and with which a Magistrate might not be able to deal completely; that it vested the jurisdiction to hear the petition in the District Court only; and gave to the order which might be passed by that Court the force of a decree in a regular suit; but that it was not

(1) 2 N.W.P., 79.

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the intention, and there are no words of which the effect is, to take away the ordinary remedy in cases in which the special procedure provided by the Act is not availed of.

A case was cited before us, *Mussamat Harasundari Baistabi* v. *Mussamat Jayadurga Baistabi* (1), in which it is said by Mr. Justice Hobhouse that the Court of a District Múnsif not being a principal court of original civil jurisdiction in the district had no power to entertain what in the last words of the judgment is described as a suit. The case was one in which a mother applied for the custody of her minor daughter after recovery of the child from another woman in whose charge she had left it, and it would appear from the wording of the first part of the judgment that "an application" had been made: if so, if the mother had "applied" under the provisions of Act IX of 1861, then no doubt, as is observed by the learned Judge "the application should have been made to the District Court" and we think we may assume this was so, and that the word "suit" was used inadvertently or unadvisedly. If not, we feel constrained, for the reasons given in this judgment, to differ. Of the other cases cited, some go rather to support the view we take, while in others the question either did not arise or was not necessarily or not directly decided.

We are then of opinion that the District Múnsif had jurisdiction to entertain and dispose of this suit, and accordingly set aside the decree of the Lower Appellate Court, and direct the District Judge to hear and dispose of the appeal on the merits.

Costs in this Court and in the Lower Appellate Court to abide and follow the result.

APPELLATE CRIMINAL.

Before Mr. Justice Hutchins.

1885. September 10.

QUEEN EMPRESS
against
NÁRÁYANASÁMI.*

Criminal Procedure Code, ss. 15, 264, 407, 414—General Clauses Act, s. 2 (13)—Bench of Magistrates with second-class powers—Conviction—Appeal.

An appeal lies under s. 407 of the Code of Criminal Procedure from a conviction by a Bench of Magistrates invested with second or third class powers.

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(1) 4 B.L.R., App. 36.

* Criminal Revision Case 476 of 1885.