

the offence charged, such offence having been committed before himself or in contempt of his authority. The procedure to be adopted is that laid down in section 476, Criminal Procedure Code. There are only three cases in which a Court, other than the High Court, &c., can try any person for certain offences when committed before itself. These are provided for in sections 477, 480 and 485. Section 477 obviously does not apply to this case. Section 480 only refers to certain offences committed in the view or presence of the Court and taken cognizance of the same day. This section also is inapplicable in this case. For the same reasons section 485 does not apply, and the Magistrate was, therefore, clearly precluded by the provisions of section 487 from trying the case himself. We set aside the conviction and sentence and direct the fine, if paid, to be refunded.

QUEEN-
EMPERESS
v.
SESHAYYA.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

RAMAYYA AND OTHERS (DEFENDANTS NOS. 7 TO 16), APPELLANTS,

1889.
March 29.

v.

SUBBARAYUDU AND OTHERS (PLAINTIFF AND DEFENDANTS
NOS. 1 TO 6), RESPONDENTS.*

Jurisdiction—Objection as to, first taken on appeal—Suit for partition.

Plaintiff sued in the District Court for partition of an one-seventh share purchased by him in an undivided agra-haram, of which the total value was about Rs. 10,400, and obtained a decree. The defendants on appeal objected that the suit should have been filed in the District Munsif's Court:

Held, that the suit should have been filed in the District Munsif's Court. *Vyādinatha v. Subramanya* (I.L.R., 8 Mad., 235), distinguished.

Per cur: Though the objection was not taken in the Court below, yet it is apparent on the face of the plaint and has reference to the jurisdiction of the Court; we must therefore consider it.

APPEAL against the decree of W. G. Underwood, Acting District Judge of Kistna, in original suit No. 9 of 1887.

The plaint alleged that the Ketumukkuvari agra-haram was originally the property of the defendants, that one-seventh of the agra-haram was sold in execution of the decree in original suit

* Appeal No. 15 of 1888.

RAMAYYA
v.
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RAYUDU.

No. 109 of 1883 and the plaintiff became the purchaser and obtained a sale certificate on 28th June 1886. The plaint also stated as follows :—

“As the value of the whole property out of which the plaintiff claims his portion is above Rs. 2,500, this suit has been filed in this Court. Stamp duty for Rs. 1,494-4-0, the value of plaintiff's share of acres 123-28½ of land, has been paid.”

The prayer of the plaint was “that out of 862 acres of dry and wet land of Ketumukkuvari agraharam . . . the plaintiff's one-seventh part be divided or given to him proportionately from the superior, middling and inferior land;” the plaint also prayed for mesne profits.

No plea to the jurisdiction of the Court was raised before the District Judge, who passed a decree for the plaintiff.

Defendants preferred this appeal against the decree of the District Judge on the ground *inter alia* that “the value of the share claimed being below Rs. 2,500, the suit should have been filed in the District Munsif's Court.”

Mr. Parthasaradhi Ayyangar for appellants.

Mr. Gantz for respondents.

The arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT.—This was a suit brought by the first respondent to recover his share of an agraharam, of which the value was mentioned in the plaint as Rs. 1,494-4-0. The plaint stated that the suit was filed in the District Court, as the value of the entire property, of which a share was claimed, exceeded Rs. 2,500. No objection was taken by the defendants in the Court below to its jurisdiction to entertain the suit. The Judge decreed the claim. It is argued in appeal for defendants Nos. 7 to 16 that the subject-matter of the suit was the specific share claimed in the plaint and that the suit was cognizable by the District Munsif, the value thereof being below Rs. 2,500. The jural relation between the parties to the suit was not that of coparceners as in the case of *Vydinatha v. Subramanya*(1), but that of joint owners of an agraharam village.

(1) I.L.R., 8 Mad., 235.

Having regard to the principle laid down in *Khansa Bibi v. Syed Abba*(1), we are of opinion that the subject-matter of the suit was the specific share claimed, and that the suit ought to have been brought in the Court of the District Munsif. Though the objection was not taken in the Court below, yet it is apparent on the face of the plaint and has reference to the jurisdiction of the Court. We must, therefore, consider it, though it is only raised in appeal.

We set aside the decree of the District Court and direct that the plaint be returned to the plaintiff for presentation to the Court of competent jurisdiction. As the objection was not taken at the earliest opportunity, we direct that each party do bear his costs both in this Court and in the Lower Court.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

v.

PERA RAJU.*

1889.
June 6, 17.

Penal Code, ss. 419, 420, 467 and 468—Cheating—Forgery—Use of a false name with intent to defraud.

The accused was alleged by the prosecution to have advertised that a work on English idioms by Robert S. Wilson, M.A., was ready, stating that the price was Rs. 2-4-0, and that intending purchasers might remit it by money order to Robert S. Wilson, Council House Street, Calcutta: to have then requested the Postal authorities at Calcutta by a letter signed Robert S. Wilson, to have the money orders re-directed to him as above at Rajam: to have similarly requested the Post Master at Rajam to pay the money orders to his clerk Seshagiri Rau: to have subsequently received the value of money orders made out in favor of Robert S. Wilson from the Post Master at Rajam, signing receipts as Seshagiri Rau: Robert S. Wilson and Seshagiri Rau were alleged to be fictitious persons, and it was also alleged that the accused had no book on English idioms ready to be despatched to purchasers:

Held, that the above allegations supported charges of cheating and forgery.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused by