

the share claimed, and, if the claim is allowed, to separate and give possession of such share, and this is necessary no less in the case before us than in a suit for partition of family property.

NAGAMMA
v.
SUBBA.

It is then urged that in any case it was not open to the Subordinate Judge to set aside the decree in so far as it awarded mesne profits to the appellant, the only parties to the appeal being the tenants on the one side and the plaintiff and the decree-holder on the other. A reference is made to s. 544 of the Code of Civil Procedure and certain cases bearing upon this section were cited, but none of the authorities referred to touch the question—What is to be done when neither the court of first instance nor the court of appeal has jurisdiction to try the case at all? It appears to us clear that the Subordinate Judge could not, even to the limited extent contended for, support the decree in favor of the plaintiff. If the court of first instance had no jurisdiction to make a decree for the appellant's share, it had no jurisdiction to make a decree for mesne profits, the one being, for the purposes of this suit, subsidiary to, and dependent on, the other; and if the court of first instance had no jurisdiction, the course adopted by the lower appellate court was the proper course for it to adopt.

We dismiss the appeal without costs, no one appearing for the respondents.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

VENKATA

against

PARAMMA.*

1887.
July 6.

*Criminal Procedure Code, s. 488—Maintenance order passed on report of
Subordinate Magistrate, illegal.*

Under s. 488 of the Code of Criminal Procedure a Magistrate of the first class may, upon proof of neglect or refusal by a person having sufficient means to support his wife, order such person to make a monthly allowance for the maintenance of his wife: a First-class Magistrate having referred a complaint by a wife for maintenance to a Subordinate Magistrate to take evidence and report upon the facts

* Criminal Revision Case No. 138 of 1887.

VENKATA
v.
PARAMMA.

stated in the petition of complainant, passed an order upon such report in the absence of the husband for payment of maintenance :
Held, that the order was illegal.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to revise the order of F. D. O. Wolfe-Murray, Acting Principal Assistant Magistrate of Vizagapatam District, in maintenance case No. 5 of 1887.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Parker, J.).

Mr. *Michell* for defendant.

Mr. *Subramanyam* for complainant.

JUDGMENT.—The petition by the complainant was put in on 26th January 1886, and was referred to the Second-class Magistrate for inquiry and report on 28th January. This was irregular, as the Principal Assistant Magistrate was bound to make the inquiry himself. The defendant expressed to the Second-class Magistrate his willingness to pay to the complainant the maintenance fixed by the Court on his share of the property, and the order of 22nd January 1887 was apparently passed on this report.

There is nothing to show that defendant had even an opportunity of appearing before the Principal Assistant Magistrate, and the record would appear to show that he had no such opportunity.

We set aside the order and direct the Principal Assistant Magistrate to hear the case himself without further delay.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

RAMASAMI (DEFENDANT), APPELLANT,

and

RAJAGOPALA (PLAINTIFF), RESPONDENT.*

Rent Recovery Act, 1865, s. 4—Patta—Uncertainty as to amount of rent.

An agreement in a patta to pay whatever rent the landlord may impose for any land not assessed which the tenant may take up is bad for uncertainty.

APPEAL from the decree of S. T. McCarthy, Acting District Judge

* Second Appeal No. 786 of 1886.