

Judge of Cocanada, reversing the decree of A. F. Elliot, District Múnsif of Cocanada, in Suit No. 324 of 1884.

SUBBARAYADU
GANGARAJU.

Suit to recover the office of karnam in a zamíndári village.

The facts appear from the judgment of the Court (Collins, C.J., and Muttusámi Ayyar, J.).

Mr. *Norton* for appellant.

Ramasámi Mudaliar for respondent.

JUDGMENT.—The plaintiff's father resigned the office of karnam in 1863, being incapacitated, the plaintiff then being a minor. The plaintiff's uncle was then lawfully appointed and continued to hold the office until 1877, when he died. The plaintiff was nominated by the zamíndár, the husband of defendant No. 1 in 1877, but never took upon himself the duties of the office. The zamíndár died in 1877. Defendant No. 2, the son and heir of the late karnam, was appointed in 1879, and defendant No. 1 has held the office since that year. It seems clear that under Regulation XXIX of 1802, s. 7, the heir of the preceding karnam must be chosen. Defendant No. 2 was the heir of the late karnam and is the lawful holder of the office.

The second appeal must be dismissed with costs.

APPELLATE CIVIL.

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

NAGAMMA (PLAINTIFF), APPELLANT,

and

SUBBA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1887.
August 22.

*Civil Courts Act (Madras), 1873—Jurisdiction—Suit for partition and mesne profits—
Civil Procedure Code, s. 544.*

N. sued S. and others for partition of a share of certain land and claimed mesne profits from other defendants who were tenants of the land. S. obtained a decree by consent for her share and a sum of 99 rupees was decreed to her against the tenants for mesne profits. Against this decree the tenants appealed.

The Subordinate Judge finding that the subject-matter of the suit, the land of which partition was claimed, exceeded the jurisdiction of the Múnsif, reversed the

* Second Appeal No. 918 of 1886.

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decree of the Múnsif and directed the plaint to be returned for presentation in the proper court. It was contended, on appeal to the High Court, that the Subordinate Judge could not set aside the decree against the tenants for mesne profits :

Held that, as the Múnsif's Court had no jurisdiction to entertain the suit for partition, it could make no decree for mesne profits.

APPEAL against the decree of Venkata Rangayyar, Acting Subordinate Judge at Ellore, reversing the decree of M. Ramayya, District Múnsif of Tanuku, in suit No. 328 of 1879.

The facts are set out in the judgment of the Court (Collins, C.J., and Brandt, J.).

Subba Rau for appellant.

Respondents did not appear.

JUDGMENT.—In this case, the plaintiff, one of a large number of agraháramdárs, sued for the ascertainment, partition, and delivery to him of his share, and eventually all those who had any interest were made parties to the suit. Some of the defendants were sued as in possession as tenants liable to pay rent to the agraháramdárs. During the course of the trial it appears that some amicable arrangement was come to among the agraháramdárs between themselves, the result of which was that a decree was made for the plaintiff, without further resistance on their part, for some 7 or 8 acres of land. Decree was also made in her favor for 99 rupees, the value of mesne profits, as against the defendant tenants. Against that part of the decree the latter appealed. In the Lower Appellate Court, it was contended that the value of the entire property exceeded the pecuniary jurisdiction, and that this is so was admitted. On the authority of *Vydinatha v. Subramanya*(1), the Subordinate Judge held that the District Múnsif had no jurisdiction in the suit, and, therefore, set aside the decree and directed the plaint to be returned to the plaintiff to be presented in the proper court, ordering the parties to bear their own costs throughout. In this appeal, presented by the plaintiff, it is contended that the Subordinate Judge was wrong in holding that the decision of this Court above referred to applies in the present case, but we can draw no distinction between the one case and the other. The principle is that, where it is necessary to ascertain and decree to a plaintiff a share in undivided property, it is necessary that the court should have before it, and at its disposal for the purposes of the suit, the whole property, in order to adjudicate upon the claim to

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

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.

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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.