

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1892.
March 25.

KAMMATHI (PETITIONER), APPELLANT,

v.

MANGAPPA AND ANOTHER (COUNTER-PETITIONERS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 622—Revision—Jurisdiction—Succession
Certificate Act—Act VII of 1889, s. 4.

One applied for leave to sue in *forma pauperis* to recover assets forming part of the estate of a deceased person. His application was dismissed on the ground that he produced no certificate under Act VII of 1889 :

Held, (1) that the application was wrongly dismissed ;

(2) that the High Court had jurisdiction to interfere on revision under Civil Procedure Code, s. 622.

APPEAL under Letters Patent, s. 15, against the judgment of Mr. Justice SHEPHARD made on civil revision petition No. 1 of 1890.

That was a petition under Civil Procedure Code, s. 622, praying the High Court to revise the order of C. Gopalan Nayar, Subordinate Judge of North Malabar, dismissing an application for leave to sue in *forma pauperis* to recover properties forming the assets of certain persons deceased on the ground that the applicant had obtained no succession certificate under Act VII of 1889.

The petition came on for disposal before SHEPHARD, J., who delivered the following judgment :

“SHEPHARD, J.—The Subordinate Judge’s reason for dismissing the application to sue in *forma pauperis* is in my opinion “unsound. Act VII of 1889 does not require the production of a “certificate as a condition precedent to the maintenance of a suit. “The question, however, arises whether the matter is one of such “a nature as to make the provisions of section 622 applicable. “Can it be said that the Subordinate Judge acted with material “irregularity or illegally? Adopting the construction put upon “these words by MUTTUSAMI AYYAR, J., in *Manisha Eradi v. “Siyali Koya*(1), I think I must answer this question in the

* Letters Patent Appeal No. 4 of 1891.

(1) I.L.R., 11 Mad., 220.

“negative. The point on which the decision of the Subordinate Judge turned had nothing to do with any question of jurisdiction. There is another reason for declining to interfere in this case, and that it is open to the petitioner to make a fresh application to the Subordinate Judge.

KAMMATHI
MANGAPPA.

“I must dismiss this petition with costs.”

The petitioner preferred the present appeal under Letters Patent, s. 15.

Sankara Menon for appellant.

Respondents were not represented.

JUDGMENT.—The Subordinate Judge declined to entertain the application which he had jurisdiction to entertain by reason of his erroneously supposing that a certificate was necessary before the application could be entertained. The case is within the principle enunciated by the Full Bench in *Manisha Eradi v. Siyali Koya* (1) as warranting the interference of this Court under section 622 of the Code of Civil Procedure. We set aside the order of the learned Judge and also that of the Subordinate Judge and direct the latter to receive the application and deal with it according to law.

Respondents will pay appellant's costs in this Court.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.

RATHNAMMAL, PETITIONER,

v.

MANIKKAM AND ANOTHER, RESPONDENTS.*

1891.
October, 13.
1892.
August, 9.

Divorce Act—Act IV of 1869—Evidence of marriage.

The bare assertion of a petitioner under Divorce Act, 1869, is not sufficient proof of her marriage to satisfy the requirements of that Act.

CASE referred under the Indian Divorce Act IV of 1869, s. 17, by T. Weir, District Judge of Madura.