

QUEEN-
EMPRESS
v.
KARUPPA
UDAYAN.

We must therefore direct the original appeal to be replaced on the file and heard and disposed of according to law. The order on the second appeal filed by the petitioners is set aside.

APPELLATE CRIMINAL.

Before Mr. Justice Shephard and Mr. Justice Davies.

1896.
November 5.

QUEEN-EMPRESS

v.

KANDAPPA GOUNDAN.*

Criminal Procedure Code—Act X of 1882, s. 88—Attachment of property as of an absconding person—Claim to property attached—Procedure.

When a claim is made to property attached under section 88 of the Code of Criminal Procedure, the Magistrate should stay the sale to give the claimant time to establish his right. If the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition.

CASE referred for the orders of the High Court by W. J. Tate, Sessions Judge of Salem, being criminal revision case No. 35 of 1896 on the file of that Court.

The facts of the case were as follows:—

The brother of the petitioner in the District Court was accused of an offence and suspected of absconding to avoid a warrant, and the Magistrate ordered the attachment of his property under Criminal Procedure Code, section 88. Cattle, grain and other property having been attached, the petitioner preferred a petition to the Magistrate stating that they belonged to him. The Magistrate dismissed the petition without examining the witnesses cited in support of his allegation, and this was the order complained against. The District Judge was of opinion that the Magistrate erred in not giving the petitioner an opportunity of proving his case. He accordingly referred the case to the High Court. In his letter of reference he cited *Queen v. Chumroo Roy*(1), *In re Chunder Bhon Singh*(2), *Queen-Empress v. Sheodihal Rai*(3), and *Queen-Empress v. Umayan*(4).

* Criminal Revision Case No. 478 of 1896.

(1) 7 W.R. Cr. 35. (2) 17 W.R. Cr., 10. (3) I.L.R., 6 All., 487.

(4) Criminal Revision Case No. 560 of 1893 unreported.

Parties were not represented.

JUDGMENT.—We do not think this is a case for interference.

In the first place the Magistrate, whose action is impugned, gives in our opinion good reasons for his order. But secondly we are deposed to agree with the view taken in other Courts of section 88, Criminal Procedure Code. What may be said with regard to that section would equally apply to section, 386. In both cases we think, if the Magistrate errs, the remedy of the aggrieved party is by civil suit. All that we can say is that, in cases of dispute, the Magistrate should stay the sale of the property seized to give the claimant time to establish his right.

QUEEN-
EMPRESS
v.
KANDAPPA
GOUNDAN.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

CHINTAMALLAYYA (PLAINTIFF), APPELLANT,

v.

THADI GANGIREDDI (DEFENDANT), RESPONDENT.*

1896.
December 2.

Civil Procedure Code—Act XIV of 1882, ss. 521, 522, 526—Application to file award—Objection that submission was revoked before award made—Jurisdiction of court to determine objection—Subsequent suit to annul award.

The plaintiff's case was that arbitrators, to whom differences between him and the defendant had been referred, had out of enmity to him and at the defendant's instance, made a fraudulent award on 17th February after he had revoked his submission and had antedated it as on 1st February; that the defendant had instituted proceedings under Civil Procedure Code, chapter XXXVII, and his objections to the above effect having been overruled, a decree was passed in terms of the award. He now sued to have it declared that neither the decree nor the award was binding:

Held, that the Court had jurisdiction to determine the genuineness or validity of the award in the proceedings under chapter XXXVII, and that the present suit was not maintainable.

APPEAL against the decree of K. Krishna Rau, Subordinate Judge of Cocanada, in original suit No. 40 of 1894.

The plaintiff alleged that he and the defendant had carried on business in partnership till 29th July 1892, when the partnership

* Appeal No. 199 of 1895.