

## APPELLATE CIVIL.

*Before Mr. Justice Wallis and Mr Justice Miller.*

1907.  
October  
29, 30.

SOMASUDARAM CHETTIAR AND ANOTHER (PLAINTIFFS—  
RESPONDENTS), PETITIONERS,

*v.*

MANICKA VASAKA DESIKA GNANA SAMMANDA  
PANDARA SANNIDI (DEFENDENT-PETITIONER), RESPONDENT.\*

*High Court powers of superintendence under s. 15 of Charter Act—Civil Procedure Code, Act XIV of 1882, ss. 386, 622—High Court can interfere under s. 15 of Charter Act when lower Court issues commission to examine a witness on grounds other than those mentioned in the Code.*

An order under section 386 of the Code of Civil Procedure for the examination of a witness on commission, can only be made on one of the grounds mentioned in the Code, and a Court usurps a jurisdiction not vested in it by law when it orders such examination in the absence of any such ground.

The High Court has power to interfere with such an order under section 15 of the Charter Act.

*Obiter:* The High Court may also interfere with such an order under section 622 of the Code of Civil Procedure, although the order is only interlocutory.

THE plaintiff in Original Suit No. 21 of 970 on the file of the Munsiff's Court at Mayavaram cited the defendant as a witness to appear and give evidence. The defendant thereupon applied to be examined on commission and his application was supported by an affidavit, stating that he had been summoned as a witness on the side of the plaintiffs; that he personally knew nothing of the matters connected with the case; that his evidence was unnecessary; that it had not been the practice for him to appear before the Court to give evidence; and that he had been examined on commission in several cases by this and other Courts.

The defendant prayed that if the Court should deem his evidence necessary, that he be examined on commission.

The District Munsif passed an order for the examination of the defendant on commission.

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\* Civil Revision Petition No. 304 of 1907, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of M. R. By. T. A. Narasimha Chariar, District Munsif of Mayavaram, in Interlocutory Application No. 482 of 1907 (Original Suit No. 21 of 1907.)

The plaintiffs applied to the High Court under section 15 of the Charter Act, and section 622 of the Code of Civil Procedure, to set aside the order.

*S. Srinivasa Ayyangar* for petitioner.

*V. Krishnasami Ayyar* and *S. Muthia Mudaliar* for respondent.

JUDGMENT.—It has been held in *Veerabadrán Chetty v Nataraja Desikar*(1) that a Civil Court has no jurisdiction to issue a commission for the examination of a witness on the grounds put forward in the present case, as such jurisdiction is only conferred in the case of persons who are exempted under the Civil Procedure Code from attendance, or are unable from sickness, or infirmity, to attend. The lower Court has therefore usurped a jurisdiction not vested in it by law.

The ruling of the Calcutta High Court that the High Court has power to interfere under section 15 of the Charter Act with the orders of Subordinate Courts passed without jurisdiction has been approved by the Privy Council in *Nilmóni Singh Deo v. Taranuth Mukerjee*(2) and is sufficient to authorize our interference in this case. It is therefore unnecessary to rely on section 622 of the Code of Civil Procedure; but after the careful argument which we have listened to, we desire to say that, we are not to be understood as holding that section 622 would not authorize us to interfere as the order of the lower Court was an interlocutory one. The evidence taken on the commission which the District Munsif has ordered to issue would not, in our opinion, be legal evidence in the case, and under these circumstances we think we ought to interfere. We, accordingly, set aside the order of the District Munsif as made in excess of his jurisdiction, dismiss the application, and direct the respondent to pay the costs of the petitioner, here, and in the lower Court.

We express no opinion on any other question.

SOMA-  
SUNDARAM  
CHETTIAR

v.

MANICKA  
VABAKA  
DESIKA  
GNANA  
SAMMANDA  
PANDARA  
SANNIDI.

(1) I.L.R., 26 Mad., 28.

(2) I.L.R., 9 Calc., 295.