

BENSON  
AND  
SUNDARA  
AYYAR, JJ.

MUTHU  
KRISHNA  
AYYAR  
v.  
SOMALINGA  
MUNI-  
NAGANDRIEN,

obstructs the free passage of light and air to plaintiff's windows Nos. 1, 2 and 3.

The plaintiff will have three-fourths of the costs of this litigation in all the courts.

The memorandum of objections is dismissed.

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## ORIGINAL CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

K. DAMODARA MENON (PETITIONER),

v.

KITTAPPA MENON AND FOUR OTHERS (RESPONDENTS).\*

*Civil Procedure Code (Act V of 1908), Order XLVI, rule 1 and s. 141—Reference in proceeding neither a suit nor appeal—Jurisdiction of High Court.*

Order XLVI, Rule 1, read with section 141, Civil Procedure Code, does not authorize a reference to the High court in a matter which is neither a suit nor an appeal. Section 141 does not authorize a court to invoke the jurisdiction of another court any more than it authorizes a party to do so by way of appeal. Such right must be expressly conferred by statute.

CASE stated under Order XLVI, Rule 1, Civil Procedure Code (Act V of 1908), by the District Munsif of Palghat, in Miscellaneous Petition No. 474 of 1909 (M.P. No. 666 of 1909).

The facts necessary for this case are fully set out in the judgment.

Both the parties were unrepresented.

JUDGMENT.—This is a reference made by the District Munsif of Palghat under Order XLVI, Rule 1, of the Code of Civil Procedure. The question referred is whether when mortgage money is deposited under section 83 of the Transfer of Property Act for the benefit of the mortgagee, and the mortgagee is a Malabar tarwad or tavazhi governed by the Marumakkatayam law, consisting of a mother and her minor daughters who are all made counter-petitioners to the petition put in under section 83, the minors being represented by their mother as guardian *ad litem*, the

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\* Referred Case No. 5 of 1909.

money may be paid out to the mother alone as manager without taking security from her under Order 32, rule 6, of the Code of Civil Procedure, to protect the interests of her minor daughters. The munsif is of opinion that, although the proceeding before him is not a suit or appeal, he is entitled to make this reference by virtue of the provisions of section 141 of the Code of Civil Procedure which lays down that "the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction." In our opinion this reference is incompetent. It has been held in numerous cases that section 141 will not give a party to a proceeding, not a suit, a right of appeal; See *Thomas Souza v. Gulam Moidin Beari*(1) and *Parasurama Ayyar v. Seshaiyer*(2). The corresponding provision in section 38 of Act XXIII of 1861, expressed in similar language, was interpreted by JACKSON and MILLER, JJ., to extend to other proceedings only "the mode of trial and the procedure incidental thereto" laid down in the Civil Procedure Code and not a right of appeal. See *Hureenath Kbondoo v. Modhoo Soodun Saha*(3) followed in *Ningāppā v. Gangāwā*(4). We are of opinion that the section does not authorize a Court to invoke the jurisdiction of another Court, any more than it authorizes a party to do so by way of appeal. Such right must be expressly conferred by statute. See *Minakshi v. Subramanya*(5). We therefore decline to answer the question. The record will be returned to the munsif who will dispose of the case according to law.

BENSON  
AND  
SUNDARA  
AYYAR, JJ.  
DANOBARA  
MENON  
v.  
KITTAPPA  
MENON.

(1) (1903) I.L.R., 26 Mad., 438

(2) (1904) I.L.R., 27 Mad., 504.

(3) (1878) 19 W.R., 122.

(4) (1886) I L.R., 10 Bom., 433.

(5) (1888) I.L.R., 11 Mad., 26 [P.C.]