

contentions was raised in the lower Court. The latter is based on the partition deed which has not been translated and printed, and the former is, I think, untenable. The suit is, no doubt, for payment of money payable under a contract to pay it, but I do not think that is what is meant in the schedule to the Small Cause Courts Act by a suit for specific performance. I dismiss the petition with costs.

ANNASAMI  
SASTRIAL  
v.  
RAMASAMI  
SASTRIAL.  
MILLER, J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Sankaran Nair and Mr. Justice Ayling.*

Re RANGASAMI PILLAI (ACCUSED IN MISCELLANEOUS CASE  
No. 10 of 1913 ON THE FILE OF THE JOINT MAGISTRATE OF  
POLLACHI).\*

1913.  
December 4.

*Criminal Procedure Code (Act V of 1898), ss. 109 and 110—Binding  
over under both sections illegal.*

A person cannot be bound over under both the sections 109 and 110, Criminal Procedure Code (Act V of 1898).

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code (Act V of 1898), by F. R. HEMINGWAY, the District Magistrate of Coimbatore, in his letter, dated 1st September 1913 R.O.C. No. 1467-M.

In this case J. C. STODART, the Joint Magistrate of Pollachi, passed an order directing one Rangasami Pillai to execute a bond of Rs. 300 with two sureties of like amount to be of good behaviour for one year. In his order the Joint Magistrate stated "He (Rangasami Pillai) is liable to be bound over under sections 109 (a) and 110 (e)."

The notice issued to him was with reference to section 110, clauses (a), (e) and (f).

The District Magistrate referred the case on the ground that it was illegal to bind over a person under both sections 109 and 110, Criminal Procedure Code (Act V of 1898).

The accused was not represented.

*C. F. Nupier, the Public Prosecutor, for the Crown.*

ORDER.—We do not think that a person should be bound over under both the sections 109 and 110 of the Criminal Procedure

SANKARAN  
NAIR AND  
AYLING, JJ.

Re RANGA.  
SAMI PILLAI.

SANKARAN  
NAIR AND  
AYLING, JJ.

Code. See *Re Kosa Kumaran* [*vide* foot note \*]. We accordingly set aside the order binding him under section 109. The evidence fully supports the order so far as section 110 is concerned. We leave the order therefore to stand as one made under section 110.

## APPELLATE CIVIL.

*Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar and before Mr. Justice Spencer (on reference).*

D. SRINIVASA IYENGAR (DIED) AND ANOTHER  
(FIRST DEFENDANT AND HIS LEGAL REPRESENTATIVE), APPELLANTS,

v.

THIRUVENGADATHAIYANGAR AND ANOTHER (MINORS,  
THROUGH THEIR GUARDIANS PLAINTIFF AND DEFENDANT NO. 6),  
RESPONDENTS.†

1912.  
August 1  
and 30,  
1914.  
February 6,  
10 and  
March 4.

*Hindu law—Suit for partition by a minor co-parcener—Right to mesne profits—No exclusion—Separate living of minor co-parcener—Same rule as in the case of major co-parceners—Suit for account—Principle different—Provision for expenses of Upanayanam and marriage of co-parceners in a partition suit—Setting apart of funds—Whether Upanayana and marriage of male co-parceners are obligatory ceremonies—Provision for marriage of unmarried sisters whether obligatory—Whether expenses of marriage of a male co-parcener is a reasonable expense—Right to maintenance of mother—Whether son's share only or share of step-sons also liable—Doctrine of Mitakshara as to right by birth examined—Civil Procedure Code (Act V of 1908), O. XLI, r. 3.*

In a suit for partition by a minor co-parcener against his step-brother who was a major, the plaintiff is not entitled to recover past mesne profits in the absence of proof of exclusion by the manager.

\* CRIMINAL REVISION CASE No. 348 OF 1904.

1904.  
August 23.

*Before Mr. Justice Davies and Mr. Justice Sankaran Nair.*

Re KOSA KUMARAN (ACCUSED).

DAVIES AND  
SANKARAN  
NAIR, JJ.

ORDER.—We think that no person should be bound over to be of good behaviour under both sections 109 and 110 of the Code of Criminal Procedure. The sections contemplate different classes of cases and if a man is amenable under section 109 he can hardly be amenable under section 110 and *vice versa*. In this case evidence shows the prisoner was properly bound over under section 110, and we see no evidence to justify his being bound over under section 109. We therefore cancel the order binding him over under that section and leave the order to stand as one made under section 110.

† Second Appeal No. 355 of 1911.