

CHARAMUDI
v.
RAGHAVULU,
—
AYLING AND
TYABJI, JJ.

Our decision must therefore be that the rule against perpetuities is applicable only in reference to an attempt to create an interest in land, that no interest in land is created by an agreement to sell the land, still less by reason of there being a possible claim to have an agreement for sale specifically enforced as against a transferee with notice of the agreement. The lower Courts were therefore right in holding that the agreement for resale now in question was enforceable and the appeal is dismissed with costs.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Spencer and Mr. Justice Coutts Trotter.

APPADU (PETITIONER), APPELLANT,

v.

APPAMMA (RESPONDENT), RESPONDENT.*

1915.
March 3.

28 M.L.J. 433

Criminal Procedure Code (Act V of 1898), sec. 488—Maintenance—Criminal revision petition to the High Court—Order of a single Judge—Appeal against, if maintainable—Letters Patent, article 15—Criminal trial, order in.

No appeal lies under article 15 of the Letters Patent against an order of a single judge of the High Court dismissing a criminal revision petition filed against an order of a Joint Magistrate passed under section 488 of the Code of Criminal Procedure (Act V of 1898).

APPEAL under clause 15 of the Letters Patent against the order of AYLING, J., in Criminal Revision case No. 756 of 1914 preferred against the order of T. G. BUTLER, the Joint Magistrate of Parvatipur, in Maintenance No. 9 of 1914.

This appeal was preferred under clause 15 of the Letters Patent against the order of a single judge (AYLING, J.) of the High Court dismissing a Criminal Revision Petition (No. 756 of 1914) filed against the order of the Joint Magistrate of Parvatipur division in a maintenance case. A preliminary objection was taken that the appeal was not maintainable, as the order of the single judge was passed in a criminal trial, and that no appeal was allowed under clause 15 of the Letters Patent.

* Letters Patent Appeal No. 376 of 1914.

V. *Ramesan* for the appellant.

The Honourable Mr. *B. N. Sarma* for the respondent.

The following judgment of the Court was delivered by SPENCER, J:—A preliminary objection has been taken that no appeal lies, as an order under section 488, Criminal Procedure Code, awarding maintenance is an order passed in a criminal trial. We think the objection is good. Clause (7) describes the person against whom proceedings are taken as an “accused” and provides that he may give evidence on his own behalf, a right which would exist without being conferred by statute if the proceedings were civil.

Clause (6) provides that the evidence shall be recorded in the manner prescribed for the trial of summons cases and clause (3) provides that a person neglecting to comply with the order may be imprisoned.

The Bombay High Court in *Reg v. Thaku bin Ira*(1) took the view that the proceedings were, under the Code of Criminal Procedure then in force, a “judicial proceeding of a criminal Court” from which no appeal lay. We agree with that decision and dismiss this appeal with costs.

K.R.

APPADU
2.
APPANMA

SPENCER
AND GOUDS
TROTTER, JJ.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

AUDIAPPA PILLAI (PETITIONER), APPELLANT,

v.

NALLENDRANI PILLAI (RESPONDENT), RESPONDENT.*

Guardians and Wards Act (VIII of 1893), ss. 17 and 19—Guardianship of minor children—Father, marrying a second time—No disability.

Under section 19 of the Guardians and Wards Act, the Court must be satisfied that the husband or father is unfit to be the guardian of his wife or child respectively before it can appoint another person as guardian. The fact of the father marrying a second time is no ground for depriving him of the guardianship of his minor children.

Bindo v. Sham Lal (1907) I.L.R., 29 All., 210, dissented from.

1915.
March 5

2871. L. J
442

(1) (1868) 5 Bom. H.C.R., 81 (Cr. Ca.).

* Appeal Against Order No. 76 of 1914.