

onus in such a case should be regarded as lying in the same way as it does upon claimants to attached property under the Civil Procedure Code. That is to say, the mere fact of attachment throws the onus upon the claimants so that in the result the lower Court was correct in throwing the onus of proof on the claimants. They should, however, be allowed to adduce evidence as to the separate possession of schedules C and D property and on that evidence the Court will pass final orders. The order as regards schedule E properties is upheld in so far as the decision that they are joint family properties is concerned.

NARASANNA,  
In re.

K.N.G.

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## APPELLATE CRIMINAL.

*Before Sir Murray Coutts Trotter Kt., Chief Justice,  
Mr. Justice Beasley and Mr. Justice Pakenham Walsh.*

[IN THE MATTER OF THIRUVENGADASWAMI, A MINOR.]

RAMAMMAL, PETITIONER,

1928,  
August 23.

v.

VIJAYARAGHAVALU AND ANOTHER, RESPONDENTS.\*

*Code of Criminal Procedure (Act V of 1898), sec. 491—Habeas Corpus proceedings—Power of the High Court to award costs.*

The High Court has no power to award costs in proceedings under section 491 of the Code of Criminal Procedure. Costs are a creature of statute or statutory rules.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be

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\* Criminal Miscellaneous Petition No. 471 of 1923.

RAMAMMAL  
 v.  
 VIJAYA-  
 RAGHAYALU.

pleased to issue a writ of *Habeas Corpus* to the respondents therein to produce the body of the petitioner's unmarried minor son Thiruvengadaswami in Court and also to issue an injunction restraining the said respondents from celebrating the marriage of the said minor on the 24th June 1928 or on any other day pending the petition.

*K. S. Desikan* for petitioner.

*V. V. Srinivasa Ayyangar* and *C. Sarangaraja Ayyangar* for respondents.

The JUDGMENT of the Court was delivered by

COTTES  
 TROTTER C.J.

COTTES TROTTER C.J.—This petition is withdrawn. We very much regret to come to the conclusion that we have no power to grant costs *proprio motu*. In some ways perhaps it is to be regretted that we have not, because a lot of these applications are so thoroughly frivolous—I do not say anything about this one—that I think the losers ought to be penalized for vexatious proceedings. However, costs are a creature of statute or statutory rules and, in the absence of either in this case, we must hold that we have no jurisdiction to award costs.

K.N.G.