

have partitioned the property among themselves, and the right of the widow to have a share set apart for her maintenance would come into existence. That, however, is evidently not the present case; here there is no suggestion that these houses are anything more than a small outlying piece of property, or that the bulk of the family estate does not remain undivided, or that it is not ample for the support of the widow. In my opinion, therefore, this is not such a partition of the family property among the sons as brings this right of the widow into existence, and I think that the Subordinate Judge was right in the conclusion at which he arrived, and that this appeal must be dismissed with costs.

1892
 BARAH
 DEBI
 v.
 DEBKAMINI
 DEBI.

Appeal dismissed.

C. S.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Trevelyan.

MADAN MANDUL (PETITIONER) v. HARAN GHOSE (OPPOSITE PARTY).*

1893
 June 15.

Appeal in Criminal Case—Appealable sentence—Costs of complaint in Criminal Court, order on accused to pay—Fine—Court Fees Act (VII of 1870), s. 31—Criminal Procedure Code, 1882, s. 413.

An order passed by a Magistrate under section 31 of the Court Fees Act, directing an accused person to pay to the complainant the court-fee paid on the petition of complaint, is no part of the sentence so as to make it a sentence of fine within the terms of section 413 of the Code of Criminal Procedure, and an order therefore sentencing an accused person to 14 days' rigorous imprisonment and to pay the costs is not appealable.

THE petitioner in this case was charged by the opposite party with committing mischief by ploughing up certain indigo plants, and convicted by the Deputy Magistrate, under section 426 of the Penal Code, in a summary trial and sentenced to rigorous imprisonment for 14 days. The Deputy Magistrate further directed him to pay the costs, Rs. 3-8.

* Criminal Revision No. 367 of 1893, against the order passed by B. R. Pope, Esq., Sessions Judge of Jessore, dated the 12th of June 1893, affirming the order passed by Baboo M. K. Bose, Deputy Magistrate of Bongong, dated the 3rd of May 1893.

1893

MADAN
MANDUL
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GHOSE.

The petitioner then appealed to the Sessions Judge, who, holding that no appeal lay, converted the petition of appeal into one for revision under section 435 of the Code of Criminal Procedure, and having gone into the facts of the case, refused to refer it to the High Court, and rejected the application.

The petitioner thereupon made the present application to the High Court to send for the record under section 437 and revise the order of the Sessions Judge, on the ground, amongst others, that the Sessions Judge was wrong in holding that no appeal lay to him, inasmuch as the order to pay the costs amounted to a fine, and two kinds of sentences having been passed, the appeal lay.

The facts relating to the merits of the case and the other grounds taken in the petition to the High Court are not material for the purpose of this report, as the main ground relied on by Counsel in support of the application was that the Sessions Judge was wrong in holding that no appeal lay to him, and this was the only ground dealt with by the judgment of the High Court.

Mr. S. P. Sinha (with him Baboo Sarat Chunder Rai Chowdhry) in support of the petition argued that as the costs directed by the Deputy Magistrate to be paid by the petitioner were, under the provisions of section 31 clause IV of the Court Fees Act, ordered to be recovered as if they were a fine imposed by the Court, that portion of the sentence was in fact a fine, and being imposed in addition to imprisonment, rendered the conviction appealable.

The judgment of the High Court (PRINSEP and TREVELYAN, JJ.) was as follows:—

It is necessary in this application only to refer to one of the grounds taken, which is that, because the Magistrate, in addition to a sentence of 14 days' imprisonment, directed the accused person, under section 31 of the Court Fees Act, to pay to the complainant the court-fee paid on his petition of complaint to the Magistrate, the order is appealable. The learned Counsel contends that inasmuch as the law provides that all such fees ordered to be paid may be recovered as if they were fines imposed by the Court, therefore this part of the sentence must be regarded as a fine, and, superadded to the sentence of imprisonment, makes the order appealable. We do not accept this view of the law. The order

under section 31 of the Court Fees Act is no part of the sentence so as to make it a sentence of fine within the terms of section 413, Code of Criminal Procedure. The order is therefore not appealable. This application is refused.

1893

MADAN
MANDUL
v.
HARAN
GHOSE.

Application rejected.

H. T. H.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

CRISP (DEFENDANT) *v.* WATSON (PLAINTIFF).

1893

June 29.

Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 16 (e), proviso—Recorder of Rangoon, jurisdiction of.

The plaintiff sued in the Court of the Recorder of Rangoon to recover damages for trespass on land in his own possession situate outside the limits of the original jurisdiction of the Recorder's Court; asking at the same time for an injunction restraining the defendant from further acts of trespass. Both plaintiff and defendant resided within the limits of the original jurisdiction of the Recorder's Court. *Held*—(1) that the plaintiff having alleged that the land was in his possession, was not entitled to the benefit of the proviso to section 16 of the Code of Civil Procedure; and (2) that a suit for damage to land cannot be said to be a suit for which relief can be entirely obtained through the personal obedience of the defendant, even though it may be joined with a claim for an injunction; and that for the above reasons the Recorder had no jurisdiction to try the suit.

THIS was a suit brought in the Court of the Recorder of Rangoon to recover damages for trespass and for an injunction.

The plaintiff alleged that on the 27th March 1891, at a time when he was in possession of a piece of land, known as Extra Suburban allotment, 3rd class, No. 455, Kokine Circle, the defendant and his servants broke into and entered upon this land and cut and carried away a quantity of grass growing thereon; he claimed Rs. 500 as damages, and asked for an injunction restraining the defendant from further acts of trespass.

* Appeal from Original Decree No. 296 of 1891, against the decision of W. F. Agnew, Esq., Recorder of Rangoon, dated the 7th August 1891.