question as to joint right of management was only incidentally before the Court of First Instance in that litigation. We are of opinion then that the Subordinate Judge came to a correct conclusion in the present case in holding that the respondent should have a declaration as prayed for, and we dismiss this appeal with costs.

We do not overlook the incongruity resulting from the existence of a decree passed by the Court of a District Múnsif, the effect of which is that in respect of one or more specific pieces of devasom land the respondent and appellant No. 1 have jointly right of management, while under the present decree appellant No. 1 is debarred from again asserting and from exercising such right jointly with the respondent in respect of the devasom lands other than those which formed the subject of the suit or suits in the District Múnsif's Court in which appellant No. 1 succeeded.

In the present case, however, the right of the party who succeeds before us has been recognized in the other suits also as uralen, but not as sole uralen, and, as the possession of one uralen is the possession of all, the result is not so incongruous as it might be in some cases.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Brandt.

RANGAMMA (PLAINTIFF), APPELLANT,

and

VOHALAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1887. August 22.

Civil Procedure Code, s. 43.

The plaintiff having obtained a decree against the defendants for the payment to her of a monthly sum for her maintenance, subsequently sued to have it constituted a charge on certain land:

Held, that the claim in both suits arose out of the same cause of action, and, therefore, the plaintiff was precluded by s. 43 of the Code of Civil Procedure from asserting in the second suit the claim which she might have asserted in the first.

SECOND appeal against the decree of Venkata Rangayyar, Acting Subordinate Judge of Ellore, in Appeal Suit No. 510 of 1885,

* Second Appeal No. 903 of 1886.

RANGAMMA v. VOHALAYYA.

reversing the decree of O. S. Kristnamma, District Múnsif of Ellore, in Original Suit No. 324 of 1884.

This was a suit to set aside the court-sale of certain property, and to declare a certain sum due to the plaintiff (under a decree) for her maintenance to be a charge upon the property.

Plaintiff and defendants Nos. 1 and 2 were members of a joint Hindú family; defendants Nos. 1 and 2 being, respectively, father and brother of the plaintiff's deceased husband. Defendant No. 3 obtained a money decree against defendant No. 1 in Original Suit No. 68 of 1876, and, subsequently, in execution of the decree, brought certain land belonging to the family to sale and purchased it himself. Before the execution of the decree the plaintiff's husband died, and the plaintiff sued defendants Nos. 1 and 2 for maintenance and obtained a decree for maintenance at the rate of Rs. 40 per annum in Original Suit No. 473 of 1878. The present suit was brought to set aside the sale in execution of the decree in Original Suit No. 68 of 1876 as collusive, and to declare the annual sum due under the decree in Original Suit No. 473 of 1878 a charge upon the land sold.

The District Múnsif allowed the plaintiff's claim, but his decree was reversed on appeal by the Subordinate Judge.

The plaintiff preferred this second appeal.

Rámachandra Ráu Saheb for appellant.

Mr. *Ramasámi Ráju* for respondents.

The arguments adduced on this second appeal appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Brandt, J.).

JUDGMENT.—In this case the third defendant, the respondent, obtained a decree in the year 1876 against the first defendant. In 1878 the appellant sued the first defendant and another member of the family for maintenance and obtained a personal decree against those two defendants, under which they were bound to pay to the appellant for her life a sum of Rs. 3 per mensem, with an allowance for cloths. Some time in 1883 the respondent, in execution of his decree, purchased a part of the family lands belonging to the first defendant's family. The present suit was brought to set aside the sale and the purchase of the respondent, and to have the appellant's maintenance charged on the land purchased by him. The Subordinate Judge held that in no circumstances

could a decree be made as prayed by the appellant, having regard to s. 43 of the Code of Civil Procedure.

It is contended in appeal that a claim for maintenance to be decreed against a person and a claim to have maintenance charged upon immovable property are different, and that they do not arise out of one and the same cause of action; and it was suggested that a widow or other female member of a family entitled to maintenance might have cause to sue for maintenance without having at the same time sufficient cause to demand that the charge be made a charge on the property or any part thereof; and that, if, subsequently, the manager of the family or others were to commit waste or alienate any part of the property, the claimant would be at liberty to come in and sue to have the maintenance already awarded made a charge upon the property. We are unable to allow this contention. The plaintiff had undoubtedly a right to a decree against the first and second defendants personally, or to a decree making the maintenance a charge on the property, and possibly to both; but it appears to us clear that, on the principle to which effect is given by the provisions of the Code of Civil Procedure, the plaintiff was bound, when she sued in 1878, to have asked, for all the remedies in respect of the right of maintenance, to which she was then entitled, and that these claims did arise out of one and the same cause of action, that cause of action being the right to maintenance.

On these grounds, we hold that the Sub-Judge is right and dismiss this second appeal with costs.