APPELLATE CIVIL.

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

SAMINATHA (DEFENDANT No. 3), APPELLANT,

v.

RANGATHAMMAL (PLAINTIFF), RESPONDENT.*

1889. Feb. 4, 8.

Civil Procedure Code, s. 43—Hindu Law—Maintenance—Suit to declare maintenance fixed by a decree—A charge on land.

A Hindu woman having obtained a decree for maintenance against her husband, now alleged that he had alienated part of his property with a view to defeat her claim for maintenance, and sued him for a declaration that certain land which he had not alienated was liable for her maintenance:

Held, that no cause of action was shown.

SECOND APPEAL against the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in appeal suit No. 765 of 1887, affirming the decree of H. Srinivasa Rau, District Munsif of Tanjore, in original suit No. 360 of 1886.

Suit by a Hindu woman against her husband and two persons who professed to hold mortgages from him. The plaintiff had obtained a decree against her husband for maintenance at a fixed rate in original suit No. 400 of 1875 on the file of the District Munsif of Tanjore. Her plaint now alleged that defendant No. 1 (the husband) had fraudulently alienated the greater part of his property to defeat her claim to maintenance, and prayed for a declaration that certain lands which remained unalienated by him and their produce were liable for her maintenance. It was pleaded, *inter alia*, that the suit being a second suit on the same cause of action was not maintainable by reason of ss. 13 and 43 of the Code of Civil Procedure.

The District Munsif found that the professed mortgages to defendants Nos. 1 and 2 were invalid, and passed a decree as prayed for, and the Subordinate Judge affirmed his decree, observing, with reference to the plea referred to above:

"The first ground of appeal is that this second suit upon the

* Second Appeal No. 1348 of 1888.

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same cause of action is not sustainable, and s. 43 of the Civil Procedure Code is relied on. But that section in my opinion cannot apply to a case of this kind. As observed by Mr. Mayne in s. 379 of his Hindu Law, the maintenance of a 'wife by her husband is of course a matter of personal obligation arising from the very existence of the relation and independent of the possession of any property.' If the maintenance of a wife by her husband is a personal obligation, whether he possesses any property or no, such considerations as that every suit shall include the whole of the claim which a plaintiff is entitled to make in respect of the cause of action; if a plaintiff omits to sue in respect of any portion of his claim, he shall not afterwards sue in respect thereof; and a person entitled to more than one remedy may sue for all or any of them but if he omits to sue, he shall not afterwards sue for the remedy so omitted—do not arise in a suit similar to this, where the plaintiff, when she sued her husband for her maintenance had no necessity to ask that her maintenance should be charged upon some portion of her husband's property. The necessity for such a prayer arose only when her husband commenced to waste his property. Therefore, it cannot be said that the claim for maintenance and a claim to have that maintenance charged upon the plaintiff's husband's property arose out of the same cause of action and that both the causes of action were so entwined as to disentitle her, under s. 43, to claim, in a separate suit, when the necessity for it arose, that a portion of her husband's property may be charged with her maintenance. When she brought her suit for her maintenance, she might have asked for such a charge, but her omission to do so cannot debar her now from asking for the relief."

Defendant No. 3 preferred this second appeal.

Pattabhiramayyar for appellant.

Subramanya Ayyar for respondent.

The arguments adduced in this case appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—In her plaint, the plaintiff does not in terms seek to make her maintenance a charge upon the property which has not been alienated. Such a suit would be barred under s. 43, Code of Civil Procedure, *Andi* v. *Thatha*(1). But she seeks for a

(1) I.L.R., 10 Mad., 347.

declaration that some property not alienated is subject to her claim for maintenance, and dates her cause of action from the alienation of some other property. She does not state that her husband is about to alienate this particular property, or that she has any legal lien specially upon it, but merely that her husband has alienated other properties with a view to defraud her of her maintenance. SAMINATHA v. RANGATHAMMAL.

It is urged that the right to have maintenance made a charge upon immovable property is an equitable relief only and not a real right. This contention cannot be supported after the Full Bench decision in *Ramanadan* v. *Rangammal*(1), though in any case, s. 43, Civil Procedure Code, would operate as a bar to such a suit.

We are constrained to hold that plaintiff has alleged no cause of action which would entitle her to the declaration prayed.

The decrees of the Courts below must be reversed, and the suit dismissed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

MALLAN AND OTHERS (PLAINTIFFS), APPELLANTS IN S.A. 730 OF 1888, 1889. Feb. 22.

v.

PURUSHOTHAMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

PURUSHOTHAMA AND ANOTHER (DEFENDANTS NOS. 1 AND 2), APPELLANTS IN S.A. 1040 OF 1888,

v.

MALLAN AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Land dedicated to family idol—Land excluded from partition of family property and declared inalienable—Subsequent purchase from Escheat Department of Government—Sale in execution.

By a partition deed by the six members of a Hindu family it was provided that part of the land of the family should be set apart for the maintenance of the family idol and should be inalienable and the rest of the land was divided equally.

Subsequently the Government claimed the dedicated land as an escheat, and sold it to the members of the family jointly, of whom one built a house on part of

(1) See ante, p. 260. * Second Appeals Nos. 730 and 1040 of 1888.