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and that when a person entitled to maintenance not contented with asking for a declaratory decree has asked for a decree relating to future maintenance, he cannot thereafter bring a separate suit to recover arrears of maintenance. If his former decree has provided for payment periodically and is properly drawn up, he can recover arrears in execution. If his former decree has made no such provision or is not regularly drawn up, it must be either because the relief asked for has been refused or because some mistake has been made. In the former case his remedy is by appeal; in the latter, which is the present case, he can obtain redress by review. The present case differs from *Sabhanatha* v. *Lakshmi* (1), for there it was a declaratory decree only that the plaintiff had obtained in the former suit, and the point now under discussion did not arise. We think the appeal must be allowed. The decrees of the Courts below must be reversed and the suit must be dismissed but without costs.

APPELLATE CIVIL.

Before Mr. Justice Wilkinson and Mr. Justice Shephard.

1888. Nov. 23.

LUIS AND OTHERS (DEFENDANTS IN O.S. No. 11 OF 1888), PETITIONERS,

v.

LUIS (PLAINTIFF IN O.S. No. 11 OF 1888), RESPONDENT.*

Civil Procedure Code, ss. 494, 588, 622—No appeal lies against an order for issue of notice made under s. 494—Revision by High Court of an order purporting to be made on appeal from such an order.

A petition praying for a temporary injunction in a suit was presented by the plaintiff in a Subordinate Court.

The Judge refused to pass orders on it without hearing the defendants, and ordered notice to issue to them. The plaintiff appealed to the District Judge who granted the injunction prayed for:

Held, that no appeal lay from the Subordinate Court, and that the District Judge had purported to exercise a jurisdiction not vested in him by law.

PETITION under s. 622 of the Code of Civil Procedure, praying the High Court to revise the order of J. W. Best, District Judge

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(1) I.L.R., 7 Mad., 80. * Civil Revision Petition No. 204 of 1888.

of South Canara, dated 17th April 1888, and made on civil miscellaneous appeal No. 19 of 1888, presented against the order of C. Gopala Nayar, Subordinate Judge of South Canara, dated 7th April 1888, and made on civil miscellaneous petition No. 126 of 1888.

The plaintiff in original suit No. 11 of 1888 on the file of the Subordinate Court of South Canara preferred a petition, civil miscellaneous petition No. 126 of 1888, under s. 493 of the Civil Procedure Code, praying for the issue of a temporary injunction against the defendants in that suit. The Subordinate Judge on 7th April 1888 made the following order on the petition:—

"The case seems to be one of importance. I am disinclined to pass orders without hearing the other side. Notice for hearing on the 11th June."

The petitioner preferred an appeal to the District Court.

The District Judge on the 7th April 1888 made an order granting the temporary injunction, which was subsequently varied by an order made by him on the 17th April 1888.

The respondents preferred this petition to the High Court under s. 622 of the Code of Civil Procedure.

Mr. *Subramanyam* for petitioners.

Subba Rau for respondent.

The Court (Wilkinson and Shephard, JJ.) delivered the following

JUDGMENT:—We are of opinion that the Judge exercised a jurisdiction not vested in him by law, in that no appeal lay from the order of the Subordinate Judge. The Subordinate Judge, as required by s. 494, resolved, before granting the temporary injunction, to issue notice to the defendants. Such order was one made under s. 494, and there is no provision under s. 588 for an appeal from such an order. It is argued that, inasmuch as the plaintiff stated that the object of granting the injunction would be defeated by the delay, the order of the Subordinate Judge was virtually an order refusing the prayer for an injunction and that therefore an appeal lay. We are unable to concede this. The order made by the Subordinate Judge was not the formal expression of his decision on the question, whether an injunction should be granted or not. A discretion is vested in the Court by s. 494 of refusing to grant a temporary injunction if satisfied

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that the object of granting an injunction will not be defeated thereby, and no appeal is provided in case of his refusal. The orders of the Judge were, therefore, *ultra vires*, and we set them aside.

Petitioners will have their costs in both Courts

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1888. Nov. 27. Jan. 15.

VENKATANARASIMHA (PLAINTIFF), APPELLANT,

v.

SURYANARAYANA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Regulation XXV of 1802 (*Madras*), *s.* 11—*Regulation XXIX of* 1802 (*Madras*), *ss.* 5, 7, 10, 16, 18—*Suit for dismissal of a zamindari karnam—Jurisdiction.*

A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a District Munsif.

The Subordinate Court, and the District Court where there is no Subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802.

APPEAL against the order of G. T. Mackenzie, Acting District Judge of Kistna, made in original suit No. 22 of 1887, directing that the plaint be returned to the plaintiff for presentation in the Court of the District Munsif.

This was a suit filed by a zamindar to obtain the dismissal of defendants who are karnams on his zamindari. The District Judge was of opinion that the Madras Regulations XXV and XXIX of 1802 contained nothing to oust the jurisdiction of the District Munsif within the meaning of s. 11 of the Code of Civil Procedure and observed:—

"I consider that the power to try such suits as this is given to Courts of Judicature generally, and that if the phrase Adawlut of the Zilla is used elsewhere in connection with the subject, it was not intended to restrict this jurisdiction to the District Court, but that the phrase is used merely as a synonym for Court of Judicature."

He accordingly made an order to the effect stated above.

Plaintiff preferred this appeal.

Mr. *Shaw* for appellant.

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* Appeal against Order No. 96 of 1888.