

APPELLATE JURISDICTION (a)

Civil Petition No. 131 of 1862.

Ex parte IMBICHI PÁTAMA.

An appeal will not lie against an order refusing to appoint a receiver under Act VIII of 1859 section 92.

THIS was an appeal by the plaintiff in a suit in the Civil Court of Calicut, against an order of the Civil Judge refusing to appoint a receiver under sec. 92 of the Code of Civil Procedure, Act VIII of 1859. 1862.
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of 1862.

Mayne for the appellant.

Branson, for the respondent, took the preliminary objection that under the Civil Procedure Code a plaintiff could not appear against an order refusing to appoint a receiver. He referred to sections 363 and 92 of Act VIII of 1859.

Mayne : A party has a right to appeal from a subordinate to a superior court unless the appeal be expressly taken away.

SCOTLAND C. J.—The objection cannot be got over. It is a general principle of law that no one is entitled to appeal unless the right to do so is clearly given him. Now section 363 of the Civil Procedure Code provides that “No appeal shall lie from any order passed in the course of a suit and relating thereto prior to decree.” Here we have general negative words ; and unless the case comes within some specific affirmative provision there can be no appeal. Now all through the Civil Procedure, and subsequently to presenting the plaint, seems to be given only when such orders are made in favour of the plaintiff. Thus sec. 76 allows a defendant an appeal against orders to give bail and sec. 85 allows a defendant an appeal in cases of attachment before judgment. So sec. 94 declares that “any order made under either of the last preceding sections” (which relate res-

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pectively to the granting of injunctions and appointment of receivers) "shall be open to appeal by the defendant." Nowhere is an appeal against the refusal of such an order given to the plaintiff. And the negative words in section 363 preclude a right of appeal unless when such right is given by express words in the Code.

FRERE, J. concurred.

Appeal dismissed.

APPELLATE JURISDICTION (a)

Regular Appeal No. 21 of 1862.

KONDAYYA GAUNDAN and another.....*Appellants.*

RÁMÁSVÁMI GAUNDAN and another.....*Respondents.*

Translations of papers, if required, should be applied for before the case is posted.

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IN this case *Mayne*, for the appellants, applied that certain documents mentioned in the petition of appeal might be translated, and that the case might be postponed until this should have been done. The case had been posted on the 17th of December 1862.

SCOTLAND C. J. :—The case has been for some time posted, and does not appear to have been posted prematurely. Applications like the present should always be made before the posting. As, however, the Registrar says that no inconvenience will be caused, we will grant the application. But it must distinctly be understood that this is an exceptional case and not to be taken as a precedent.

FRERE, J. concurred.

Application granted.

(a) Present Scotland, C. J. and Frere, J.