

*Referred Case.*1869
Sept. 7.

Bisandas valad Magniram <i>et al.</i>	<i>Appellant.</i>
Lakhmichand Kisanchand.....	<i>Respondent.</i>

Recognised Agent—Munim—Civ. Proc. Code, Sec. 17, cl. 2.

The *munim* of a firm is not, for the purpose of presenting a plaint, the recognised agent (under Sec. 17 of the Civil Procedure Code) of a partner who is present within the jurisdiction. The *munim* and such partner should join in presenting the plaint, or appointing a pleader.

The partner's not so joining is not a ground on which an Appellate Court should reverse the decree of a Lower Court, unless the irregularity affects the merits of the case or the jurisdiction of the Court.

Case referred for the decision of the High Court, under Sec. 28 of Act XXIII. of 1861, by S. N. Tagore, Acting Assistant Judge of Khandesh.

The plaintiff, as manager of the firm of Jethmal Shrichand, brought this suit in the Court of the Munsiff of Malegam to recover the sum of Rs. 146, due from the defendants to that firm on a bond payable by instalments, dated the 17th of December 1857.

The defendants contested the plaintiff's right to sue as manager of the firm, as Lalchand Shrichand, one of the partners of the firm, was present within the jurisdiction of the Court. The defendant also pleaded that the bond was without consideration.

The Munsiff found that Lalchand Shrichand was the son of Shrichand, and one of the partners in the firm of Jethmal Shrichand; that his permanent dwelling-place was in Marwar; that he had come to Malegam about twelve or thirteen months ago, but did not transact all the business of the firm. The Munsiff was, therefore, of opinion that the plaintiff had properly brought the suit as manager, and he gave a decree in the plaintiff's favour on the merits.

Against this decree the defendants appealed to the Acting Assistant Judge, S. N. Tagore, on the ground, *inter alia*, that the manager had no right to sue as long as the principal was present within the jurisdiction of the Court.

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The following is an extract from the case stated by the Acting Assistant Judge:—

“The preliminary question is whether the plaintiff, as manager of the firm, is authorised by law to conduct the suit when Lalchand Shrichand, one of its partners, is admitted to be present within the jurisdiction of the Court.

“It appears from Lalchand’s evidence that the firm was owned in partnership by Jethmal and Shrichand, whose names it bears, and a third person who has adopted Jethmal’s son; that Jethmal’s sons live in Marwar; that witness is the son of Shrichand, and has been residing at Malegam with his brother for the last twelve or thirteen months; that their permanent dwelling-place was also in Marwar; that when at Malegam witness transacted no other business connected with the firm except signing *hundis*; that in all other respects the firm was managed by the plaintiff, who has been the *munim* of the firm for twelve years.

“I am of opinion that, under the circumstances stated above, the plaintiff is not authorised to conduct the suit.

“The decision of the question turns on the meaning to be given to the words ‘parties not within the jurisdiction of the Court’ in Sec. 17, cl. 2 of the Code of Civil Procedure. Do they mean parties not dwelling, or parties not present, within the jurisdiction of the Court? If the former, then the Lower Court’s decision is right, because the evidence shows that the residence of Lalchand Shrichand within the Court’s jurisdiction is only temporary, and mere presence without intention of remaining is not dwelling. I am of opinion, however, that the words are too general to admit of that interpretation, and that parties not within the jurisdiction of the Court mean parties not present within its jurisdiction.”

The Acting Assistant Judge accordingly reversed the decree of the Munsif, and gave judgment for the defendants, contingent on the opinion of the High Court on the point of law whether the plaintiff (Lakhmichand Kisanchand) as manager of the firm of Jethmal Shrichand was a recog-

nized agent within the meaning of the Code of Civil Procedure, as long as Lalchand Shrichand, one of the partners of the firm, was present within the jurisdiction of the Court.

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The case came on for consideration on the 10th of August 1869, when it was sent down to ascertain further particulars.

It then appeared that the suit had been instituted on the 25th of January 1868, and that Lalchand's evidence was taken on the 14th August 1868.

PER CURIAM (COUCH, C. J., LLOYD and MELVILL, J J.):
 —The Court is of opinion that, Lalchand Shrichand being within the jurisdiction of the Court when the suit was commenced, Lakhmichand Kisanchand was not his recognized agent within the meaning of the Code of Civil procedure, and had not authority to present the plaint on his behalf, or to appoint a pleader for him. They should have joined in presenting the plaint or appointing a pleader; but unless the irregularity appears to have affected the merits of the case or the jurisdiction of the Court, the Appellate Court ought not on that account to reverse the decree.

Special Appeal No. 582 of 1868

June 15.

Ramshet bin Bachashet... .. *Appellant.*
 Balkrishna bin Ababhat... .. *Respondent.*

Procedure—Special Appeal—Ex parte Judgment in Regular Appeal.

A plaintiff or defendant, successful in the Court of first instance, who does not appear in the Court of Regular Appeal is not debarred by such non-appearance from preferring a Special Appeal.

This was a special Appeal from the decision of A. Lyon, Assistant Judge of the Konkan, at Thana, in Appeal Suit No. 148 of 1867.

The plaintiff, Balkrishna Ababhat, sued the defendants, Govind Balaji and Ramshet Bachashet, for possession of certain immoveable property mortgaged to him by the first defendant for Rs. 199, or to recover the amount of the