

1870. to defeat the purpose for which the Registration Law was
 MULJI BECHAR enacted.
 et al.

v.
 ANUPRA'M
 BECHAR.

Both issues must be decided in the negative; and the decree of the lower appellate court reversed, and that of the Subordinate Judge upheld.

Costs throughout on special respondent.

Decree of lower appellate court reversed, and that of the Subordinate Judge confirmed.

March 2.

Miscellaneous Appeal No. 8 of 1869.

CHANBASA'PPA' bin SANGA'PPA' et al.Appellants.
 MAINA'BA' bin MAHA'DSHET'Respondent.

Practice—Ex parte Decree—Service of Summons—Summons not served in time.

Where an *ex parte* decree was passed against the defendant and it appeared that the writ of summons had not been served upon him in sufficient time to enable him to appear and answer, the appellate Court, reversing the order of the court of first instance, directed the *ex parte* decree to be set aside and ordered a new trial.

Quære whether the affixing of a summons to the outer door of the place of business of a defendant is good service upon him under Sec. 55 of the Code of Civil Procedure.

THIS was an appeal from an order passed by the First Class Subordinate Judge at Puñá rejecting an application made by the defendants to set aside an *ex parte* judgment passed against them in Suit No. 168 of 1869.

The Subordinate Judge of the First Class at Puñá, in rejecting the application, recorded the following observations:—

“From the endorsement on the back of the summons, it appears that it was served on the 17th of April by fixing a copy thereof on the outer door of the defendants’ place of business at Puñá. The summons was served on the 17th, and the hearing of the suit was fixed for the 19th of April.

“There was, therefore, sufficient time for the defendants’ men in their new shop at Puñá to communicate with the defendants by telegram, and for the defendants to come here and

be present in court on the 19th of April. The defendants first stated that they were at Solápur when the summons was served, but in a subsequent petition they stated they were at Bársi. These two contrary statements cannot be reconciled, and it strikes me that after the application was made, the defendants must have thought that there was sufficient time for them to come from Solápur, and that they, therefore, now state that they were at Bársi when the summons was served. The defendants' *vakíl* admits that the defendants are in pecuniary difficulties, and that there are decrees outstanding against them. It seems, therefore, that the application is made with a view to obstruct the plaintiff in the execution of his decree. I, therefore, reject the application, with costs on the defendants."

1870.
 CHANBAS-
 A'PPA'
 SANGA'PPA'
 et al.
 v.
 MAINA'BA'
 MAHA'DSHET.

The defendants appealed from this order, and the appeal was heard before COUCH, C.J., and MELVILL, J.

Pándurang Balibhadra for the appellant.

Shántáram Náráyan for the respondent.

Cur. adv. vult.

COUCH, C. J.:—We think it doubtful whether the summons in this case was properly served, for Sec. 55 of the Code requires that the copy of the summons should be fixed on the door of the house in which the defendant is dwelling, and it would not be sufficient that it should be affixed to the door of the defendant's place of business. But it is not necessary for us to determine this point, for we are of opinion that even if the summons were properly served it was not served in sufficient time to enable the defendants, who are admitted to have been absent from Puná, to appear and answer; and a representation to this effect having been made to the Subordinate Judge, he ought to have postponed the hearing of the suit. The terms of Sec. 113 of the Code are imperative on this point. We reverse the Subordinate Judge's order of the 4th of October 1869, rejecting the application to set aside the *ex parte* judgment, and order that the *ex parte* judgment be set aside and the suit reheard. Costs of this appeal to be paid by the respondent.