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not an agent, or even a go-between, but merely a confidential servant of the one firm to check the operations done for it by the other, and perhaps to advise on those operations. Service on him was not, therefore, as against Ganeshlal Sunderlal, due service.

The Code does not provide that a service unduly made under s. 76 shall become effectual through being brought to the notice of the persons really interested as defendants. It was probably foreseen that such a provision would sometimes [424] encourage trickery, and often raise questions of difficulty, such as have actually arisen in the present case.

A service effectually made under s. 76, on the other hand, seems to be effectual without regard to the circumstance of its being or not being communicated to the real defendants; but, as in this case there was no such service, I will not discuss that subject further. Nor it is necessary to say more on the fourth question than that there is, at least, room for very grave suspicion that the service of the summons was purposely kept from the knowledge of the defendants. That this should be so, shows the necessity of not enlarging the scope of s. 76 so widely that any petty subordinate employed at a distance may by his fraudulent assistance to a plaintiff involve his employers in unlimited liabilities. The question of who were the constituent members of the firm, does not, under these circumstances, call for decision. The service was ineffectual as to the members, whoever they were, and the decree must be set aside with costs of this motion and incidental thereto.

Decree set aside.

Attorneys for the plaintiff.—Messrs. *Macfarlane and Gilbert.*

Attorneys for the defendants.—Messrs. *Gefferson, Bhaishanker, and Dinsha.*

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4 B. 424.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Kemball.

VAMAN SHRIPAD (*Original Plaintiff*), *Appellant v.* MAKI AND OTHERS, (*Original Defendants*), *Respondents.**

[27th August, 1879.]

Landlord and tenant—Lease—Construction.

A lease of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee.

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District of Satara, confirming the decree of the Subordinate Judge of Dahivadi.

The suit was to recover possession of land let to persons whom the defendants represented. The plaintiff alleged and the defendants [425] did not deny that the lease gave to the lessee the right to hold the land so long as the lessee chose to hold it; but the plaintiff contended that the lease was determined by the death of the original lessee, while the defendants contended that the plaintiff could not eject them so long as they chose to remain.

* Second Appeal, No. 228 of 1879.

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The only question was as to the construction of the lease. Both the lower Courts held that such a lease was a permanent one. The District Judge was of opinion that the lease should be construed most in favour of the lessee. He considered that the improvements made by the lessee showed that the parties intended to treat the lease as a permanent lease.

Vinayak Mahadev Pandit, for the appellant.—The lease has been misconstrued. It is admitted that the lease gave to the lessee the power of holding the land as long as he pleases. Leases of this kind have been held to terminate at the death of the lessee: *Vithalrav* v. *Pirdngavda* (1), *Gopalrav* v. *Bhavanrav* (2), *Suleman* v. *Asmad* (3).

Ghanasham Nilkanth Nadkarni, for the respondents.—The language of the lease unambiguously gives to the lessee the power of holding at his pleasure. Under this power the lessee has made improvements and acted to the lessor's knowledge, as if it was the intention of both parties not to deprive the representatives of the lessee of the benefits which the lessee himself enjoyed. It would be a great hardship to construe the lease to the lessee's disadvantage, for when it was executed, the land was evidently of little value to the lessor.

JUDGMENT.

M. MELVILL, J.—It has been repeatedly held that leases of this description are determined by the death of the lessee. In addition to the decisions in special appeal No. 312 of 1871 and the cases there cited we may refer to the rulings in Special Appeal 373 of 1873 and Special Appeal 112 of 1877. The decrees of the Courts below must be reversed, and the claim awarded, with costs on defendants throughout.

Decree reversed.

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4 B. 426.

[426] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and Mr. Justice M. Melvill.

JAGJIVAN JAVERDAS, (*Applicant*) *v.* ISMAIL ALLI KHAN AND THE COLLECTOR OF KOLABA, (*Opponents.*)* [9th February, 1880.]

Bombay Act III of 1874, *s.* 10—*Vatan—Removal of attachment—Collector's certificate.*

The applicant held a decree, dated the 28th June, 1861, against Ismail Alli Khan and another for Rs. 3,956-13-7, of which he had already recovered Rs. 2,742-4-5. On the 24th December, 1866, he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain *vatan*, belonging to the judgment-debtors, in satisfaction of the balance, Rs. 1,214-9-2, due to him under his decree. On the 7th February, 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was pending the Collector, on the 13th December 1878, sent a certificate to the Court, and informed it that the proceeds of the *vatan* were not liable to attachment under ss. 10 and 13 of Bombay Act III of 1874. The certificate referred to the profits of the *vatan* which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the

* Application No. 81 of 1879 under Extraordinary Jurisdiction.

(1) S.A. No. 312 of 1871, decided by M. Melvill and Kemball, JJ., on 22nd September 1871, unreported.

(2) S.A. 373 of 1873. See Printed Judgments for 1874, p. 279.

(3) S.A. 112 of 1877. See Printed Judgments for 1877, p. 177.