

in the present state of circumstances, it is unnecessary for us to decide, and we do not say, whether or not the nazir could maintain such an action.

We must reverse the decree of the District Judge, and restore the decree of the Subordinate Judge. The plaintiff must pay to the defendant the costs of both appeals.

Decree reversed.

1880
MARCH 24.

APPEL-
DATE
CIVIL.

4 B. 468.

4 B. 468.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice Melvill, Mr. Justice Kembal, Mr. Justice Pinhey, Mr. Justice F.D. Melvill and Mr. Justice Marriott.

H. KASTOLINO, THROUGH HIS CONSTITUTED ATTORNEY J. CARDOZ,
(*Plaintiff*) v. RUSTOMJI DADABHAI (*Defendant*)*
[8th March, 1880.]

Plaint, signing and verification of—Civil Procedure Code (X of 1877 as amended by Act XII of 1879), ss. 51 and 52.

A plaint, signed by a person holding a general power of attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in s. 51 of the amended Civil Procedure Code.

The Court must be satisfied, under s. 52, that a person, other than the plaintiff, verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding a general power of attorney, or of any other recognized agent the Court will not insist on any extreme stringency of proof.

[469] Section 52 does not require the verification of a plaint to be made in the presence of an officer of the Court; but, having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with his attendance.

[R., 16 C.P.L.R. 103; 41 P.R. 1902=54 P.L.R. 1902; D., 2 L.B.R. 41 (49).]

THIS case was referred under s. 617 of Act X of 1877, for the opinion of the High Court by Madan Shrikrishna, Judge of the Small Cause Court at Poona, with the following remarks:—

"The plaintiff, who formerly resided at Poona, is at present a resident of Bombay. The plaint was, consequently, signed and verified by his constituted attorney.

"The defendant objects that the plaint is not signed and verified by the plaintiff personally; that the person, who has verified it, is not proved to the satisfaction of the Court to be acquainted with the facts of the case; that the plaint has not been sworn to before an officer of this Court; and that, therefore, it should be rejected under s. 53 of the new Civil Procedure Code (Act X of 1877).

"Under this contention the following issues arise for decision, *viz*:—

"1. Whether a plaint, signed by a person holding a general power of attorney, is properly signed as required by s. 51?

"2. Whether it should be proved to the satisfaction of the Court, before the plaint is admitted or at the time of the hearing of the suit, that the person verifying the plaint is acquainted with the facts of the case?

* Small Cause Court Reference, No. 1 of 1880.

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"3. Whether the plaint should be sworn to before an officer of the Court named in that behalf ?

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"The plaintiff in this case was not, at the time of the institution of the suit, and is not now, a resident within the territorial jurisdiction of this Court. In his absence his constituted attorney, holding a general power of attorney from him, has signed and verified to the plaints. But here a question may arise, whether by the words 'duly authorized by him in this behalf', is meant that a person holding general power of attorney, containing (*inter alia*) powers to sue and to defend suits, but not containing a special [470] power to sign a plaint, may sign it or that he should have a special power authorizing him to sign it." [The Subordinate Judge referred to ss. 36, 37 and 51 of the Code.]

"With regard to the verification of the plaint, s. 51 provides that it should be verified by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The proof on this point should be made by affidavits or otherwise before the plaint is admitted, and not at the time of the hearing of the suit. It is clear that by word 'proved' in s. 51, it is meant that it should first be proved that the person verifying the plaint is acquainted with the facts of the case. Moreover, the verification of the plaint by a proper person is one of the conditions precedent to the admission of the plaint; for, if the plaint be not properly verified as aforesaid, it may, at the discretion of the Court, be rejected or returned for amendment. In this case the plaint is verified by a person who is not proved to be acquainted with the facts of the case, and it ought to have been rejected or returned for amendment; but as it has been admitted by the Registrar of this Court under s. 36 of Act XI of 1865, it cannot now be rejected or returned. I think that, under the circumstances, the plaintiff's constituted attorney may be allowed to prove that he is acquainted with the facts of the case, and to re-verify the plaint.

"With regard to the third issue, s. 52, as amended by Act XII of 1879, provides that the verification shall be signed by the person making it. Before the amendment Act came into operation, s. 52 further provided that when the person making the verification made it out of Court, he should sign it in the presence of a witness who should also sign it, and that the Court should examine such witness as to the fact of the signature, unless the person making the verification was present. But this latter provision has been repealed by s. 1 of the Amendment Act. Section 52, as it stood before the amendment, required a party to verify the plaint in Court in presence of a witness if verified out of Court, in which latter case it required the Court to examine the witness as to the fact of the signature of the person making the verification. But since the amendment, it only requires the person making the verification to sign it; he [471] is not now required to make or sign the verification in Court or in presence of a witness. He may sign it out of Court, and in presence of nobody. It is now sufficient that the verification is signed by the person making it, and it is not by law necessary for him to solemnly affirm or swear to in the presence of an officer of the Court."

There was no appearance of parties in the High Court, either in person or by pleader.

JUDGMENT.

WESTROPP, C. J.—We think: (1) That a plaint signed by a person holding a general power of attorney to sue on behalf of the plaintiff, is

properly signed within the meaning of the proviso in s. 51 of the amended Civil Procedure Code.

(2) It should be proved to the satisfaction of the Court, under s. 52 of the same Act, that a person, other than the plaintiff, verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding such a power of attorney as above described, or of any other recognized agent, the Court will probably not insist on any extreme stringency of proof.

(3) Section 52 of the amended Civil Procedure Code (X of 1877) does not appear to require that the verification should be made in the presence of an officer of the Court; but, having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint, is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with his attendance.

4 B. 472.

[472] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Melwill.

JETHA MADHAVJI AND OTHERS, (*Plaintiffs*) v. NAJERALLI ABHRAMJI, (*Defendant*).* [23rd March, 1880.]

Civil Procedure Code, (Act X of 1877), s. 295—Attachment—Rateable distribution of assets.

Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge, accordingly, attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees, obtained in the Subordinate Judge's Court, claimed a rateable share in the assets realized by the Small Cause Court, under s. 295 of Act X of 1877.

Held, that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court.

[F., 18 B. 456; Appr., 6 M. 357; R., 5 B. 198; L.B.R. (1893—1900) 161 (167).]

THIS case was referred for the opinion of the High Court by Khan Bahadur Cursetji Manakji, Judge of the Court of Small Causes at Ahmedabad, with the following remarks:—

“Under these decrees, obtained in this Court, all against the same judgment-debtor, moveable property has been duly attached and sold by this Court in due form.

“After such attachment, however, but before realization of assets by sale, certain other creditors obtained decrees against the same debtor in the Court of the Subordinate Judge here, and having applied to *that Court* for execution of their decrees, prohibitory orders have been received by this Court for the attachment of the property mentioned in the preceding para. The decree-holders of the Subordinate Judge's Court now claim a

* Small Cause Court Reference, No. 2 of 1880.