

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and

Mr. Justice Beaman.

1906.

September 5.

SAKHARAM BHASKAR (ORIGINAL DEFENDANT 2), APPELLANT, v.
PADMAKAR MAHADEO (ORIGINAL PLAINTIFF), RESPONDENT.*

*Civil Procedure Code (Act XIV of 1882), section 80.—Appeal—Respondent—
Service of notice—Failure to carry out the requirements of the Code (Act
XIV of 1882).*

A bailiff, who was deputed to serve notice of an appeal on the respondent, affixed a copy of the notice on the outer door of the respondent's house under section 80 of the Civil Procedure Code (Act XIV of 1882), and reported as follows:—"The respondent was not found; his adult undivided son having refused to receive copy of the notice, it was affixed to the front door of his house."

Held that the service of the notice was not proper. The report was merely a statement that the respondent could not be found and the serving officer was not shown to have carried out the requirements of the Civil Procedure Code (Act XIV of 1882).

Rajendro Nath Sanyal v. Jan Meah⁽¹⁾ and *Sakina v. Gauri Sahai*⁽²⁾ referred to.

APPEAL against an order of remand passed by H. S. Phadnis, Assistant Judge of Ratnágiri, reversing the decree of M. I. Kadri, Subordinate Judge of Chiplún, and sending back the case for trial on the merits.

This action was instituted by the plaintiff to recover from the defendants forty-seven rupees as his share in the value of certain trees cut by them.

The defendants contended that the suit was bad for misjoinder of parties and that the plaintiff's remedy lay in a suit for partition.

The Subordinate Judge dismissed the suit holding that it was multifarious and also being one for the recovery of damages was not maintainable.

On appeal by the plaintiff the Judge found that the plaintiff was entitled to partial relief as against defendant 2. He, there-

* Appeal No. 13 of 1906 from order.

(1) (1898) 26 Cal. 101.

(2) (1902) 24 All. 302.

1906.
 SAKHARAM
 v.
 PADMAKAR.

fore, reversed the decree only with respect to that defendant and remanded the suit for trial on the merits after framing certain issues.

Defendant 2 appealed against the said order of remand.

H. C. Coyaji appeared for the appellant.

The appeal was admitted and notice of the appeal was ordered to be issued to the respondent (plaintiff). The bailiff of the Subordinate Judge's Court, who was deputed to serve the notice of the appeal on the respondent, affixed it on the outer door of the respondent's house and made a report, No. 1302, dated the 31st May 1906, as follows :—

The respondent was not found ; his adult undivided son having refused to receive the copy of the notice, it was affixed to the front door of his house.

A question having arisen whether the said service was proper the Court gave the following ruling.

JENKINS, C. J. :—The report of the bailiff verified by his affidavit does not satisfy us that the serving officer was entitled to affix a copy of the summons on the outer door of the house in which the respondent ordinarily resided, as provided by section 80 of the Civil Procedure Code.

There is merely a statement that the respondent could not be found. But it does not appear that any effort was made to find him, or that even enquiry was made of his son, who was found, as to where the respondent was.

The serving officer is not shown to have carried out the requirements of the Civil Procedure Code and we must therefore send down the notice for proper service. In this connection we refer to *Rajendro Nath Sanyal v. Jan Meah*⁽¹⁾ and *Sakina v. Gauri Sahai*⁽²⁾.

Order accordingly.

G. B. R.

(1) (1898) 26 Cal. 101.

(2) (1902) 24 All. 302.