

1921.

KRISHNAJI
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v.
MAHADEO
SAKHARAM.

of section 39, as the petitioner could apply to the Poona Court to execute the decree as if the Poona Court had passed it, and the next step would be that if the Poona Court could execute the decree as if it had passed that decree, then it could transfer that decree under section 39, Civil Procedure Code. Therefore, the Rule will be made absolute. The order dismissing the application with costs must be set aside, and the petitioner's costs will be costs in the execution.

We may add that Rule 34 is not very clearly worded. If it means that a party who has obtained an award can execute it in a number of different Courts, that would certainly be contrary to the scheme of the Civil Procedure Code which provides that the Court which passes the decree shall execute it, and if required, shall send the decree for execution to another Court under the provisions of section 39, with the result that the execution of the decree really proceeds under the Court which passes the decree, whereas if the decree is being executed in half a dozen Courts, it would be impossible for those Courts to know what had been done outside their own jurisdiction:

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.^c

SUNDER SPINNER AND ANOTHER (ORIGINAL DEFENDANTS), APPLICANTS v.
MAKAN BHULA (ORIGINAL PLAINTIFF), OPPONENT^c.

1921.

June 24.

Summons—Service by registered post—Ex parte decree—Defendant denying delivery of summons—Retrial—Practice.

^c Civil Extraordinary Application No. 34 of 1921.

The Court must allow the defendant a retrial, if, after the decree has been passed against him on evidence that the summons was sent by registered post and returned refused, he appears and denies that the packet had ever been delivered to him by the postal authorities.

THIS was an application under the Extraordinary Jurisdiction of the High Court against an order passed by G. L. Dhekne, Subordinate Judge at Surat.

The plaintiff filed a suit against the defendants to recover a sum of money, a certificate and a pass-port.

Summonses to the defendants were not served in the ordinary way. They were sent by registered post to their address in Surat. The packets were returned by the post office as refused. It appeared from the evidence of the postman that the defendants had refused to take delivery of the packets. The trial Court heard the suit *ex parte* and decreed the claim.

Thereafter the defendants applied to the Court to set aside the *ex parte* decree and retry the suit, on the ground that the registered packets were never tendered to them. The Court relied on the evidence of the postman and declined to make the order of retrial.

The defendants applied to the High Court.

G. N. Thakor, for the applicants.

Ratanlal Ranchhoddas, for the opponent.

MACLEOD, C. J. :—We need say no more in this case than that the defendant on representing to the Court that he had not been offered the postal packet was entitled to a retrial. Service by registered post is at any time a poor substitute for personal service which is directed by the Court. It is allowed to litigants as a matter of convenience. But when sitting on the Original Side I have invariably allowed a defendant a retrial, if, after the decree had been passed against

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him on evidence that the summons was sent by registered post and returned refused, he appeared and denied that the packet had ever been delivered to him by the postal authorities. Rule will be made absolute.

Costs, costs in the cause.

SHAH, J. :—I agree.

Rule made absolute.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

June 29.

ATMARAM BABAJI CHOWGALE (ORIGINAL DEFENDANT), APPLICANT v.
NARAYAN ARJUN DERE (ORIGINAL PLAINTIFF), OPPONENT^a.

Civil Procedure Code (Act V of 1908) Order I, Rule 8—Caste—Under caste rules powers of management vested in a Managing Committee—Resolution of the Managing Committee authorising the President of the caste to file suits—President not competent to file ejectment suits in his own name—Bombay Rent (War Restrictions) Act (Bom. Act II of 1918), section 9—Communal purpose—Whether letting out to certain members a reasonable and bona fide purpose of the community.

The plaintiff as President of a caste was authorised under a resolution passed by the Managing Committee of the caste to file suits in ejectment in his own name. The Managing Committee was elected by the community under caste rules for the management of caste properties. The object in filing the suits was to eject the existing tenants for the purpose of letting out the premises to the members of the community,

Held, (1) that the resolution passed by the Managing Committee did not entitle the President to sue in his own name since, there being numerous members of the community having the same interest in the suit, notice of the institution of the suit to all such persons as well as the permission of the Court was necessary for filing the suit, as provided in Order I, Rule 8, of the Civil Procedure Code, 1908 ;

(2) that it could not be said that the community required the premises for their own purposes reasonably and *bona fide* when the intention was to turn out the existing tenant and put in one of the community.

^aCivil Extraordinary Application No. 17 of 1921.