

Privy Council Appeal No. 57 of 1919.

Thiruvengkatasami Iyengar and another - - - - *Appellants*

v.

Pavadai Pillay and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH MAY, 1921.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

[*Delivered by* LORD ATKINSON.]

This is an appeal against the judgment and decree of the High Court of Judicature at Madras, dated the 25th November, 1910, which affirmed the decree of the Subordinate Judge of Kumbakonam, dated the 30th September, 1907, and made on an execution petition No. 279 of 1905.

The appellants are the punchayetdars or trustees of a temple and as such hold a decree for mesne profits against the respondents or their predecessors in title. Their petition praying for the execution of this decree was dismissed by the Subordinate Judge, and his judgment was upheld by the High Court. From this latter decision the decree holders have brought this appeal.

There were nine plaintiffs originally in the suit. All but three of them have died or resigned or been removed from the trusteeship.

The appellants, to use the words of Section 37 of the Code of Civil Procedure, 1882, are resident within the local limits of jurisdiction of the Court within which limits the application by petition was to be made, and the sale applied for carried out. The

case of the appellants does not come within any one of the subsections of Section 37. The execution petition No. 279 of 1905 was not signed by any of the appellants. It was signed by a pleader appointed in writing to make the application embodied in the petition, and that writing was filed in the Court.

Both the High Court of Madras and the Subordinate Judge of Kumbakonam held that this petition was not validly presented because, to use the words of the judgment of the High Court, "The person who executed the vakalat to the pleader to act on his behalf was not a recognised agent of the decree holder as defined under Section 37 of the Civil Procedure Code, 1882, and could not have presented the application for execution himself. Under Section 36 of the Civil Procedure Code the pleader appointed can only do what might be done by the party on whose behalf he is appointed." The only question for their Lordships' decision is whether the construction in this passage put upon Sections 36 and 37 of the Code of Civil Procedure is their true construction. Their Lordships do not think it is their true construction for this reason: that it confounds the intending litigant, the pleader's client, with the intermediary by whom, as the agent of that litigant, the pleader is appointed to act on the litigant's behalf. The pleader is not appointed, on behalf of the intermediary or agent, to act on the agent's behalf, but by the agent on behalf of his principal, the litigant, to act on the litigant's behalf. The litigant is at once the principal of the agent and the client of the pleader. The lines of Section 36 of the Code of Civil Procedure immediately preceding the proviso run thus: "be made or done by the party in person or by his recognised agent or by a pleader duly appointed to act on his behalf." The possessive pronoun *his* all through this sentence refers to the "*party*," i.e., *the litigant*, not the intermediary or agent.

This construction gives a reasonable and natural meaning to the provisions of Section 36. The application is to be made or done by the party in person or by the recognised agent of the party in person, or by the duly appointed pleader of the party in person, while the other construction would leave entirely uncovered the case where the party himself in person without the intervention of any agent duly appoints his own pleader to act on his own behalf.

In the present case, the appellants on the 8th September, 1902, executed, not a general power of attorney, but a special power of attorney in favour of one Raghava Naicken, authorising him on their behalf to, amongst other things:—

"execute vakalat to vakils to sign execution petitions, and put in affidavits and to conduct all necessary proceedings"

in this suit. On the same day this same Raghava Naicken, the appellants' agent, authorised the pleader to appear in the Tanjore Court to present the execution petition verified by him, the agent, to examine witnesses, argue, &c. No doubt the words run: "to appear on my behalf in the Tanjore Court," and he describes himself as general agent of the appellants under a

general power of attorney, but that was a misrecital. The power of attorney was not a general power of attorney, but a special one, and the words, "on my behalf" are misleading. The execution petition was to be presented on behalf of the appellants, they were the only persons who had the right to put the decree into execution and have the property of the debtors attached and sold.

Their Lordships are therefore of opinion that the judgment appealed from as well as that of the Subordinate Judge which it affirmed were erroneous, and should be reversed, and a declaration made that the appellants' decree should be put into execution. They will humbly advise His Majesty accordingly.

The respondents will pay the costs of the appeal.

In the Privy Council.

THIRUVENKATASAMI IYENGAR AND
ANOTHER

v.

PAVADAI PILLAY AND OTHERS.

DELIVERED BY LORD ATKINSON.

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