

BHEEMA DEO  
 v.  
 BEHARI DEO. Their Lordships will, therefore, humbly advise His Majesty  
 that this appeal should be dismissed with costs.  
 Solicitor for appellants: *Douglas Grant.*  
 VISCOUNT SOLICITORS FOR RESPONDENT: *Chapman-Walker & Shephard.*  
 HALDANE.

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PRIVY COUNCIL.\*

1921,  
 May 26.

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THIRUVENKATASAMI IYENGAR AND ANOTHER  
 (DECREE-HOLDERS),

v.

PAVADAI PILLAI (EXECUTION DEBTORS).

[On Appeal from the High Court of Judicature  
 at Madras.]

*Code of Civil Procedure (Act XIV of 1882), ss. 36, 37—“Pleader duly appointed”—Appointment of authorized agent—Signature to execution petition.*

Where a party to a suit authorizes an agent by special power-of-attorney to appoint a pleader to sign execution petitions, a pleader so empowered by the agent, is a “pleader duly appointed to act on his” (the party’s) “behalf,” within section 36 of the Code of Civil Procedure, and the petition signed by the pleader but not signed by the party, is a duly presented petition even if neither the agent nor the pleader is a “recognized agent” within section 37.

[*Judgment of the High Court reversed.*]

APPEAL from a judgment and decree of the High Court (November 25, 1910) affirming a decree of the Subordinate Judge of Kumbakōnam.

The appellants, the panchayatdars or trustees of a temple, held a decree for mesne profits against the respondents, or their predecessors, for mesne profits. In 1905, the then trustees petitioned for execution of the decree. The petition was signed on their behalf by one Raghava Naicker and their duly authorized agent and by the first-grade pleader whom he had retained acting under a special power-of-attorney from the trustees, authorizing him to “execute vakalat to vakils, to sign execution petitions.” The defendants contended that the petition was

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\* Present:—VISCOUNT HALDANE, Lord ATKINSON and Sir JOHN EDGE.

not duly presented, since neither it nor its pleader's retainer was signed by the trustees. On December 31, 1906, the Subordinate Judge rejected the objection. Subsequently, in the same proceedings, the judgment-debtors renewed their objection, and on this occasion the Subordinate Judge (on September 30, 1907), allowed it, and dismissed the petition.

On Appeal to the High Court the decision of the Subordinate Judge was affirmed. The learned Judges (SHEHAGIRI AYYAR and NAPIER, JJ.) dealing with sections 33, 36 and 37 of the Code of Civil Procedure said :

"The decree-holders could not legally authorize the person who signed the vakalat to present the application for execution himself, and that being so he could not authorize any one else to do it."

*Kenworthy Brown* for the appellants.—The Subordinate Judge held in 1906 that the petition was duly presented, and rejected the present objection; he had no power subsequently to review or set aside his decision. But in any case the petition was signed by a "pleader duly appointed to act" who under section 36 had power to sign on behalf of the decree-holders. He did not purport to sign as a "recognized agent" under section 37, and it is not material that neither he nor Raghava Naicker were so. This was not a case of delegation of authority; Raghava Naicker was specially authorized to appoint a pleader on behalf of the trustees and did so. [Reference was made to *Badri Prasad v. Bhagwati Dhar*(1).

The respondents did not appear.

The JUDGMENT of their Lordships was 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 Kumbakōnam, dated the 30th September 1907, and made on an Execution Petition No. 279 of 1905.

The appellants are the panchayatdars 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

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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 sub-sections 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 Kumbakōnam 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 recognized 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 put upon sections 36 and 37 of the Code of Civil Procedure in this passage 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 recognized 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 recognized 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 Naicker, authorizing 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 Naicker, the appellants' agent, authorized the pleader to appear in the Tanjore Court to present the execution petition verified by him, the agent, to examine witnesses, argue, etc. 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.

Solicitors for appellants: *T. L. Wilson & Co.*

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