APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Sundaram Chetti.

1926, September 8.

THAYAMMAL AND ANOTHER (DEFENDANTS), PETITIONERS,

v.

K. A. RATHNAVELU NADAR (PLAINTIFF), RESPONDENT.*

Sec. 9 *of Madras City Tenants Protection Act* (*III of* 1922)—"*Service of summons*" *must be personal*—15 *days' limitation not applicable, if no personal service.*

Service of summons on the defendant under section 9 of the Madras City Tenants Protection Act (III of 1922) should be personal and not by any other means. Hence where the summons was said to have been served on him by its being affixed to the outer door of his house, he is not bound to apply within 15 days of the affixture of the summons for the sale to him of the landlord's land.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act praying the High Court to revise the Order of the Full Bench of the Court of Small Causes, Madras, in Full Bench Application No. 24 of 1926 preferred against the Order of P. SAMBANDA MUDALIYAR, Second Judge of the Court of Small Causes, Madras, in Ejectment Suit No. 469 of 1925.

The facts are given in the judgment. Section (9) of the Madras City Tenants Protection Act is as follows :—

"Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord, may, within fifteen days after the date of this Act coming into force or within

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* Civil Revision Petition No. 239 of 1926.

fifteen days after the service on him of summons, apply to the Court for an order that the landlord shall be directed to sell the land for a price to be fixed by the Court."

THAYAMMAL *v.* RATHNAVELU NADAR.

C. S. Nageswara Ayyar for petitioner.

R. Thirumala Thathachariar for respondent.

JUDGMENT.

This is an application to revise the order of the Second Judge of the Court of Small Causes, Madras, dismissing an application of the petitioners under section 9 of the Madras City Tenants Protection Act, III of 1922. The petitioners are tenants. The respondent filed an ejectment suit and the summonses in the suit were fixed to the houses of the petitioners as it was said that they had gone out. This was on 21st December 1925. The petitioners filed their application under section 9 on 6th January 1926. On objection by the respondent, the application was dismissed as being out of time, for under section 9 the application has to be made within 15 days after the service of summonses. It is contended before us that the learned Judge did not record a finding that the service was good and that he did not take evidence as regards the allegations of the petitioners that they were not aware of the affixture of the summonses to the door of their houses and that they came to know of the filing of the suit only on 2nd January 1926. The learned Judge would have done well to have made a thorough inquiry into the allegations of the petitioners and satisfied himself that they were served before declaring the service to be good. But we do not propose to interfere with his order on this ground.

Under section 9 of the Act the service should be personal service. The relevant portion of the section is "within 15 days after the service on him of summons

THAYAMMAL v. RATHNAVELU NADAR.

apply to the Court, etc." The expression "service on him of summons" we think, means that the service should be personal service. No doubt in the case of summonses under the Civil Procedure Code and under the Presidency Small Cause Courts Act, the service need not be personal. But taking into consideration the nature and the scope of Act III of 1922 and the fact that the defendant will have no opportunity of applying under section 9 if he does not make an application within 15 days, we think that the expression "service on him of summons" can only mean personal service. No doubt, we are aware of the difficulties that the plaintiff or any other landlord may encounter on account of the avoidance of service by the tenants, but that would be no ground for not giving the words of section 9 the plain meaning that they are capable of bearing. If the legislature wanted the service only to be good service, then the wording should have been "after due service" or "after proper service on him of the summons." In this view of section 9 of the Act, we hold that the petitioners were not served with summonses in the suit and therefore their application of 6th January 1926 was not out of time. We set aside the order of the learned Judge and direct him to restore the application to file and deal with it according to law.

The petitioners are entitled to the costs of this application. The costs of the suit will be provided for in the decree that may be passed by the Judge.

N.R.