

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and
Mr. Justice Wallace.

1927,
November 1.

RAJA RAJESWARI MUTHU RAMALINGA
SETHUPATHI (PLAINTIFF), PETITIONER,

v.

SHANMUGA NADAN AND ANOTHER (DEPENDANTS 2 AND 3),
RESPONDENTS.*

Civil Procedure Code Act V of 1908, sec. 2 (20) and O. VI, r. 14—Civil Rules of Practice, r. 4 (11)—Vakalats and affidavits, stamped, whether sufficient—“Signed”, meaning of, under Civil Procedure Code and Civil Rules of Practice—Party able to sign—Stamping of vakalats by him, whether sufficient.

The use of a stamp bearing the name of the party on a vakalat or an affidavit executed by him is sufficient even in cases where he is able to sign.

Under section 2 (20) of the Civil Procedure Code, 1908, the word “signed”, save in the case of a “judgment or decree”, includes “stamped” and the same definition has to be applied under rule 4 (11) of the Civil Rules of Practice, to vakalats and affidavits, and no distinction can be drawn between them and pleadings.

Maharaja of Benares v. Debi Doyal Noma, (1881) I.L.R., 3 All., 575, referred to.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the order of the District Munsif of Paramakudi in E.A. No.—of 1925 in S.C.S. No. 104 of 1922 on the file of the District Munsif of Manamadura.

The decree-holder in a Small Cause suit applied for its execution, through his agent with a general power of attorney. The vakalat, petition and the affidavit in

* Civil Revision Petition No. 1113 of 1925.

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support thereof were executed by the agent using his facsimile stamp in the place of his signature though he knew to sign his name. The District Munsif refused to accept them and returned them to be re-presented after execution in the proper form. The decree-holder, through his agent, filed this revision petition in the High Court.

S. Soundararaja Ayyangar for petitioner.—Under section 2 (20) of the Civil Procedure Code “signed” includes stamped. That is, stamped includes facsimile signature. Order III, rule 4 (1), appointment of a pleader can be in writing “signed” which includes stamped. See also Order VI, rule 14. Under rule 4 (11) of the Civil Rules of Practice, the expressions used therein should bear the same meaning as in the Civil Procedure Code. See rule 8 and form 21 in the Civil Rules of Practice. Under the old Code of 1877, the word “mark” was used, but by amendment the word “stamped” was added, and inability to sign was not necessary to enable a person to use a stamp: See *The Maharaja of Benares v. Debi Dayal Noma*.

Respondents were not represented.

JUDGMENT.

Having regard to the definition of the word “signed” in section 2, clause (20) of the Civil Procedure Code and to the fact that under rule 4 (11) of the Civil Rules of Practice, the same definition has to be applied in the case of affidavits and vakalats, we think that the use of a stamp bearing the name of the party is sufficient even in cases where he is able to sign. Even under the old Code of Civil Procedure of 1877 it was held in *Maharaja of Benares v. Debi Dayal Noma*(1) that inability to sign was not necessary in order to enable a person to use a stamp. The definition of “signed” in the present Code is to the effect that except in cases of judgments or decrees “signed” includes stamped. There is nothing to show that any difference can be drawn

(1) (1881) I.L.R., 3 All., 575.

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between vakalats and affidavits and pleadings. We set aside the order of the District Munsif and direct him to receive and file the papers returned if they are otherwise in order.

K. R.

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Before Mr. Justice Devadoss.

1927,
October 19.

MUNISAMI MUDALI AND ANOTHER (DEFENDANTS 2 AND 3,
PETITIONERS), PETITIONERS,

v.

MEENAKSHIAMMAL (PLAINTIFF-RESPONDENT),
RESPONDENT.*

Petition—Order—: “the petition will be recorded”—Validity of the order—Duty of Court either to allow the petition or dismiss it—Such order, whether legal.

A Court should not, on a petition, pass an order that “the petition will be recorded”, but should either allow it or dismiss it. Such an order is no order at all and should be set aside.

PETITION under section 115, Civil Procedure Code, to revise the order of the District Munsif of Vellore in I.A. No. 898 of 1925 in O.S. No. 417 of 1914.

This is an application to revise an order of the District Munsif on an Interlocutory Application in a pending suit in the Court. The Court, without disposing of it on the merits, simply ordered that “the petition will be recorded”. The defendants (petitioners) preferred this Civil Revision Petition to High Court.

P. S. Narayanasami Ayyar for petitioners.

A. Ramachandra Ayyar for respondent.

* Civil Revision Petition No. 480 of 1926.