

APPELLATE CIVIL.

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

1921.

July 1.

UTTAMRAM VITHALDAS (ORIGINAL PLAINTIFF), APPLICANT *v.* THAKOR-DAS PARSHOTTAMDAS (ORIGINAL DEFENDANT), OPPONENT^{*}.

Plaint—Plaint signed and presented by plaintiff's servant—Vakilpatra also signed by servant—No proof of authority—Effect.

During the plaintiff's absence, a servant of the plaintiff signed a plaint and had it presented in Court. The Vakilpatra of the Vakil was also signed by the servant :

Held: that the plaint was not duly presented and not duly signed, as the plaintiff made no effort to prove that his servant was his recognised ~~agent~~ trading on his behalf while he was away from the jurisdiction.

APPLICATION under Extraordinary Jurisdiction against the decision of G. L. Dhekne, First Class Subordinate Judge at Surat.

Suit to recover money.

The plaintiff sued to recover Rs. 279-1-3 on account of the balance due in Samvat 1973 and the price of goods supplied in Samvat 1973 and 1974 to the defendant and his father for family use.

The defendant put in a written statement but at the trial admitted that he was joint with his father and that the goods bought were for family use.

In the course of plaintiff's deposition, however, it was found that the plaint and Vakilpatra were signed by the plaintiff's clerk.

The Subordinate Judge dismissed the suit holding that the plaint was not properly signed nor properly presented by the plaintiff. The pleader presenting the plaint was not duly authorised.

The plaintiff applied to the High Court.

G. N. Thakor, for the applicant:—The signing and verification of the plaint by the Mehta on behalf of the

^{*} Civil Extraordinary Application No. 35 of 1921.

1921.

 UTTAMRAM
 VITHALDAS
 v.
 THAKORDAS
 PARSHOT-
 TAMDAS.

plaintiff's firm do not make it a bad plaint: see *Basdeo v. John Smidt*⁽¹⁾. The authority to sign and verify must be presumed to have been given to him. No objection on this point has been taken in the written statement nor was there any issue on the point. The subsequent filing by the plaintiff of the Vakalatnama and the application for amendment which the Court granted made up for the defect, if any. The case should be sent back for trial on the merits.

M. B. Dave, for the opponent:—The plaint as well as the Vakalatnama are bad, as they are signed not by the plaintiff but by his Mehta purporting to be on behalf of the plaintiff's firm; but the plaintiff has denied the existence of the firm in his deposition. The Mehta is not a recognised agent within the meaning of Order III, Rule 2. Any suit filed by a person who is not a recognised agent is bad in law; *Venkatrav Raje Ghorpade v. Madhavrav Ramchandra*⁽²⁾. The provisions of the Code regarding presentation of plaint and giving of the Vakalatnama should be strictly observed; *Muhammad Ali Khan v. Jas Ram*⁽³⁾. The defect is neither formal nor technical but goes to the root of the case. It has an important bearing on the question of limitation, for the plaint was filed only two days before the expiry of the period of limitation. The case of *Basdeo v. John Smidt*⁽¹⁾ does not affect the present case as no question of the legality or otherwise of the Vakalatnama arose therein.

MACLEOD, C. J.:—The plaintiff sued to recover the balance due in Samvat 1973 from the defendant and the price of goods supplied in Samvat 1973 and 1974, and for a further amount of Rs. 35 odd. The plaint was first presented on the 23rd October 1920 signed

(1) (1899) 22 All. 55.

(2) (1886) 11 Bom. 53.

(3) (1913) 36 All. 46.

1921.

UTTAMRAM
VITHALDAS
v.
THAKORDAS
PARSHOT-
TAMDAS.

by Vithaldas, a servant of the plaintiff, while the Vakildatra of the Vakil was also signed by Vithaldas. When these facts came to the notice of the Judge on the 3rd December 1920, he found that the plaint was not properly signed and not properly presented by the plaintiff, and that the pleader presenting the plaint was not duly authorised, and, therefore, dismissed the suit with costs. We think he was right in holding that the plaint was not duly presented and not duly signed, as the plaintiff made no effort to prove that Vithaldas was his recognised agent trading on his behalf while he was away from the jurisdiction. But we think that if the plaintiff had applied to be allowed to sign the plaint and present it on that day, he should have been allowed to do so. Then of course the question of limitation would arise. We have nothing to do at present with that. So that to that extent the Rule will be made absolute, the decree dismissing the suit will be set aside and the plaintiff will have an opportunity of having his suit considered as if it was filed on the 3rd December 1920. The plaintiff must pay the costs up to date.

Rule made absolute.

J. G. R.