

Appellate Jurisdiction. (a)*Civil Miscellaneous Regular Appeal No. 174 of 1869.*

RAJA CHILICANY BASKARARAYENIN- GARU and 3 others, heirs of RAJA CHILICANY VEKATARAMA JAGAN- NADHA RAO.	}	<i>Petitioners.</i>
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PILLARY SETTY RAGAVULU NAIDU... *Counter-Petitioner.*

Service of a notice of application for execution of a decree served by affixing a copy of it on the wall of the house in which the defendant (who was absent from his village) was then residing is sufficient, and the defendant, not having appeared upon the notice, will not be allowed, on a subsequent application for execution of the decree, to object to the reception of the application and the proceedings upon it.

1869.
November 13.
C.M.R.A.No.
174 of 1869.

THIS was a petition against the order of R. Swinton, the Civil Judge of Guntoor, dated 23rd January 1869, passed on Miscellaneous Petition No. 877 of 1868.

Miller, for the petitioners.*Sloan*, for the counter-petitioner.

The facts sufficiently appear from the following

JUDGMENT :—The question raised in this case is whether the plaintiff's present application for execution is barred by the Law of Limitations, and that depends upon the question whether it is now open to the defendant to object to the former application made on 26th July 1855 as having been made out of time. It appears that notice was issued on this latter application and was served by affixing a copy of it on the wall of the house in which the defendant (who was absent from his village) was then residing. The application for execution was pending till the 30th August 1866 when it was withdrawn. For the applicant it was contended that the service was insufficient, but such service would have been quite sufficient in the case of a summons to answer a plaint, and we see no reason why a like service in the case of a notice should not be sufficient. Service then having been properly effected, the defendant, not having appeared on that occasion, cannot now be heard to object to the reception of the application and the proceedings upon it. The present application is therefore not barred, having been presented

(a) Present : Scotland, C. J. and Collett, J.

within three years from the termination of the last proceedings for execution, and the order appealed from must be affirmed with costs.

1869.
November 13.
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174 of 1869.

Appeal dismissed.

Appellate Jurisdiction. (a)

Referred Case No. 42 of 1869.

ANANTHA NARAYANA against PERIYANA KONE.

The actual presence of the defendant within the jurisdiction of the Court is not necessary if he was there dwelling at the commencement of the suit, and a temporary dwelling is sufficient to give jurisdiction to a small Cause Court.

Service of a copy of the summons on the door of the house in which the defendant is dwelling is one of the modes of service provided in lieu of personal service, but it is necessary that the defendant should be residing in the house in such a manner as to make it probable that knowledge of the service of the summons will reach him. There may be a dwelling sufficient to give jurisdiction and yet not the kind of dwelling necessary to make a good service.

THIS was a case referred for the opinion of the High Court by J. R. Daniel, the Acting Judge of the Court of Small Causes of Madura, in Suit No. 1780 of 1869.

1869.
November 15.
R. C. No. 42
of 1869.

The case stated was as follows :—

This suit was brought to recover Rupees 156-8-6 due under a bond, dated 15th September 1866, executed by defendant.

On the day fixed for hearing of this suit it appeared from the evidence of the serving peon that the defendant had left his house and village about two years ago, but the reason of his going, or the place where he has gone to, was not known; the summons was served by affixing a copy to the house in which the defendant's father and brother resided, and the question arose whether this was the house in which defendant was dwelling and whether the summons was served according to Section 55, Act VIII of 1859. The jurisdiction of this Court to try the case at all depends upon the meaning of the word dwell as under Section 8, Act XI of 1865; it is necessary that the defendant at the commencement of the suit should dwell within the limits of the jurisdiction.

All that is known of the defendant is that he left his village about two years ago; his father and brother can

(a) Present : Scotland, C. J. and Innes, J.