

(1911) 09 MAD CK 0034
In the Madras High Court

Kasi Visvanathan Chetty and Chidambaram Chetty	APPELLANT
Vs	
Muthu K.R. Aranachellam Chetty	RESPONDENT

Date of Decision : 18-09-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 89

Citation : (1911) 21 MLJ 978

Judgement

1. We think the learned Subordinate Judge is right in this case. It appears that when the summons was taken out on the first occasion the serving officer was informed by the agent of the defendants that they had gone to a village in Pudukottah territory and the date when they would return was not known. He then affixed the summons to the door of the defendant's house. This was on the 14th November 1909. A second summons was issued in January 1910 and again the process server was informed by the agent of the defendants that they had gone 2 or 3 days previously to some place in the Pudukottah territory and it was not known when they would return. The peon thereupon again affixed the summons to the door of the defendant's house. The court then declared the defendants ex parte and proceeded with the suit. It is argued on behalf of the appellants that there is no order of the Subordinate Judge who heard the case declaring that there had been a sufficient service. But the whole record is not before us and the appellants did not take this objection before the lower Court and there is no statement to that effect in their affidavits. We are, therefore, unable to say that this contention is well founded in fact.

2. Upon the facts of the case, the lower Court was right in holding that there was due service of the summons on the defendants. No doubt service

ought primarily to be made on the defendants personally and every reasonable effort should be made to effect such service. But if it appears that

reasonable efforts have been made to effect personal service but without success the CPC permits of the summon's being affixed to the outer door

of the residence of the defendants. When the officer is justified in taking the latter step such service would not be open to objection. Here the peon

was informed that the defendants had gone to a village in the territory of Puducottah and he had no reason to disbelieve the statement of the

defendants' agent that it was not known when they would return and the defendants' own affidavits show that they were about that time going

from village to village in the territory of Puducottah. The peon relying on the statement of the defendants' Kariasthar was justified in affixing the

copy to the outer door of the defendants' residence. It is argued by the learned vakil for the appellants, that summons ought to have been sent to

Puducottah and he relies on Abraham Pillai v. Donald Smith ILR (1906) M. 324, as authority for this proposition. But Section 89 of the Code of

Civil Procedure, 1882, on which reliance is placed in that case, deals with cases in which the defendants reside out of British India and if the

learned Judge meant to lay down a general proposition to the effect that when summons is taken to a defendant's place of residence in British India

but he is away in a foreign territory for a temporary purpose, then the court must act under the section of the Code which lays down the mode for

effecting service in a foreign territory, we should, with all respect, dissent from such a view. On the other hand, the ruling in Sankaralinga Mudali v.

Rathnasabapathi Mudali ILR (1897) M. 324, in our opinion, lays down the law correctly.

3. It also appears that the defendants knew as far as back as the 6th November 1909, all about the institution of the present suit.

4. The appeals are dismissed with costs.