

(1904) 03 MAD CK 0006
In the Madras High Court

Zemindar of Ettiapuram

APPELLANT

Vs

Subba Reddy and Others

RESPONDENT

Date of Decision : 28-03-1904

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37

Citation : (1904) 14 MLJ 223

Hon'ble Judges : S. Subrahmania Aiyar, O.C.J.

Bench : Division Bench

Judgement

S. Subrahmania Aiyar, Offg. C.J.

1. The petitioner in this case is the Zemindar of Ettiapuram. He left Ettiapuram, where he resides permanently and which is within the jurisdiction of

the District Munsif of Satur, in the beginning of December 1902 to attend the Durbar in Delhi and returned to his station towards the end of

January 1903. Before he left Ettiapuram the petitioner gave a general power of attorney to one Ettiahpandian authorising him, among other things,

to institute suits on his behalf during his absence. On the 9th January 1903 Ettiahpandian acting under the power of attorney, presented a plaint for

rent due to the petitioner. Under Rule 23 of the Civil Rules of Practice the power of attorney should have been filed in court. But that was not done

and the court returned the plaint with the order endorsed thereon, "" Rule 23 should be complied with--returned, time one month."" On the 13th

February 1903 the plaint was re-presented accompanied by the power of attorney. The District Munsif thereupon rejected the plaint on the 20th

April.

2. The question is whether the plaint was a proper plaint in that it was signed

and verified only by the party who held the general power of attorney and this depends upon whether the petitioner was a party "" non-resident"" within the meaning of Section 37 of the Civil Procedure Code. My attention was drawn to a number of cases in which the terms "reside," "residence," "dwell," "dwelling" have been construed with reference to the various legislative provisions in which those terms occur. I do not consider it necessary to refer to them in detail.

3. One general result of the authorities is that "reside" is an ambiguous and elastic expression and that it has to be interpreted with reference to the object and character of the provision in which it occurs. Now the purpose of Section 37 of the CPC is to provide for appearances being made and

acts being done on behalf of suitors in courts within the jurisdiction of which they are not, at the time, present. Having regard to this, I agree with

the learned judges who decided *Ramachandra Sakharam v. Keshav Durgagi* by his agent *Hakma Depaji* ILR 6 B. 100 which deals with the

interpretation of the above section that a liberal construction should be put upon the term "non-resident" in the section and I also hold that the

present case is in a measure analogous to that in regard to its circumstances as well, though there the absence of the party from his permanent

place of residence was about four months while here the absence was shorter. The occasion which led to the petitioner leaving his place was an

official ceremony which the petitioner, as a landholder, was, as it were, bound to attend. The station he was going to was many hundred miles

away from his native place and the affairs of his estate naturally required during his absence supervision by some one entitled to represent the

petitioner. In these circumstances the petitioner's absence could not be treated as so short and temporary as to warrant his being looked upon as

still resident within the jurisdiction of the court in regard to the application of the section; and therefore the plaint as presented was in my view a

proper plaint. No doubt when Rule 23 of the Civil Rules of Practice was complied with by the production of the power of attorney, the petitioner

had returned to Ettiapuram but that could not affect a plaint which had been presented when he was away. The filing of the power of attorney on

the date on which it was filed by the vakil who had been retained when the plaint was presented was an act perfectly within the power of the vakil.

4. I therefore set aside the order of the District Munsif and direct that the plaint be restored to the file and proceeded with according to law.

5. I make no order as to costs.