

1947

Present : Soertsz S.P.J.

MEERALEVVAI, Petitioner and SEENITHAMBY, Respondent.

518—Application for *restitutio-in-integrum* in C. R.
Batticaloa, 1,014.

Civil procedure—Defendant in jail—How summons should be served on him—Substituted service of summons on last known place of abode—Meaning of word “abode”—Civil Procedure Code, ss. 68, 839.

The defendant was in jail at the time of the institution of the action. The plaintiff sought to serve summons through the officer in charge of the Mahara Jail, but the report was that the defendant was not in that jail. Later, the plaintiff asked for substituted service of summons on the last known place of abode of the defendant. This was allowed, but the summons was affixed on some part of the house in which the defendant lived when he was free.

Held, that the substituted service was bad (1) because in a case like this where the plaintiff himself knows that the defendant is in prison he must ascertain the particular prison in which the defendant is confined and serve summons on him in the manner indicated by section 68 of the Civil Procedure Code, (2) because the summons was not affixed to the last known place of abode as was directed, for according to the plaintiff himself the last known place of abode was the Mahara Jail; the word “abode” is a word of wide connotation and includes both places of temporary stay and of habitual residence.

A PPLICATION for *restitutio in integrum* in respect of a case instituted in the Court of Requests, Batticaloa.

C. T. Olegasegarem, for the defendant, petitioner.

C. Renganathan, for the plaintiff, respondent.

Cur. adv. vult.

February 17, 1947. SOERTSZ S.P.J.—

It is unfortunate that this action which was instituted nearly seven years ago and in which decree was entered in July, 1941, has to be re-opened, but there is no alternative.

It is common ground that when this action was instituted, the defendant was in jail and continued to be there till decree was entered against him and the sale in execution took place. Section 68 of the Civil Procedure Code which is made applicable to cases in Courts of Requests by section 808 of the C. P. C. provides that—

“ If the defendant be in jail, the summons shall be delivered by the Fiscal to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant. The summons shall be returned through the Fiscal to the Court from which it is issued with a statement of the service endorsed thereon, and signed by the officer in charge of the jail.”

In this case, the plaintiff sought to serve summons through the officer in charge of the Mahara Jail, but the report was that the defendant was not in that jail. The defendant was required to give further particulars to enable the Fiscal to have summons served. He, thereupon, asked for summons to be served through the officer in charge of the Kandy, Mahara, Welikada and Jaffna Prisons. He was directed to give any one correct address. He did not do that but he submitted an affidavit and asked for substituted service by affixing the summons on the last known place of abode. This was allowed and the summons was affixed on some part of the house in which the defendant lived when he was free.

In my opinion this substituted service was bad, firstly because in a case like this where the plaintiff himself knows that the defendant is in prison he must ascertain the particular prison in which the defendant is confined and serve summons on him in the manner indicated by section 68 of the Code. If the plaintiff is diligent, this is an easily ascertainable fact; secondly, the substituted service was bad in that it was not affixed to the last known place of abode as was directed, for according to the plaintiff himself the last known place of abode was the Mahara Jail. The word “abode” is a word of wide connotation. It includes both places of temporary stay and of habitual residence. In the former class, for instance, would be what the well-known phrase calls “the abodes of pain” and a jail or prison would, I suppose, be an abode of pain.

I set aside the order made by the Commissioner and remit the case for a date to be fixed for the defendant to file answer or to admit the plaintiff’s claim. Under section 839 of the Civil Procedure Code, I make order that if the defendant admits the claim he be given two

months' time from that date to pay the amount due to the plaintiff with costs. If he fails to do that, I direct that the costs of these proceedings shall abide the final order of the Commissioner and will be in his discretion.

Order set aside.

