

(2002) 09 AP CK 0038
In the Andhra Pradesh High Court
Case No : SA No's. 172 and 173 of 1992

J. Venkatramana Reddy

APPELLANT

Vs

Kanakagari Bhakthavatsalaiah and Another

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 115
Limitation Act, 1963 — Section 14

Citation : (2002) 6 ALD 402 : (2003) 4 ALT 16 : (2004) 1 BC 22 : (2003) 3 CivCC 139

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : D.V. Shivaprasad, for the Appellant; M.V.S.R. Murthy, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—SA No. 172 of 1992 is preferred against the judgment and decree in AS No. 13 of 1990 on the file of the Sub-Judge, Srikalahasthi confirming the judgment and decree in OS No. 67 of 1986 on the file of the Principal District Munsif, Srikalahasthi.

2. SA No. 173 of 1992 is preferred against the judgment and decree in AS No. 12 of 1990 on the file of Sub-Judge, Srikalahasthi confirming the judgment and decree in OS No. 119 of 1985 on the file of the Principal District Munsif, Srikalahasthi.

3. The appellants in both the appeals are the plaintiffs and the respondents are the defendants in the respective suits. Both the suits were filed for recovery of money from the defendants due under promissory notes. Though the defendants in both the suits are common, the plaintiff in OS No. 67 of 1986 is different from the plaintiff in OS No. 119 of 1985.

SA No. 172 of 1992

4. The factual matrix in OS No. 67 of 1986 is asunder:

The plaintiff averred that on 9-6-1981 the defendants borrowed from him a sum of Rs. 9,000/- and jointly executed the suit promissory note promising to repay the same on demand or order with interest at 12% per annum. Despite repeated demands the defendants did not choose to repay the amount. Hence the suit for recovery of a sum of Rs. 12,240/- being the principal and interest as on the date of filing of the suit with subsequent interest @ 12% per annum.

5. The 1st defendant resisted that suit contending that though the defendants executed the suit promissory note on 9-6-1981 for Rs. 9,000/- in favour of the plaintiff they did not receive consideration under the suit promissory note and it was executed at the instance of B. Gangi Subbarami Reddy in renewal of the earlier debt due to him. The first defendant further stated that the Court in which the suit was presented has no pecuniary jurisdiction to entertain the suit. Hence the suit is liable to be dismissed.

6. The 2nd defendant adopted the written statement of the 1st defendant.

7. On the basis of the above pleadings, the trial Court framed appropriate issues.

8. Both parties did not adduce any evidence and they filed a Memo in the trial Court to that effect.

9. The trial Court on the basis of the pleadings of both parties held that the suit promissory note is supported by consideration and accordingly dismissed the suit through its judgment dated 19-3-1990 on the ground that it is barred by limitation.

10. The plaintiff being aggrieved by the judgment and decree of the trial Court preferred AS No. 13 of 1990 on the file of the Sub-Judge, Srikalahasthi, but the appeal was also dismissed by the 1st appellate Court through its judgment dated 16-9-1991 confirming the judgment and decree of the trial Court.

11. The plaintiff being aggrieved by the judgment and decree of the first appellate Court preferred this appeal challenging its validity and legality.

SA No. 173 of 1992

12. The factual matrix leading to the filing of this appeal culled out from the pleadings of both the parties in OS No. 119 of 1985 is as under:

13. The plaintiff averred that on 11-6-1981 the defendants borrowed a sum of Rs. 10,000/- from him and executed the suit promissory note jointly promising to repay the same with interest at 12% per annum either on demand or order. The defendants failed to repay the amount despite repeated demands. Hence the suit for recovery of a sum of Rs. 13,600/- being the principal and interest as on the date of filing the suit with subsequent interest at 12% per annum.

14. The 1st defendant resisted the suit by contending that the suit promissory note is not supported by consideration, though both the defendants executed the

same. The 1st defendant further contended that they executed the suit promissory note at the instance of B. Gangi Subbarami Reddy in renewal of the earlier debt due to him and that the Court where the suit was instituted has no pecuniary jurisdiction to entertain the same. The defendants have also taken a plea through an additional written statement that the suit is barred by limitation and it is liable to be dismissed with costs.

15. The 2nd defendant adopted the written statement of the 1st defendant.

16. On the basis of the above pleadings the trial Court framed appropriate issues.

17. Both parties did not adduce any oral or documentary evidence and filed a Memo to that effect.

18. The trial Court after considering the pleadings of both parties held that the suit promissory note is supported by consideration but dismissed the suit through its judgment dated 16-3-1990 holding that it is barred by limitation.

19. The plaintiff being unsuccessful in AS No. 12 of 1990 also before the Sub-Court, Srikalaasthi preferred this appeal challenging the validity and legality of its judgment dated 16-9-1991.

20. Both the suits were dismissed on the question of limitation. Since there is a common question of law involved in both the appeals, they were heard together and this common judgment is delivered.

21. As seen from the grounds of appeals, the following is the substantial question of law to be considered by this Court:

Whether the suits covered by OS No. 67 of 1986 and OS No. 119 of 1985 are barred by limitation and whether the plaintiffs are not entitled for decrees as prayed for?

Point:

22. The suit promissory note in OS No. 67 of 1986 was executed by the defendants on 9-6-1981. The plaint was presented in the Sub-Court, Tirupathi, on 11-6-1984. Article 35 of the Limitation Act, 1963 ("the Act" for brevity) provides for filing of a money suit on the foot of a promissory note within three years from the date of its execution. In the normal circumstances, the suit was to be filed on 9-6-1984. But, since 9th and 10th June, 1984 were public holidays, the plaintiff filed the suit on the next working day i.e., 11-6-1984, being the last date of limitation.

23. In the year 1984 the Andhra Pradesh Civil Courts Act was amended through Amendment Act. No. 19 of 1984 and it received assent of the Governor of Andhra Pradesh on 20-5-1984 and the same was published in the A.P. Gazette on 21-5-1984 raising the pecuniary jurisdiction of the District Munsif from Rs. 10,000/- to Rs. 20,000/-. The learned Counsel for the respondent submitted that since the plaintiffs have not filed the suit before the Principal District Munsif at

Srikalahasthi, which was the proper Court to entertain the suit, the same was rightly dismissed by the trial Court and confirmed by the 1st appellate Court on the ground that it was presented before a wrong Court.

24. The suit promissory note in OS No. 119 of 1985 was executed on 11-6-1981 and the suit was filed on the last date of limitation i.e., on 11-6-1984. But the plaintiff, instead of presenting the suit in the Principal District Munsif Court at Srikalahasthi, which was the Court of lowest pecuniary jurisdiction, presented the plaint at Sub-Court, Tirupathi.

25. The learned Counsel for the appellants-plaintiffs submitted that before summer vacations of 1984 the pecuniary jurisdiction of the Munsif Court was only Rs. 10,000/- and as the suit was filed immediately after the vacation, they were a bona fide impression that since the value of the suits was more than Rs. 10,000/-, the plaint was to be presented before the Sub-Court, Tirupathi, which was having territorial jurisdiction over the area situated in the limits of the Principal District Munsif Court, Srikalahasthi. Therefore, the suits were presented with due diligence and in good faith believing that the Sub-Court has pecuniary jurisdiction to entertain the suit.

26. The Sub-Court, Tirupathi did not raise any objection at the time of presentation of the suits and they were numbered as OS Nos. 193 and 194 of 1984.

27. Subsequent to the filing of the suits, the Sub-Court at Srikalahasthi was established. In pursuance of the proceedings vide Dis.Nos.776 and 777 dated 28-1-1985 and 29-1-1985 respectively issued by the District Court, Chittoor, the suits were transferred to the Sub-Court, Srikalahasthi on 5-2-1985 and 6-2-1985 respectively. After receipt of the suit records, the Sub-Judge, Srikalahasthi re-numbered the suits as OS Nos. 193 and 194 of 1985.

28. The Sub-Court, Srikalahasthi on an application covered by IA No. 70 of 1986 in OS No. 194 of 1985 filed by the plaintiff for transfer of the suit to the District Munsif Court, Srikalahasthi passed an order on 19-2-1986 directing return of plaint for presentation before the District Munsif Court, Srikalahasthi and directing both parties to appear before the District Munsif, Srikalahasthi on 28-2-1986. The plaint was accordingly returned on 20-2-1986 and the same was presented before the District Munsif Court, Srikalahasthi and on the same day the Munsif Court re-numbered the suit as OS No. 67 of 1986.

29. In the matter relating to SA No. 173 of 1992 the plaint was presented in the Sub-Court, Tirupathi on 11-6-1984 and it was numbered as OS No. 193 of 1984. On 5-2-1985 the suit was transferred to the newly established Sub-Court at Srikalahasthi and it was re-numbered as OS No. 193 of 1985. On 27-3-1985 the Sub-Judge, Srikalahasthi passed an order that as per Act No. 19 of 1984 the suit has to be filed in the Court of the District Munisif and directed return of the plaint for presentation before the proper Court within fifteen days. The plaint was retuned on the same day i.e., on 27-3-1985, and the plaintiff presented the

same before the District Munsif Court, Srikalahasthi on 6-4-1985 i.e., on the tenth day of the return of the plaint.

30. In the light of the above facts and sequence of events, it has to be considered whether the suits are within time.

31. In order to give a finding to the above point, the following questions have to be answered:

(a) Whether the period during which the party prosecuted the case before the Sub-Court is liable to be excluded for the purpose of computing the period of limitation?

(b) Whether the period from the date of return of the plaint in the Sub-Court till the date of presentation of the plaint in the District Munsif Court is liable to be excluded?

(c) Whether the Sub-Court at Tirupathi and later the Sub-Court at Srikalahasthi lack inherent jurisdiction to entertain the suits and whether they can be termed as "wrong Courts" for the purpose of Section 14 of the Limitation Act?

Question (a):

32. The learned Counsel for the respondents submitted that since the Sub-Court, Tirupathi is a wrong Court, the filing of the suits in the said Court is not maintainable and as the plaintiffs failed to file the suits in the proper Court within the period of limitation, they are barred by limitation.

33. In this regard, I wish to refer to Section 14 of the Limitation Act, 1963 which reads as under:

14. Exclusion of time of proceedings bona fide in Court without jurisdiction :--(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, unable to entertain it.

(2) xxx

(3) xxx

Explanation :--For the purposes of this section,--

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) xxx

(c) xxx

34. This section is intended to provide relief against the bar of limitation in cases of selection of wrong forum. This section does not give a discretion to the Court, but on the other hand the litigant is entitled as of right to exclude the period spent in the wrong Court, provided the conditions laid down in the section are satisfied.

35. In order to attract the provisions of this section three conditions have to coexist. (1) The plaintiff must have been prosecuting another civil proceeding which he relies upon with due diligence, (2) the earlier and later proceeding must be founded on the same cause of action and (3) the former proceeding must have been prosecuted in good faith in a Court which, from defect of jurisdiction, is unable to entertain it.

36. In order to know the legal position on this aspect, I wish to refer to the following decisions:

37. In *M. Krishna Murthy Sastri v. Y. Ram Murthi* AIR 1957 AP 654, a learned single Judge of this Court while dealing with Section 14 of the Limitation Act held that the burden of establishing bona fides u/s 14 is on the person seeking the benefit of that provision. But, when he gives a narrative of events leading up to the re-presentation of the plaint in the wrong Court and there is nothing elicited in the cross-examination to rouse suspicion and when no evidence to the contrary is led by the opposite party, the Court should naturally draw an inference of bona fides because, normally speaking, there is no presumption of mala fides.

38. In *Sajjanam Wadla China Rajayya Vs. Chappal Venkateshwar Rao*, , a Division Bench of this Court held that three days" time given by the Court for presenting fresh plaints would be of no avail to the plaintiff because the Court had no jurisdiction to fix any time for filing suits or presenting fresh plaints. Therefore, the period of three days granted by the Court could not be excluded from computation and the suits become time barred.

39. In *Tirumareddi Rajarao and Others Vs. The State of Andhra Pradesh and Others*, , a Full Bench of this Court while dealing with Section 14 of the Limitation Act, 1908 held as follows:

Sub-section (1) of Section 14 shows that the intendment thereof was that in computing the period of limitation, the time occupied by the litigation which became fruitless by reason of the defects contemplated by that section should be deducted. No doubt the section does not define a period that should be allowed under that section. The intention of the Legislature in this behalf is conveyed by the clause "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant...." It is seen that the Legislature has used comprehensive words and it must have done it advisedly so that they may take in the entire period covered by the prosecution of another civil proceeding. The section does not tender it essential that the prosecution of the proceedings

should be continued exclusively in the Court i.e., the actual proceeding in the Court. There is justification for the view that it is only the actual period between the presentation of a proceeding and a disposal of that proceeding that should be allowed under the subsection."

40. The Full Bench of this Court in the above decision went a step further by observing:

The time during which a party has been taking by indispensable and necessary steps preparatory to initiate the proceeding in a Court should also be regarded as the time during which he has been prosecuting the civil proceeding.

41. In *M. Dorayya and Another Vs. Sri Baleswaraswami Varu and Sri Venugopalaswamy Varu* a deity repled. by its trustee A. Adinarayana Murty and Another, , a learned single Judge of this Court held that the period spent in prosecuting the case before a wrong Tribunal is a sufficient cause within the meaning of Section 5 of the Limitation Act and that period should be deemed to be added to the period allowed for presenting the appeal.

42. In *Shaik Maidar v. Raja Gulam Abbas Hussain* 1970 (1) ALT 11, a Division Bench of this Court held that when a suit filed on the small cause side was returned and presented to the original side in the same Court, the period from the date of return to the date of presentation shall be excluded for the purpose of computation of limitation, as provided u/s 14 of the Limitation Act.

43. In *Narain Das Vs. Banarsi Lal and Others*, , the Patna High Court held that the real purpose of Section 14 is to extend the period of limitation prescribed by adding the period during which the suit or other proceeding has been in prosecution with due diligence and in good faith in a Court which, either on effect of jurisdiction or other cause of like nature, was unable to entertain it. The Court further held that the period during which the proceeding actually remained pending in the Court is the only period liable to be excluded u/s 14(1) of the Limitation Act and nothing more.

44. In *Moneys Transports, Tiruchirapalli Vs. The Tanjore Co-operative Marketing Federation Ltd.*, , a Division Bench of the Madras High Court while dealing with Section 14 of the Limitation Act held that the interval between order for return and actual return of plaint is covered is to be excluded in computing limitation for the suit.

45. The above legal position is making it very clear that the period during which a proceeding was pending in a wrong Court from the date of its presentation till the date of return shall be excluded from the total period for the purpose of computation of limitation, when it was prosecuted in the said Court with a bona fide impression that the said Court had the jurisdiction to entertain the suit.

46. The District Munsif Court at Srikalahasthi was having pecuniary jurisdiction to an extent of Rs. 10,000/- till 20-5-1984. The pecuniary jurisdiction of the District Munsif Court was raised to Rs. 20,000/- with effect from 21-5-1984 when the

Courts were closed for summer vacation. Within few days after the reopening day the plaintiffs filed the suit in Sub-Court, Tirupathi under a bona fide impression that the said Court can entertain the suits when the value of those suits was more than rupees ten thousand. Though the amendment to the Civil Courts" Act was published in the A.P. Gazette on 21-5-1984 increasing the pecuniary jurisdiction of the District Munsif Courts from Rs. 10,000/- to Rs. 20,000/-, it might have taken so much time to receive a copy of the Gazette, and it might not have come to the notice of the plaintiffs or their Counsel about the enhancement of the same. Since the Sub-Courts were entertaining the suits valued more than rupees ten thousand till the closing of the Courts for summer vacation the plaintiffs might be under the impression that the same pecuniary jurisdiction continues and accordingly they filed the suits in the Sub-Court, Tirupathi. Had the plaintiffs been aware of the amendment, they would not have chosen to take the trouble of going to Tirupathi for filing the suits instead of filing the same in the District Munsif Court at Srikalahasthi, which is nearer to their native place. Since the suits were filed within twenty days after the amendment, there is every justification for them to plead ignorance about the amendment of the pecuniary jurisdiction of the Courts and it can be safely concluded the suits were filed in the Sub-Court, Tirupathi bona fide thinking that it is Court of lowest jurisdiction to entertain the suit.

47. In the light of the above legal position and discussion, I do not find any force in the contention of the learned Counsel for the respondents that the suits are barred by limitation. The appellants plaintiffs are entitled to get the period from the date of filing till the date of return of the plaint by the Sub-Court excluded, even if it is considered for a moment that it is a wrong Court. This point is accordingly answered in favour of the appellants.

48. When the plaint in OS No. 193 of 1984 was returned by the Sub-Court, Srikalahasthi on 27-3-1985, the plaintiff has taken return of the same and represented it before the Principal District Munsif Court at Srikalahasthi on 6-4-1985 with a delay of ten days.

49. The learned Counsel for the appellants-plaintiffs submitted that since the Sub-Judge, Srikalahasthi granted 15 days time for presentation of the plaint in the proper Court, the plaintiff is entitled to represent the same before the proper Court within the time granted by the Court, therefore the question of barring of suit on the ground of limitation does not arise and requested this Court to hold that the suit is within time.

50. The plaintiff filed the suit initially on the last date of limitation. The legal position is very clear that the plaintiff is entitled for exclusion of the period during which he prosecuted the suit in a wrong Court. The Sub-Court and the Principal District Munsif Court, Srikalahasthi are located in the same premises. There should not be any difficulty for the plaintiff to represent the plaint in the District Munsif Court on the date of the return. But, he appeared to have gained an impression that since the Court which returned the plaint granted 15 days

time for representation, he can leisurely present the same and accordingly presented the plaint in the District Munsif Court on 6-4-1985. Ultimately the trial Court on the assumption that the Sub-Court is a wrong Court came to a conclusion that the Subordinate Judge, Srikalahasthi has no power to grant 15 days time for representation of the plaint in the proper Court, since there is no power to the Court to extend the period of limitation, as prescribed under Article 35 of the Limitation Act. The learned District Munsif observed that since the plaintiff represented the plaint after the period of limitation, he is not entitled to get the said period excluded from the total period for computation of the period of limitation and ultimately held that the suit is barred by limitation. The 1st appellate Court also made similar observation and confirmed the findings of the trial Court by holding that the suit is barred by limitation.

51. In the light of the observations of the Courts below and in the light of the contentions made by the learned Counsel before this Court, I wish to refer to the legal position to test the correctness of the findings of the Courts below.

52. In *Rikhab Dass v. Chandro and Ors.* AIR 1871 All. 234, a learned single Judge of the Allahabad High Court while dealing with Section 14 of the Limitation Act, 1908 held that the time between the order of return of the plaint for its presentation in proper Court and date of such presentation is not counted for exclusion except for reasonable time spent for going to place of proper Court.

53. In the case covered by the above decision, the plaint was returned on 6-3-1965 for presentation before the proper Court. The plaintiff did not present the plaint in the proper Court until 23-3-1965. He did not sufficiently for the delay in presenting the plaint before the proper Court. The Allahabad High Court therefore observed that since the Court to which the plaint has to be presented was situated at a different place, it was not physically possible for the plaintiff to present the plaint on the date of return i.e., on 6-3-1965. Therefore, the plaintiff is entitled only for exclusion of the period reasonably required for the purpose of the journey. The plea taken by the plaintiff that due to illness he could not present plaint to the proper Court cannot be accepted and the delay due to sickness is not excusable u/s 14 of the Limitation Act.

54. In *Parameswaran Vs. N. Ramachandran*, a learned Judge of the Kerala High Court while dealing with Section 14 of the Limitation Act, 1963 held that there is no doubt that the time allowed to the plaintiff by the wrong Court declaring that it has no jurisdiction to try the suit is not a period during which the suit can be said to be pending in the wrong Court. The grant of grace period to represent the suit in the proper Court to save the Court fee paid on the plaint, a prevalent practice in the lower Courts, had really no statutory backing and such grace period cannot be deemed to be period during which the suit could be said to be pending in the wrong Court.

55. In *Ponnavolu Venugopal Reddy v. C. Balakota Reddy* (1988) 1 ALT 804, the Court ordered return of plaint on 8-11-1978 on the ground of territorial

jurisdiction and granted one week time for presentation in proper Court. The plaintiff represented the plaint in the proper Court on 13-11-1978, since 11th and 12th November were public holidays. Though the Court granted one week time for re-presentation in proper Court there was two days time for re-presentation of the plaint from 8-11-1978 to 10-11-1978, on which date the limitation period expired. A learned single Judge of this Court held that the order passed by the Court giving one week time for presentation does not amount to extension of limitation under Article 35 of the Limitation Act, 1963 and if it is held otherwise, it is without authority of law and without jurisdiction, and thereby the suit is barred by limitation.

56. The above legal position makes it crystal clear that the period from the date of return of the plaint by the wrong Court till the date of presentation to the proper Court cannot be excluded for the purpose of computation of limitation and the Court which returned the plaint has no power to grant time. Even if the wrong Court grants time for representation of the plaint before a proper Court, it will not save the period of limitation. Therefore the period from the date of return of the plaint by the wrong Court till the date of presentation of the plaint to the proper Court is not liable to be excluded u/s 14 of the Limitation Act and the Court has no power to grant time for representation of the plaint when it was presented to the Court of first instance on the last date of limitation. But the situation appear to be different in the present case, which I wish to deal with under Question (c)

Question (c):

57. While dealing with questions (a) and (b), the purport of Section 14 of the Limitation Act has been extensively discussed and the relevant case law has been referred. Under this question, I have to deal with a different situation, keeping in view the mandate of Section 15 and Order 7, Rule 10 CPC. Under two situations a regular Court can be treated as a wrong Court: (1) when the Court has no territorial jurisdiction and (2) when it has no pecuniary jurisdiction. When a suit is filed in a Court having a different territorial jurisdiction than the Court within whose jurisdiction any part of the cause of action arose, the former Court is to be treated as a wrong Court and the period during which the proceedings are pending in the wrong Court is to be excluded in computing the period of limitation. In the case of pecuniary jurisdiction, when a suit is filed in a Court which has no sufficient pecuniary jurisdiction, i.e., a suit which is supposed to be filed in Sub-Court if filed in District Munisf Court, it can be said that it is a wrong Court.

58. Under question (b) I dealt with the aspect regarding the period from the date of return of the plaint by the wrong Court to the date of presentation before the proper Court and after referring to the relevant case law, I came to a conclusion that the period from the date of return till the date of presentation to the proper Court is not liable to be excluded, except the time taken for journey, and if the presentation of the suit at the first instance was on the last date of limitation, the

delay in presentation of the plaint to proper Court after return by wrong Court leads to the suit barred by limitation.

59. Now the question that has to be considered is:

In the event of any delay in presenting the plaint to the Court of the lowest grade after return of the plaint by the Court having higher pecuniary jurisdiction, whether the date of the first institution of the suit shall be treated as the date of presentation of the suit for the purpose of limitation.

60. In order to get an answer to this question, I wish to refer to the provisions of Section 15 and Order VII, Rule 10 CPC., which reads as follows:

Section 15. Court in which suits to be instituted;

Every suit shall be instituted in the Court of the lowest grade competent to try it.

Order VII Rule 10 CPC.

(1) Subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation :--For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint - on returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

61. It may be appropriate to deal with the case law also on this aspect.

62. In *Nidhilal v. Mazhar Hussain* ILR 7 All 230, and *Mirkhan v. Kadarsa* ILR 13 Mad 145 the Allahabad and Madras High Courts held that the exercise of jurisdiction by a Court of higher grade than is competent to try it is a mere irregularity.

63. In *Matra Mondal v. Hari Mohun Mullick* ILR 17 Cal. 157, the Calcutta High Court through its judgment dated 22-7-1889 held that Section 15 of CPC does not preclude a Subordinate Judge from trying a suit within the jurisdiction of the Munsif Court. It was further held therein that had the reverse been the case i.e., if a case cognizable only by a Subordinate Judge had been in a Court of District Munsif, that would have been a case of want of jurisdiction.

64. In *V. Ramaswami Aiyar and Another Vs. Veerarayan Raja alias Kuttunni*, the present *Eralpad Raja and Another*, , a Division Bench of the Madras High Court while dealing with Section 15 of CPC, 1908 held that the presentation of the plaint to a Court which has no jurisdiction to try the suit cannot be said to be the institution of the suit, even though the plaint has been accepted as being in order and registered. Before a suit can be deemed to be "instituted" the plaint must be

presented to a Court having jurisdiction. But, when a plaint is presented to a Court having jurisdiction and that Court accepts the plaint as being in order it must be held that the suit has been instituted. Because at some later stage as the result of a finding of fact on the question of the value of the subject-matter of the suit it was found that the plaint should have been presented to another Court having jurisdiction and that the plaint is returned for presentation in that Court, it does not mean that the suit has not been instituted. When a plaint has been presented to a Court having jurisdiction, a transfer of the case to another forum cannot mean the cancellation of the "institution."

65. In the case covered by the above decision, the plaint was presented before the Subordinate Judge, who had jurisdiction to try the same, but by virtue of Section 15 CPC the suit shall be instituted in the lowest Court competent to try it. The Court further held that the Subordinate Judge ought to have heard and decided the suit and the decree passed by him would have had full validity and the presentation of the plaint in the Sub-Court is valid presentation.

66. In *Bhuwaneshwari Kuer Vs. Raghubansh Mani Prasad Narayan Singh and Others*, a Division Bench of the Patna High Court while dealing with Section 15 CPC held that Section 15 and Order 7, Rule 10 CPC are not imperative in their character and the Court of higher grade has a discretion either to return the plaint or not to return the plaint for being presented to the Court of the lower grade. The Court of higher grade cannot be said to have committed any illegality in the exercise of its jurisdiction. The Court further observed that there is nothing in the language of Section 15 or Order 7, Rule 10 to suggest that the jurisdiction of the Court of the higher grade is ousted and the Additional District Judge, Patna did not commit any material irregularity in the exercise of his jurisdiction in refusing to return the plaint under Order 7, Rule 10 CPC.

67. In *M. Krishnamurthy (supra)* this Court held that when a plaint is returned by a superior Court to a lower Court, it is not, strictly speaking, a case of want of jurisdiction, because the superior Court is not without jurisdiction to entertain it, it acts only in conformity with the provision of Section 15, which requires that "a suit shall be instituted in the Court of the lowest grade competent to try it." The position is different when a suit which ought to be filed in a superior Court is instituted in the lower Court.

68. In *J.K. Sarma v. K.S. Ramachandra Setty* AIR 1964 Mys 248, the Mysore High Court while dealing with Section 15 and Order 7, Rule 10 CPC held that a suit under the Negotiable Instruments Act must be instituted in the Court of lowest grade. If the suit is instituted in a Court of higher grade, although the Court of higher grade is also competent to try the suit, it may entertain and try the suit or return the plaint for presentation before the Court of the lowest grade, and the plaintiff cannot, in view of Section 15 CPC., compel the Court to entertain the suit.

69. In *Balgonda Appanna v. Ramgonda Shivgonda* ILR 1970 Bom 815, the

Bombay High Court held that it is well established that as a matter of procedure the higher Court will not entertain the suit, but should return the plaint to the plaintiff for being presented in proper Court, as provided in Order 7, Rule 10 CPC.

70. In *Mohamed Sali Vs. Mary Gonrath Fernando and Others*, , the Madras High Court held that it is discretionary for the higher Court to determine a plaint or to try itself. When a plaint filed in a Court is returned on the erroneous finding that the Court has no jurisdiction, that later the plaint is presented to proper Court beyond time, the suit must be held to have been filed on the date the plaint was presented in the original Court.

71. In *Mrs. Laxmi Bai and others Vs. Kamalaksha G. Nayak and others*, , the Karnataka High Court held that Section 15 is a rule of convenience and is not intended to deprive the superior Court of its jurisdiction. If the Court of Civil Judge passes an order or judgment in a suit, which otherwise falls within the pecuniary jurisdiction of a Munsif, then such order or judgment would not null and void and it can be set aside in appeal or revision only if the objection regarding the pecuniary jurisdiction has been taken at the earliest possible time, and if such order or judgment has resulted in failure of justice.

72. In the light of the above legal position, I would like to conclude that the Sub-Court, Tirupathi where the plaints were presented at the first instance do not suffer from lack of inherent jurisdiction to entertain the suits and the Sub-Court, Tirupathi or the Sub-Court at Srialahasthi cannot be termed as wrong Courts for the purpose of Section 14 of the Limitation Act, 1963. The Sub-Court may exercise an option either to try the suit or to return it for presentation before the Court of the lowest pecuniary jurisdiction. Since the Sub-Court is also competent to try the suit and granted time for presentation of the plaint before the Court of the lowest grade, the time taken by the plaintiff in presenting the plaint in the Court of the lowest grade will not make OS No. 193 of 1984 barred by limitation and the date of the first institution of the suit before the Sub-Court shall be treated as the date of presentation of the plaint for the purpose of limitation. Hence the suit covered by OS No. 193 of 1984 is not barred by limitation.

73. In the result, SA Nos. 172 and 173 of 1992 are allowed by setting aside the judgments and decree of the Courts below by holding that the suits are not barred by limitation and the plaintiffs are entitled for decrees in both the suits for the recovery of the amounts due as mentioned in the respective plaints. In the circumstances, each party to bear its own cost.