
(1911) 08 MAD CK 0017
In the Madras High Court

Mira Mohidin Rowthen and Another

APPELLANT

Vs

Nallaperumal Pillai and Another

RESPONDENT

Date of Decision : 22-08-1911

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : (1913) ILR (Mad) 131 : (1911) 21 MLJ 1000

Hon'ble Judges : Spencer, J; Ayling, J

Bench : Full Bench

Judgement

Ayling, J.—In this case the plaintiffs wish to exclude the period from the 14th June 1908 (expiry of 3 years from date of cause of action) to

the 6th July 1908 (date of filing the plaint in the Madura Sub-Court as well as the period from the 6th July 1908 onwards and it is necessary for

them to do so in order to save limitation admittedly. Section 14 of the Limitation Act, cannot be extended to cover the period from the 14th June

1908 to 6th July 1908. It is contended on behalf of the plaintiffs that it is covered by Section 4 and it is argued, apparently with reason, that the

concessions awarded by the different sections of the Limitation Act are independent and cumulative. On the other hand, it is not denied that the

proper court in which the suit should have been filed re opened before the 6th July 1908 and respondents" vakil quoted the decision in A.C.

Chackerbutty v. G.M. Dutt (1875) 24 W.R. 26 as authority for holding that in such circumstances Section 4 cannot operate in plaintiff"s favour.

Appellants" vakil does not attempt to distinguish this case but merely argues that the decision is wrong. I am not only prepared to follow the ruling

in question but entirely concur in it.

2. I consider that the only effect of Section 4 is to extend the period of limitation from the 14th June 1908 to the date of reopening of the proper

courts. When that date expired and no plaint was presented the suit became effectively time-barred, and Section 14 cannot assist plaintiffs,

inasmuch as it could only take effect from the 6th July, 1908.

3. I would dismiss the appeal with costs.

Spencer, J.

4. The cause of action for this small cause suit arose on 14th June 1905, and June 14th of 1908 was therefore the last day on which the plaintiffs"

suit could ordinarily be filed.

5. They actually filed their suit on July 6th 1908, in the Madura West Sub-Court. On June 5th that court was closed for the recess and July 6th

was the reopening day, On an objection being taken by defendants to the jurisdiction of the Madura West Sub-Court the plaint was returned on

February 17th, 1909, for being presented to the Tuticorin Sub-Court and it was so presented on the next court day, viz., February 19th.

6. It has been found that the plaintiffs" action in going first to the Madura West Sub-Court was bona fide and not a mere device to save the

limitation. The learned Judge who heard this revision petition held that plaintiffs" were entitled u/s 14 of the Limitation Act to deduct the period

from July 6th to February 17th during which they were prosecuting their suit with due diligence in Madura Court, but not the period from June 15th

to July 5th during which the Madura Court was closed. It is conceded that if this last mentioned period is deducted the suit will have been filed in

time but not otherwise. The appellants (plaintiffs) invoke the aid of Section 4 of the Limitation Act of 190S (Section 5 of Act XV of 1877). Their

pleader points out that the institution of every suit is by Section 3 of the Act made subject to all the provisions contained in Sections 4 to 25 and

argues therefrom that the effect of the concessions in these sections may be cumulative. He quotes the decisions in *Jawahir Lal v. Narain Das* ILR

(1878) A. 644; *Siyadat-un-nissa v. Muhammad Mahmud* ILR (1897) A. 342; *Tukaram Gopal v. Pandurang Sadaram* ILR (1901) B. p. 584;

Saminatha Iyer v. Venkatasubba Aiyar ILR (1903) M. 21; *Silamban Chetty v. Ramanadhan Chetty* ILR (1910) M. 526 and *Banee Kant Ghose*

v. Haran Kisto Ghose (1875) 24 W.R. 405 to illustrate that all the provisions of

the above sections that are appropriate to the suit concerned may be applied; that courts have been wont to put a fair and liberal construction on the law of limitation and in many cases have allowed the provisions of more, than one section to operate in the calculation of time in a particular suit, e. g., if the time for presenting an appeal expires on a day when the court is closed an appellant who has not obtained copies of the decree and judgment appealed against may by applying for copies on the date when the court reopens obtain an extension of time for filing his appeal by the period requisite for obtaining copies and thus reap the benefit both of Section 4 and Section 12.

7. I am not at variance with the principles enunciated in these decisions, but I observe that none of them deals with the case of proceedings instituted in the wrong court except the last on the list which related to an execution application made in a court not competent to execute the decree; that in this case the section, upon a reading of which the decision turned, was Section 15 of Act IX of 1871, and that the law has since been altered so as to include applications as well as suits.

8. The only decision to which our attention has been directed, in which the facts were similar to the present, is that of *Abhoyachurn Chukerbutty v.*

Gowar Mohan Dutt (1875) 24 W.R. 26. In that case a suit was filed in a District Munsif's Court and was finally decreed, but in appeal it was

discovered that the District Munsif had no jurisdiction and the suit was ultimately returned for being filed in a Small Cause Court. The plaintiff

sought to exclude not only the time occupied by the prosecution of his suit in the two courts of original and appellate jurisdiction, but also the

period during which the District Munsiff's Court was closed for vacation before his suit was first instituted, and the period between the appellate

court decision and the return of his plaint by the lower court. The circumstances of that case differed from those of the case which we are

considering in that an appeal intervened between the proceedings in the court in which the suit was wrongly instituted and the proceedings in the

proper court and also because there was in that case a second ground for declaring the suit to be time-barred owing to the plaintiff's negligence in

not applying for the return of his plaint as soon as the appeal was decided. The intervention of an appeal will, however, make no difference under

Explanation II to Section 14. The Calcutta High Court decided both points against the plaintiffs and I am not prepared to hold that the view taken

by them was unsound. I agree with the learned Judge who decided the revision petition that the prosecution of the suit in the Madura Sub-Court

can only be deemed to have commenced on July 6th when the plaint was presented.

9. Although the word "court" in Section 4 is not qualified by the adjective "proper" as it is in other parts of the Act it could not be reasonable to

take account of the closing and reopening of any other court than that in which the suit was recently instituted. It seems to me that after June 14th

the plaintiffs' claim, to recover money from defendants was no longer alive, as a plaint presented in the court having jurisdiction to entertain it

would have been rightly rejected as time-barred and that nothing that plaintiffs could do after that date would have the effect of reviving a time-

expired claim.

10. The appeal is dismissed with costs.