

(1918) 03 MAD CK 0029
In the Madras High Court

Ramalingam Ayyar and Others

APPELLANT

Vs

S. Subbaier

RESPONDENT

Date of Decision : 20-03-1918

Acts Referred:

Citation : 47 Ind. Cas. 624 : (1918) 8 LW 256

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Division Bench

Judgement

Napier, J.—With regard to the question whether the suit was bona fide filed in the Court of the District Munsif of Ambasamudram, I do not think that the fact that he thought he would be more likely to get his money paid by the 1st defendant if he sued him in the Court of which he was an officer shows want of bona fides. A man has a perfect right to endeavour to get the payment of his money, and I see nothing improper in suing his debtor where he thought he would be more willing to discharge the debt. But the real difficulty in the way of the plaintiff seems to me to lie, in the language of the section, as follows:-- "in computing the period of limitation prescribed for any suit," that is to say, in reckoning the number of days to see if time has expired, you may deduct from the period that has actually expired the period allowed by Section 14, namely, "the time during which the plaintiff has been prosecuting with due diligence another Civil proceeding" in a Court which is unable to entertain the suit. But the right by which the plaintiff can file his suit the day after a holiday is given by Section 4, which is "where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens," that is to say, although the period of limitation has expired a suit may be filed after the expiration of the period of limitation. That is how I read the section. It is a particular statutory provision, not for the purpose of computing the period of limitation, but allowing, in certain circumstances, the filing of suits, after the period has expired. If that is so, then Section 14 will not help the plaintiff because, as I have pointed out, it begins with the phrase: " In

computing the period of limitation prescribed for any suit," prescribed, of course, having reference to the Articles. If this plaint had been presented in a proper Court on the day after that on which the limitation expired, that day having been a holiday, then the plaintiff would have been able to take advantage of the specific provision in Section 4; but as he has not done so, in my opinion, he is not entitled to take advantage of that provision. That seems to me to be the view taken by Mr. Justice Spencer in *Mira Mohideen v. Nallaperumal* 12 Ind. Cas.58 and I agree with him in that View. I would, therefore, allow the appeal and dismiss the suit against defendants Nos. 5 to 7 also. There will be no costs in any Court.

Sadasiva Aiyar, J.

2. I agree.