

(1964) 02 MAD CK 0030

In the Madras High Court

Case No : Second Appeal No. 1373 of 1961

S.N. Jayarama Aiyar and Others

APPELLANT

Vs

S. Rajagopalan

RESPONDENT

Date of Decision : 07-02-1964

Acts Referred:

Limitation Act, 1963 — Section 14, 4

Citation : AIR 1965 Mad 459 : (1964) ILR (Mad) 907 : (1965) 78 LW 513

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

(1) This second appeal raises a question of limitation. The suit is to take accounts of a dissolved partnership, the dissolution being on 6-10-1954. It

is common ground that the last date for instituting such a suit was 6-10-1957. But 6-10-1957 and 7-10-1957 happened to be holidays. The plaint

was therefore filed on 8-10-1957 but in the court of the District Munsif Chidambaram, a wrong court. The plaint was pending in that court from that

date to 18-11-1957, when the appellant got a return of it and filed the same on the same day in the court of the Subordinate Judge, Cuddalore,

which is the proper court. The appellant's claimed the benefit of Ss. 4 and 14 of the Limitation Act and contended that the suit was within time.

The courts below declined to accept that view and concurred in dismissing the suit as out of time.

(2) What is contended for the appellants is that if the time between 8-10-1957 and 18-10-1957, namely, 42 days is added on, under S. 14 of the

Limitation Act, to the period of three years, the last date for filing the plaint would be 17-11-1957, and that day being a holiday, applying S. 4 to

the case, the plaint filed on 18-11-1957 in the proper court would be in time. On

the other hand, the argument for the respondent is that the appellants are not entitled to affix and prefix the benefit of S. 4 to the time to be excluded and added on to a calculation of the period of limitation under S. 14. In other words, it is pointed out that the plaint having been filed in the wrong court on 8-10-1957, to such a case S. 4 being inapplicable, it was out of time and that Section 14 cannot be called in aid to resurrect what was already barred. The solution to the problem thus posed turns up on the interpretation of Ss. 4 and 14 of the Limitation Act.

(3) Section 3 states that any suit instituted after the period of limitation prescribed therefore by the First Schedule should be dismissed although limitation has not been pleaded in defence. But where the period of limitation expires on a holiday, S. 4 enables the court to receive the plaint on the next working day as in time. The effect of S. 4 is merely to relieve the hardship arising out of the fact that the last day of limitation happens to be a holiday and extend the time for filing to the next working day. This provision does not pertain to the computation of the period of limitation.

Section 14 is among the sections which bear on computation of the period of limitation. It deals with a case of a plaint filed, in a wrong court, and provides for exclusion of the time taken there and adding the same to the proper court. The section states that,

in computing the period of limitation prescribed 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 in a court of appeal, against the defendant should be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

In effect, what the section enables is to add to the period of limitation prescribed, the period which the plaintiff who filed the plaint in the wrong court is entitled under its provisions to exclude. Reading Ss. 4 and 14 together, there is no indication in the language used in them that, where on the date the plaint is filed in a wrong court, it is out of time, S. 14 will be of any avail. The two sections appear to be mutually exclusive in their effect and application. The reference to "court" in S. 4 is the proper court having jurisdiction and unless the plaint is filed in the proper court, S. 4

will not be applicable to it.

That what is meant in S. 4 is the proper court has been held by the Privy Council in AIR 1935 85 (Privy Council) If, therefore, the plaint was filed

on 8-10-1957, while the last date was 6-10-1957, and S. 4 could not apply to the case, the plaint when filed was out of time. The question is

whether, by an application of S. 14, such a plaint could be brought within time. I do not think that this is permissible as Ss. 4 and 14 stand. All that

S. 14 contemplates is that where a plaint is filed in a wrong court but in time, the period during which it was pending could be excluded and added

on at the period of limitation and not where a plaint is filed in a wrong court and when it was filed it was out of time the plaint could, nevertheless,

by a process of exclusion and inclusion of time under S. 14 be regarded as in time.

(4) What however is argued for the appellants by their learned counsel Sri T. R. Ramachandran is that on adding 42 days to three years, he would

get 17-11-1957, as the last day and that day being a holiday, he could present the plaint in time the next day, by invoking the aid of S. 4. But the

fallacy in the argument is that it wants to apply S. 4 twice over and by means of S. 14, a plaint otherwise barred is sought to be brought within

time. Such a case, in my opinion, is not saved from limitation by S. 14.

(5) The interpretation I have placed on the two sections is, I think, supported by AIR 1935 85 (Privy Council) In that case the preliminary decree

was passed on 7-6-1920, but an application for final decree was made on 6-8-1923. The question was whether it was in time. Between 23-12-

1920 and 8-11-1921, the appellants before the Privy Council were only seeking execution of the preliminary decree. The Privy Council held that

this period could not be excluded and added on to the period of limitation, for the application pending during that period in the wrong court was

not an application for passing a final decree. The second period sought to be taken advantage of by the appellants was the one between 20-5-

1923 to 19-6-1923, when the court remained closed. The Privy Council declined to exclude this period too on the ground that the proceeding was

pending in a wrong court during that period and to such a case S. 4 was inapplicable. The last period was from 20-6-1923 to 6-8-1923 during

which an application for passing a final decree was pending before the wrong

court. On 6-8-1923, the application was taken from the wrong court and presented to the proper court. The High Court had taken the view that even if this period of 48 days was added to the period of limitation, the last day would be 25-7-1923, and that since the application was filed on 6-8-1923, it was far out of time. The Privy Council ruled that this was the correct way of applying Ss. 4 and 14, and went on to observe-

.....but, even if it were not correct and it were necessary to turn to S. 4, the language of S. 4 is such that it seems to their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the court is closed, the application may be made on the day when the court reopens. In their Lordships view that means the proper court in which the application ought to have been made and, on that view of it, it is impossible to say that this application was made to the proper court on the day on which that court reopened. Therefore, on either view of the case, the appellants necessarily fail in regard to that period"".

That clearly lays down in effect the propositions in my opinion, that the benefit of S. 4 could not both be suffixed and prefixed to the period of limitation as calculated under S. 14. In other words, the decision of the Privy Council was that where a plaint was filed in a wrong court out of

time, it could not be brought within the period of limitation by applying S. 14. In view of this clear ruling of the Privy Council, I do not think it

necessary to refer to cases in *Ummathu Vs. Pathumma and Another*, , *Ramalingam Aiyar v. Subbier* 8 MLW 256: AIR 1919 Mad 845 and

Govindasami Padayachi v. Sami Padayachi 43 ML J 579: AIR 923 Mad 114 which took much the same view of the scope and effect of Ss. 4 and

14 of the Limitation Act.

(6) I consider therefore, that the courts below came to the correct conclusion, that the suit was barred by limitation. The second appeal is

dismissed with costs. No leave.

(7) Appeal dismissed.