
(1921) 02 MAD CK 0012
In the Madras High Court

Ummathu

APPELLANT

Vs

Pathumma and Another

RESPONDENT

Date of Decision : 23-02-1921

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Article 36

Citation : AIR 1921 Mad 654 : (1921) ILR (Mad) 817 : (1921) 13 LW 631 : (1921) 41 MLJ 84

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

Bench : Full Bench

Judgement

Spencer, J.—The plaintiff had 3 years from the death of her husband to institute this suit for dower. As he died on 30th December 1914,

the last day for presenting the plaint was 30th December 1917.

2. She actually presented it on January 3rd 1918 in the Small Causes Court of Cochin, that being the day when that Court reopened after the

Christmas holidays. The plaint was returned for want of jurisdiction on February 6th, as suits by a Mahom-medan for dower are excepted from the

cognizance of a Court of small causes by Section 15(1) and Article 36 of the second schedule of the Provincial Small Causes Court's Act. The

Plaintiff represented the plaint on the following day in the court of the Subordinate Judge of Cochin.

3. The question is whether the suit was in time. It would have been in time if it had been instituted on January 3rd as the Sub Court of Cochin was

closed on December 30th when the period of limitation prescribed by the first schedule of the Limitation Act for such suits expired and it re-

opened on January 3rd. The explanation to Section 3 shows that a suit can be said to be instituted when the plaint is presented to the proper

officer. This also is the view taken in *Haridas Roy v. Sarat Chandra Deo* (1914) 18 I.C. 121, by a Bench of the Calcutta High Court. The proper

officer in this case was the Subordinate Judge of Cochin sitting on the Original Side or the chief ministerial officer of his Court authorised under

Rule 14 of the Civil Rules" of Practice to receive complaints. The complaint was not so presented till February 7th when more than 3 years had elapsed

from the cause of action arising. The plaintiff wishes to have the benefit of Section 4 of the Act and she would be entitled to it if she had presented

her complaint on January 3rd to the proper officer, seeing that both courts were closed till January 2nd. But a presentation to the wrong officer is not

an institution of a suit at all. It has been clearly established by the decisions of *Mira Mohidin Rowther v. Nallaperumal Pillai* I.L.R.(1911) Mad 131

, *Seshagiri Row v. Vajravelayudam Pillai* I.L.R.(1912) Mad. 482 and *Ramalingam Ayyar v. Subbaier* (1918) 8 L.W. 256 that for the purposes of

Section 4 account cannot be taken of the closing and reopening of any other court than that in which the suit was rightly instituted.

4. Such being the effect of Section 4 it may next be considered whether Section 14 will avail the plaintiff so as to bring her suit within the limitation

period. u/s 14 it might under certain circumstances be possible to exclude the time between January 3rd and February 6th as being a time when

the plaintiff was prosecuting with due diligence another civil proceeding against the same party for the same relief; but even if these were done, it

could not operate to revive a claim which became time-expired by the plaintiff's failure on January 3rd to institute a suit in a court of competent

jurisdiction. The period allowed by Section 14 cannot be tacked on to the period during which the proper court was closed (See 8 L.W. 256) as

the regular suit cannot be treated as a continuation of the Small Cause suit in which the complaint was returned (See *Seshagiri Row v. Vajravelayudam*

Pillai I.L.R(1912) . Mad. 482).

5. It has been held that the period requisite for obtaining a copy of judgment for the purpose of appealing can be tacked on to the period during

which the court that passed the decree appealed against was closed if it was too late to apply for a copy on the date when judgment was

pronounced (See *Saminatha Ayyar v. Venkata Subba Ayyar*. I.L.R.(1903) Mad. 21 thus showing that Sections 12 and 4 may be combined, this

being because Section 4 applies to applications (for copies) as well as to suits. But it is necessary that the appellant should have a subsisting

right to appeal when he applies for the copy (See *Tukaram Gopal v Pauduranga Sadaram* I.L.R.(1901) . 25 Bom 584 *Venkata Row v.*

Venkatachala Chetti I.L.R.(1905) Mad. 452 and *Siyadaturtirissa v. Muhammad Mahamud* ILR (1897) All. 342 and that he should apply on the

reopening day (See *Subraimanyam v. Narasimha* I.L.R.(1920) . Mad. 640).

6. But it has never been held that the period which may be excluded u/s 1.4 can be tacked on to the period when the court having jurisdiction was

closed u/s 4. The reason is that the courts are different, and a plaintiff who fails to institute his suit in the court having jurisdiction before the

limitation period expires, or on the reopening date, if the period expires during the vacation of that court has no longer a valid and subsisting cause

of action.

7. It makes no difference that the same Judge presides over both courts or even that the same ministerial officer is deputed to receive plaints on the

original as well as the small cause side for Section 33 of the Provincial Small Cause Courts Act declares that they shall be deemed to be different

courts for the purposes of that Act and the Code of Civil Procedure. Sections 15-26 of the Code of Civil procedure, which deal with the institution

of suits, are thus affected, with the consequence that a suit instituted on the Small Cause side cannot for the purpose of. Section 4 of the Limitation

Act be regarded as a suit instituted in "the Court" having jurisdiction to hear original suits.

8. The Second Appeal is dismissed with costs.

Ramesam, J.

9. I agree in holding that the second appeal Rs should be dismissed with costs. The facts are stated in my learned brother's judgment and need not

be repeated. In deciding that the suit was time barred, the Courts below relied on *Mir Mohidin Rowther v. Nallaperumal Pillai* I.L.R.(1911) Mad.

131 and 482 and *Seshagiri Row v. Vajiravelayudam Pillai* I.L.R.(1912) M. 482 . In the first of these cases, the proper court was not closed on the

day on which the plaint was first presented. The facts in the second case are not quite similar to the first. As ascertained from the printed papers, it

appears that the proper court was closed on the day of the first presentation but

had reopened some days before the representation. It may be said that these cases are distinguishable on the ground that, in both of them, the proper court had been open for some days before the re-representation which is not the case with the appeal before us. But this does not conclude the matter.

10. I may first clear the ground by observing that the days from 3rd January to 6th February ought to be obviously excluded from computation u/s 14 of the Limitation Act. The only question for consideration is whether the days from 31st December to 2nd January can be excluded in favour of the appellant. It is conceded on all hands that the language of Section 4 enables them to be so excluded, if the plaint is represented on the reopening day where the "period of limitation expires on a holiday, or, in other words if the holidays follow any other period that can be excluded from computation, under another section such as Section 12 or Section 15. But Can the appellant get the benefit of Section 4 if the holidays precede such period? This being the real question, it is necessary to consider only the" cases involving the joint application of Section 4 with some other section of the Act relating to computation. First, we have a group of cases relating to the joint applications of Sections 4 and 12. The appellant relies on *Siyadatun-nissa v. Muhammad Maliimid* ILR (1897) All 342 *Tukaram Gopal v. Panduranga Sadaram* I.L.R.(1901) . 25 Bom. 584 *Paudarinath v. Shauker* I.L.R.(1901) 25 Bom. 586 and *Satni-natha Ayyar v. Venkatasubba Ayyar* ILR (1903) Mad. 21 and the respondent relies on *Venkata Row v. Venkatachella Chetti* I.L.R.(1904) Mad. 452 *Tanjore Palace Estate v. Andi Ramiah Chetti* (1911) 11 I.C. 339 *Subrahmanyam v. Narasimham* ILR (1920) Mad. 640 and *Masilamani v. Arumuugamudali* (1920) 12 L.W. 460 . The case in *Saminatha Ayyar v. Venkatasubba Ayyar* I.L.R.(1903) Mad. 21 cannot help the appellant. In that case the judgment was delivered on the last day before the holidays, at a time when it was impossible to make an application for copies. The Court being closed for the vacation, the application was made on the reopening day and their Lordships held that, it being impossible for the appellant to make an application earlier, the whole time that elapsed between the date of judgment and the date of application must be regarded as time taken for obtaining copies within the meaning of Section 12.

They did not invoke the aid of Section 4 (then Section 5 of the Act of 1877 in arriving at their conclusion. If there was a similar disability in

applying for copies (which does not appear from the facts) in the cases in *Tukaram Gopal v. Panduranga Sadaram* ILR (1901) Bom. 584

Pandarinath v. Shanker ILR (1901) 25 Bom. 586. I agree with these decisions also. The actual ratio decidendi of the judgments, how-ever,

depends on the use of Section 5 of the Limitation Act of 18 77. It was held that an application for copies may be made so long as the right of

appeal was subsisting, a proposition with which I agree and that, not only the period following the application for copies but all the prior holidays

can be excluded. I do not see any warrant, for the latter proposition, in the Limitation Act unless Section 4 can be construed liberally, as a section

generally enabling exclusion of holidays from computation. If such construction is permissible, the qualification that the right of appeal should be

subsisting on the date of application is unnecessary. That such a construction cannot be made is clear from the cases in *Venkata Row v.*

Venkatachella Chetti ILR (1905) Mad. 452 and *Tanjore Palace Estate v. Andi Ramiah Chetti* (1911) 11 I.C. 339 and *Subramaniam v.*

Narasimham ILR (1920) Mad. 640 and *Masilamani v. Arumugamudali* (1920) 12 L.W. 460 from the cases in *Mira Mohidin Rowther v.*

Nallaperumal Pillai ILR (1912) . Mad. 131 and *Seshagiri Row v. Vajravel ayudaym Pillai* ILR (1912) Mad. 482 from *Sheodas Daulatram v.*

Narayan (1901) ILR 36 Bom. 268 and from other cases to be cited below. That being so, I doubt the correctness of the decisions in *Siyadat un-*

nissa v. Muhammad Mahamud I.L.R.(1897) All. 342 and *Tukaram Gopal v. Panduranga Sadram* I.L.R(1901) . 25 Bom. 584 and *Pandarinathu v.*

Shanker (1901) ILR 25 Bom. 586 In passing, I may observe that these cases relate to appeals and in the circumstances of these cases, the delay

might have been excused u/s 5-A of the Act of 1877 (Section 5 of the present Act) a course not available for suits. I may also observe that no

question relating to Section 12 can arise in the case of suits. Passing on to the joint application of Section 4 with other sections of the Act, I find

lhat it was held in *Bat Hankora v. Masamalli* I.L.R(1902) . 26 Bom. 782 (by *Jenkins, C.J. and Aston, J.*) that Section 4 cannot be tacked on prior

to the period of extension given by Section 19. Again the cases of *Makund Ram v. Ramraj* (1916) 14 All L.J. 310 and *Ramalingam Ayyar v.*

Subbier (1918) 8 L.W. 256 are on all fours with the present case and are authorities against the appellant. The case in Abhoy a Churu

Chukerbutty v. Gour Mohuu Dutt (1887) 24 W.R. . 26 also supports the respondents' contention. I agree with them and hold that the suit is

barred by limitation.