

The next objection argued before us is as to limitation. Ramamurti died on 23rd April 1885, and the plaint was presented on 26th April 1888. It appears that the Court was closed for the annual recess from 23rd April, but that arrangements were made and duly notified for the reception of plaints on every Monday and Thursday during the recess. There is an endorsement on the plaint apparently by the Sheristadar of the Court that Monday the 23rd April was a local holiday and that the plaint was presented on the 26th *idem*. It is conceded that, if the 23rd April were a local holiday, the suit would be brought in time, but it is contended that the endorsement is not sufficient legal evidence. I consider it desirable to ask the Judge to ascertain whether the 23rd April 1888 was a local holiday and the Court was closed on that day.

I would set aside the decree of the Judge and remand the case with the direction that the Judge do re-try the issue as to limitation with reference to the foregoing remarks, and that if he comes to the conclusion that the suit is not barred, he do proceed to dispose of it on the merits.

Costs hitherto incurred will be provided for in the revised decree.

BEST, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Mattusami Ayyar and Mr. Justice Best.

NARASIMMA AND OTHERS (DEFENDANTS), APPELLANTS,

v.

MUTTAYAN AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1890.
May 1.

Limitation Act—Act XV of 1877, s. 14—Exclusion of time of proceeding with suit bonâ fide—Cause of like nature.

Of six persons in whom was vested the obligee's interest under a hypothecation bond, three brought a suit upon it in a District Court and the other three brought a similar suit in a District Munsif's Court to recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable and the latter was withdrawn. The present suit was brought by all six:

* Appeal No. 71 of 1889.

NARASIMMA
v.
MUTTAYAN. *Held*, that in computing the time within which the plaintiffs had to sue, the time occupied by them in prosecuting the former suits should be deducted. *Deo Prasad Sing v. Pertab Kairee* (I.L.R., 10. Cal., 86) followed.

APPEAL against the decree of W. Austin, District Judge of Trichinopoly, in original suit No. 20 of 1887.

Suit by six persons in whom was vested the obligee's interest in a hypothecation bond to recover the principal and interest due thereon.

It appeared that the plaintiffs did not at first agree in bringing one suit for the whole amount due under the bond, and the plaintiffs Nos 1—3 brought original suit No. 28 of 1886 in the District Court for recovery of their three-fourth share of the whole amount, while plaintiffs Nos 4—6 brought original suit No. 359 of 1886 in the Court of the Kulitalai District Munsif to recover their one-fourth share.

Original suit No. 28 of 1886 was dismissed on the ground that the plaintiffs were not entitled to bring a suit for a portion of the mortgage amount. The suit in the District Munsif's Court was withdrawn as soon as the dismissal of original suit No. 28 of 1886 became known with permission of that Court to bring a fresh suit.

Upon these facts the defendants raised a plea under section 43 of the Civil Procedure Code and also pleaded limitation as to which the District Judge delivered judgment as follows:—

“As to the first issue, the defendants contend that this suit is barred by suits 28 and 359 of 1886 above alluded to, because in those suits plaintiffs intentionally omitted to sue for the whole amount due under exhibit A, and further that in any case they cannot now ask for more than three-fourths of the whole amount. In reply, it is said that the two suits taken together comprised the whole claim and therefore nothing has been omitted.

“This issue I find for plaintiffs, for it is clear that no portion of the claim was intentionally omitted, but that the claim was merely split into two portions.

“The second issue I find also for plaintiffs. I think they are clearly entitled to exclude, as far as bar by limitation is concerned, the time occupied by them in prosecuting suits 28 and 359 of 1886. The decisions in *Deo Prasad Sing v. Pertab Kairee*(1), *Putali Meheti v. Tulja*(2), *Obhoy Churn Nundi v.*

(1) I.L.R., 10 Cal., 86.

(2) I.L.R., 3 Bom., 223.

“*Evitarthamoyi Dossee*(1) and *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha*(2) seem to me to settle the point, and I hold that the words in section 14 of the Limitation Act ‘or other cause of a like nature’ would certainly apply to the suit now brought with reference to suits 28 and 359 of 1886 above referred to.”

NARASIMMA
MUTTAYAN.

The District Judge recorded findings in favor of the plaintiff on the other issues raised in the suit and accordingly passed a decree as prayed.

The defendants preferred this appeal upon the ground among others that the suit was barred by limitation.

Parthasaradhi Ayyangar (*Krishnasami Row* with him) for appellants.

Mere withdrawal of the suit does not prevent time from running under section 374 of the Code of Civil Procedure, as to which see *Pirjade v. Pirjade*(3), *Kiyat Ali v. Ram Singh*(4), *Krishnaji Lakshman v. Vithal Ravi Renge*(5) and *Bai Jamna v. Bai Ichha*(6). Limitation Act, section 14, does not help the defendant. See *Chunder Madhub Chuckerbutty v. Ram Coomar Chowdry*(7), *Ram Subhag Das v. Gobind Prasad*(8), questioned in *Deo Prasad Sing v. Pertab Kairee*(9).

(*Best, J.*, referred to *Jag Lal v. Har Narain Singh*(10)).

Krishnasami Ayyar for respondent.

Permission under section 374 alone is not enough to save limitation. See *Deo Prasad Sing v. Pertab Kairee*(9), *Rajendro Kishore Singh v. Bulaky Mahton*(11) and *Putali Meheti v. Tulja*(12).

Upon the question of limitation the Court delivered judgment as follows:—

JUDGMENT.—The only point argued before us is as to limitation. We agree with the Judge that the plaintiffs in original suit No. 28 of 1886 are entitled to the benefit of section 14 of the Limitation Act, and that the case of *Deo Prasad Sing v. Pertab Kairee*(9) was rightly decided.

(1) I.L.R., 7 Cal., 284. (2) I.L.R., 10 Cal., 265. (3) I.L.R., 6 Bom., 381.
 (4) I.L.R., 7 All., 359. (5) I.L.R., 12 Bom., 625. (6) I.L.R., 10 Bom., 604.
 (7) B.L.R., Sup. Vol., 553. (8) I.L.R., 2 All., 622. (9) I.L.R., 10 Cal., 86.
 (10) I.L.R., 10 All., 524. (11) I.L.R., 7 Cal., 367. (12) I.L.R., 3 Bom., 223.