

JUDGMENT.—The preliminary point in this case is whether orders passed under Madras Act VIII of 1865 by a Collector are open to revision under section 622 of the Code of Civil Procedure.

VENKATA-
NARASIMHA
NAIDU
*.
SUBBANNA.

The question was answered in the negative in *Velli Periya Mira v. Moidin Padsha*(1), which was followed in *Appandai v. Srihari Joishi*(2).

It has now been contended that the revision mentioned in section 76 of Act VIII of 1865 (Madras) means revision by the Court which made the order and not revision by a superior Court. We are unable thus to limit the scope of the word by introducing words which are not to be found in the section.

As to the contention that Act VIII of 1865 is a local Act and cannot override the provisions of section 622 of the Code of Civil Procedure by the powers conferred on this Court under the Letters Patent, we need only refer to section 4 of the Code of Civil Procedure.

We do not see sufficient ground for dissenting from the decision in *Velli Periya Mira v. Moidin Padsha*(1).

This petition is dismissed with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

TIRTHA SAMI (PLAINTIFF), APPELLANT,

1893.
October 30.

v.

SESHAGIRI PAI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation—Limitation Act (Act XV of 1877), s. 14—Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Other cause of a like nature.

Where a previous suit by the same plaintiff against the same defendant has failed by reason of misjoinder of causes of action and parties, the plaintiff in a second suit is not entitled to the extra period of limitation allowed by section 14

(1) I.L.R., 9 Mad., 332.

(2) I.L.R., 16 Mad., 451.

* Second Appeal No. 639 of 1892.

TIRTHA SAMI
#. .
SESHAGIRI
PAL

of the Limitation Act, since the cause of failure of the previous suit is not due to 'defect of jurisdiction' in the Court which entertained the suit, nor is it a cause 'of a like nature' thereto. *Deo Prasad Singh v. Feroz Khan* (1) dissented from.

SECOND APPEAL against the decree of W. C. Holmes, Acting District Judge of South Canara, in appeal suit No. 440 of 1889, confirming the decree of U. Babu Rao, District Munsif of Udipi, in original suit No. 320 of 1888.

The facts of the case appear sufficiently for the purpose of this report from the following judgment of the District Judge :—

"The plaintiff, the present sami of the Puttige matt, sued to set aside a number of decrees passed against the Puttige matt property during the incumbency of Vijayendra Tirtha Sami, who was the *de facto* sami of the matt between the death of Samuthendra Tirtha Sami, who had nominated Vijayendra Tirtha Sami as his successor, and his (the plaintiff's) getting possession of the office of sami and of the lands attached to the matt under the High Court decree in appeal suit No. 66 of 1881, dated 26th October 1883. The plaintiff contended that the suits were fraudulent and collusive, and denied that the money was borrowed or the goods purchased for the purposes of the matt, and asserted that Samuthendra Tirtha Sami and Vijayendra Tirtha Sami had no power to do anything connected with the matt after the samis of the seven other matts deposed Samuthendra and appointed the plaintiff as his successor.

"The lower Court has held that all the suits are barred. The lower Court held that article 95 of schedule II of the Limitation Act governs the cases. That article, it is argued in this appeal, does not apply. The article relates to a suit 'to set aside a decree obtained by fraud,' and, assuming that the only ground for setting the decrees against the matt property aside would be fraud and collusion, the article would clearly apply, and I do not think that the decrees can be questioned on any other ground. I think article 95 governs the cases.

"It is contended in this appeal that the suits would not be barred even if the article applies; because to the three years allowed by article 95 there must be added under section 14 of the Limitation Act the period (two years, five months and

“twenty-six days) during which the plaintiff was prosecuting a suit against all the defendants jointly. That suit (original suit No. 11 of 1886) was filed in the Subordinate Court on the 13th February 1886 and was dismissed, as it was held the defendants were wrongly joined in the same suit, and in appeal to the High Court (No. 139 of 1887) the Subordinate Judge’s decree was confirmed on the 9th August 1888.

TIRTHA SAMI
“
SESHAGIRI
PAL.

“Section 14 of the Limitation Act directs that the Court should exclude the time during which the plaintiff has been prosecuting against the defendant another civil proceeding which the ‘Court from defect of jurisdiction or other cause of a like nature’ is unable to entertain. In the present case the plaintiff sued a number of defendants together. It was held that there was a separate cause of action against each defendant, and no joint cause of action, and the suit was therefore dismissed. The question is, should the time he was prosecuting that suit be excluded in computing the period of limitation for the suits brought against each defendant separately. In *Ram Subhay Das v. Gobind Prasad*(1) it was held that the plaintiff could not count in his favour the period during which the plaintiff was prosecuting a suit which could not be entertained owing to misjoinder of parties (plaintiffs). In *Deo Prasad Singh v. Pertab Kairee*(2), where there had been a misjoinder of causes of action in a suit, it was held that in a subsequent suit the period during which the former suit was being prosecuted was to be excluded, misjoinder of causes of action being held to be of ‘like nature’ with ‘defect of jurisdiction.’ In *Jema v. Ahmad Ali Khan*(3) this Calcutta decision was not followed. A plaintiff sued without joining his partner as party in the suit and the suit was dismissed. It was held that in a subsequent suit the period during which the former suit was prosecuted could not be excluded, because there was no defect of jurisdiction or ‘other cause of a like nature,’ which was held to mean something analogous to defect of jurisdiction. The Madras High Court has not as yet given a decision on the point, and it is, if not incumbent, at least advisable, that this Court should follow the latest ruling of the other High Courts. Besides, to interpret inability to entertain a suit for defect of jurisdiction or other like cause, to include inability to decide a suit in

(1) I.L.R., 2 All., 622. (2) I.L.R., 10 Calc., 86. (3) I.L.R., 12 All., 207.

TIRTHA SAMI
v.
SESHAGIRI
PAL.

“consequence of misjoinder of causes of action or of parties or in
“consequence of some other reason that prevents the suit being
“decided on its merits, would be, I think, to put a wider meaning
“on the words used in the statute than would be in accordance
“with the principles of interpretation usually applied to the inter-
“pretation of modern statutes. I think, though with considerable
“hesitation, that the suits should be held to be barred.”

The plaintiff preferred this second appeal.

Subramanya Ayyar and *Ramachandra Rau Saheb* for appellant.
Pattabhirama Ayyar for respondents.

JUDGMENT.—Assuming that the suit is one to which the six years' rule applies, we do not think that the plaintiff can take advantage of section 14 of the Limitation Act, inasmuch as his previous suit against the same defendant failed, not by reason of any want of jurisdiction on the part of the Court, but by reason of misjoinder of causes of action and parties. In our opinion that is not a cause of a like nature within the meaning of the section. We are unable to agree with the decision in *Deo Prosad Singh v. Pertab. Kaivee*(1). The Courts of Allahabad and Bombay seem to take the same view as we do.

The appeal is dismissed with costs.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

PALAMALAI PADAYACHI AND ANOTHER (DEFENDANTS, 1 AND 4),

APPELLANTS,

v.

SHANMUGA AUSARI (PLAINTIFF), RESPONDENT.*

Hereditary office—(Madras) Regulation VI of 1831, s. 3—Jurisdiction of Revenue Courts.

A suit for 'Maniam' lands attached to the hereditary office of village carpenter is barred by the operation of section 3 of Regulation VI of 1831.

APPEAL against the decree of R. S. Benson, District Judge of South Arcot, in appeal suit No. 254 of 1890, reversing the decree