

## APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice  
Shepherd, Mr. Justice Subramania Ayyar and  
Mr. Justice Davies:

VENKITI NAYAK AND OTHERS (DEFENDANTS), APPELLANTS,

v.

MURUGAPPA CHETTI (PLAINTIFF), RESPONDENT.\*

*Limitation Act—Act XV of 1877, s. 14—Cause of like nature—Misjoinder of causes  
of action—Want of leave under Civil Procedure Code, s. 44.*

In March 1891 the plaintiff sued the defendant to recover the sum of money due on the taking of an account between the plaintiff and the defendant, who was his agent, and to recover possession of certain land. The plaintiff did not obtain leave under Civil Procedure Code, s. 44, for the institution of this suit which was accordingly dismissed for misjoinder of causes of action. The plaintiff now instituted on 5th April 1893 two suits, the one for the money and the other for the land:

*Held*, that the plaintiff was entitled under Limitation Act, s. 14, to have the time occupied in the previous proceedings deducted in the computation of the period of limitation applicable to his suit for money which accordingly was not barred by limitation.

APPEAL against the order of W. Dumergue, District Judge of Madura, in appeal suit No. 200 of 1894, reversing the decree and remanding for trial original suit No. 152 of 1893 on the file of the District Munsif of Tirumangalam.

A suit for Rs. 2,315 due on accounts. The plaintiff was a cotton dealer and money lender and had a shop at Sengapadai, which was managed by defendant as his agent from 5th July 1881 to the 11th January 1889, when his agency ceased. Accounts not having been settled between him and plaintiff, on 19th March 1891 the plaintiff sued to recover the sum of money due on the taking of an account, and also to recover with damages two pieces of land said to have been conveyed benami to the defendant as his agent, without obtaining the leave of the Court under Civil Procedure Code, section 44. The District Munsif, in whose Court the suit was instituted, made an order on the 17th June, in which, after quoting section 44, he said that the suit was liable to be dismissed, on the ground of misjoinder of causes of action, but that he would give the plaintiff

\* Appeal against order No. 73 of 1894.

an opportunity to amend the plaint and file separate suits in respect of these different causes of action and allowed 7 days for that purpose. No amendment was made, and on the 25th June the District Munsif made an order dismissing the suit which was confirmed on appeal on 24th October 1892. The plaint in the present suit was presented on 5th April 1893.

The District Munsif held that the claim was *res judicata* by reason of the previous order which he said was passed under section 158 of Civil Procedure Code; he also held that the suit was barred by limitation, the plaintiff not being, in his view, entitled to the deduction under Limitation Act, section 14, of the time occupied by the previous proceedings and he accordingly dismissed the suit. On appeal the District Judge held that there was no bar by *res judicata* and also that the suit was not barred by limitation, as to which he quoted *Narasimma v. Muttayan*(1). He accordingly reversed the decree and remanded the suit for trial on the merits.

The defendants preferred this appeal.

*Bhashyam Ayyangar* for appellants.

*Krishnasami Ayyar* for respondent.

This appeal coming on for disposal before BEST and SUBRAMANIA AYYAR, JJ., on 3rd May 1895, they made the following order of reference to Full Bench.

ORDER OF REFERENCE TO FULL BENCH.—We defer our decision in this case pending decision of the Full Bench of the question “whether misjoinder of causes of action is a cause for which time should be deducted under section 14 of the Limitation Act.”

The case came on for hearing before the Full Bench on 2nd October 1896.

*Bhashyam Ayyangar* for appellant.

There is a conflict of decisions upon the question referred. The decision appealed against is inconsistent with the judgment in *Tirtha Sami v. Seshagiri Pai*(2) where it was held that misjoinder is not a cause of like nature within the meaning of Limitation Act, section 14, dissenting from the case followed in *Narasimma v. Muttayan*(3). That case follows *Deo Prosad Sing v. Pertab Kairee*(4) which is approved in *Mullick Kefait Hossein v. Sheo Pershad Singh*(5) and dissented from *Jema v. Ahmad Ali Khan*(6).

(1) I.L.R., 13 Mad., 451. (2) I.L.R., 17 Mad., 299. (3) I.L.R., 13 Mad., 451.

(4) I.L.R., 10 Calc., 86. (5) I.L.R., 23 Calc., 821. (6) I.L.R., 12 All., 207.

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The leading cases in Bombay are *Bai Jamna v. Bai Ichha*(1) and *Krishnaji Lakshman v. Vithal Ranji Ranje*(2). The expression cause of a like nature cannot on the right construction be held to include those which are due to the action of the suitor. This is deducible from the cases last cited. See also *Chunder Madhub v. Bissessure Debea*(3), *Rajendro Kishore Singh v. Bulaky Mahton*(4) and *Nobin Chunder Kurr v. Rojomoje Dossee*(5).

*Krishnasami Ayyar* for respondent.

Most of the cases quoted in favour of the appellant are really cases of defective jurisdiction. The term jurisdiction being used generally and not restricted to the pecuniary or territorial limits of jurisdiction. In section 14 the expression, "cause of like nature" must include formal defects which render the Court incompetent to entertain the suit. Moreover the subsequent suit must be, in effect, the same suit as the first and the other cases quoted for the appellant proceed on this ground. See also *Mohun Chunder Koondoo v. Azeem Gazeer Chowkeedar*(6), *Dhan Singh v. Basant Singh* (7) and *Subbarau Nayudu v. Yagana Pantulu*(8).

The Court (COLLINS, C.J., SHEPHERD, SUBRAMANIA AYYAR and DAVIES, JJ.) delivered judgment as follows :—

JUDGMENT.—In the case which gave rise to this reference, it appears that the former suit was dismissed, because, without leave of the Court, claims in respect of movable and immovable property had been united in one plaint in violation of the provisions of section 44 of the Civil Procedure Code. The real question to be decided is whether the reason for the failure of that suit was of such a character as to entitle the plaintiff in the present suit to take advantage of section 14 of the Limitation Act. It was argued on behalf of the plaintiff that any misjoinder of causes of action rendering the Court unable to entertain the suit, should be deemed to be "a cause of a like nature" with defect of jurisdiction within the meaning of section 14. The argument, indeed, was pushed to this length, that any plaintiff, whose plaint had been rejected under section 53 or 54 of the Civil Procedure Code, might, provided that other conditions were fulfilled, claim to have the time expended on the abortive proceeding deducted in the computation

(1) I.L.R., 10 Bom., 604.

(4) I.L.R., 7 Calo., 367.

(7) I.L.R., 8 All., 519, 527.

(2) I.L.R., 12 Bom., 625.

(5) I.L.R., 11 Calo., 264.

(3) 6 W.R., 184.

(6) 12 W.R., 45.

(8) I.L.R., 19 Mad., 90, 95.

of the period applicable to his new suit. If it had been intended to embrace such a large class of cases within the scope of section 14, one would have expected correspondingly general words to be used. The phrase "defect of jurisdiction or other cause of a like nature" seems quite inadequate to denote the miscellaneous cases of defect mentioned in sections 53 and 54. For the purpose of the present case, however, it is unnecessary to deal with the argument of the plaintiff's wakil.

The case was not one in which mere misjoinder of causes of action had proved fatal to the first suit. It was rather the absence of the leave required by section 44 of the Civil Procedure Code which rendered the Court unable to entertain it. Such a defect as absence of leave was held in a recent case decided in this Court to bring the case within the provisions of section 14, and we think that case was rightly decided. *Subbarau Nayudu v. Yagana Pantulu*(1).

Following that case, we hold that the question, whether such misjoinder as there was in the present instance was a cause for which time should be deducted under section 14 of the Limitation Act, must be answered in the affirmative.

This appeal coming on this day for final hearing, the Court (SUBRAMANIA AYYAR and BODDAM, JJ.) dismissed the appeal.

VENKATI  
NAYAK  
"  
MURUGAPPA  
CHETTI.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.*

PAYYATH NANU MENON (PLAINTIFF'S REPRESENTATIVE),  
APPELLANT,

*v.*

THIRUTHIPALLI RAMAN MENON AND OTHERS  
(DEFENDANTS), RESPONDENTS.\*

*Malabar Law—Adoption by the Karnavan of a Marumakkatayam tarwad—Want of consent by the rest of the tarwad—Civil Procedure Code s. 365,—Legal representative.*

A tarwad in Malabar subject to Marumakkatayam Law was reduced in number to two persons, viz., the karnavan and his younger brother the plaintiff.

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1896.  
August 25.  
September  
15.

(1) I.L.R., 19 Mad., 90.

\* Appeal No. 38 of 1895.