APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sankaran-Nair.

SUBBARAYA IYER AND OTHERS (DEFENDANTS), APPELLANTS,

v.

VAITHINATHA IYER AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1909. July 23. August 11.

Negotiable instrument, party to suit on—Limitation Act, s. 22—Amendment by adding party cannot relate back to date anterior to application to add party.

A suit on a negotiable instrument must be instituted in the name of the person who, on the face of the instrument, is entitled thereto or by a holder deriving title from him.

Where the suit is instituted in the name of a wrong person, the Court has power, under Order I, rule 10 (1), to amend the plaint by bringing the proper party as plaintiff. Such person cannot be brought on the record as from the day the suit was instituted. The amendment will relate back, at the most, to the date on which the application to be added as plaintiff was made and if such application was made after the right to sue was barred by limitation, such amendment should not be allowed.

In suits of this kind, a mistake to be corrected under Order I, rule 10 (1), must be corrected before the limitation period of the suit expires.

Seshamma v. *Chinnappa*, [(1897) I.L.R., 20 Mad., 467], referred to.

SECOND APPEAL against the decree of T. Gopalakrishna Pillai, Subordinate Judge of Salem, in Appeal Suit No. 142 of 1906, presented against the decree of S. Doraiswami Aiyar, District Munsif of Salem, in Original Suit No. 160 of 1905.

The plaintiffs, by their mother and next friend, sought to recover from the defendants the sum of Rs. 629 being the balance of the principal and interest due on a promissory note which the first defendant and the late father of the second and third defendants executed to the plaintiffs' mother and next friend for Rs. 1,000 on the 12th June 1902.

The suit was instituted in the names of the plaintiffs on the allegation that the money due on the promissory note belonged to them, though the note itself was executed in the name of their mother Minakshi Ammal. It was said in the plaint that the plaint promissory note was executed for a balance due on a prior promissory note which the first defendant and the second and

* Second Appeal No. 603 of 1908.

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third defendants' late father had executed in the name of the plaintiffs on the 21st June 1899.

The first defendant pleaded *inter alia* that the plaintiffs were not entitled to maintain the suit on the promissory note executed in the name of Minakshi Ammal.

After the case was closed, the plaintiffs applied to bring Minakshi Ammal on the record as plaintiff. The District Munsif rejected the application, but passed a decree for plaintiffs on the ground that the suit by the plaintiffs was maintainable.

His judgment was confirmed on appeal.

The defendants appealed to the High Court.

T. M. Krishnaswami Ayyar for *T. Subramania Ayyar* for appellants.

The Hon. The Advocate-General for respondents.

JUDGMENT (MILLER, J).—We are bound by the decisions of this Court to hold that the suit is not maintainable unless Minakshi Ammal is the plaintiff, and I cannot accede to the contentions of the Advocate-General that as the suit has been framed she is a plaintiff by implication, or that the statement in the plaint to the effect that the money belongs to the plaintiffs amounts to an assignment to the plaintiffs. I think therefore that the suit must be dismissed unless she can now be made a plaintiff. I have no doubt that this can be done under order I, rule 10 (1) (*vide Krishna Boi* v. *The Collector and Government Agent, Tanjore*(1)), and the only question is whether if it is done now the suit will not be barred by limitation.

We cannot bring her on the record now as from the date on which the suit was actually instituted: it is not very clear to me what was the effect of the order in *Seshamma* v. *Chennappa*(2), in the matter of dates, but clearly the learned Judges did not intend to make their amendment date back to the date on which the suit was originally instituted. Had they felt themselves able to do that no question of limitation could have arisen.

The utmost we could do on the authority of that case would be, it seems to me, to date the amendment as of the date on which the Court of First Instance ought to have made it and that could not be earlier than the date of application; and the suit, if instituted on that date, would have been already barred by limitation.

(1) (1907) I.L.R., 30 Mad., 419. (2) (1897) I.L.R., 20 Mad., 467.

The earliest date then on which Minakshi Ammal could appear as plaintiff is a date on which the suit if then instituted would be barred, and if the effect of the amendment bringing her on record is to bring on a new plaintiff within the meaning of section 22, Limitation Act, the bar will not be saved.

I agree with the observations of the learned Judges in *Fatmabai* v. *Pirbhai Virji*(1) (at page 584 of the report) to the effect that the language of section 22 of the Limitation Act precludes the view that a plaintiff added or substituted is not a new plaintiff if he is made a party merely for the purpose of more correctly representing the title originally asserted, and that *Subadini Debi* v. *Cumar Ganda Kant Roy Bahadur*(2) cannot be regarded as an authority from which a general proposition ought to be deduced.

The effect of section 22 of the Limitation Act is that in a suit of the kind before us a mistake to be corrected under order I, rule 10 (1), must be corrected before the limitation period of the suit expires.

That this may work hardship in certain cases is recognised in *Fatmabai* v. *Pirbhai Virji*(1), and it is fairly arguable that it does so in the present case, but having given my best consideration to the subject I think the law requires us to hold that no amendment which we could now make would save the suit from the bar of limitation, and that we must consequently allow the appeal and dismiss the suit; but as the law as to the necessary parties to a suit on a negotiable promissory note had not been finally declared by this Court when the suit was instituted in 1905 I think we ought to dismiss it without costs.

SANKARAN-NAIR, J.—The plaintiffs are clearly not entitled to sue on the promissory note. Their application to substitute their mother as plaintiff was not made till after the case was argued and closed in the Court of First Instance, though the objection that the plaintiffs are not entitled to sue was raised in the written statement of the first defendant. I do not think therefore that their application ought to be allowed.

I agree therefore that the suit must be dismissed but in the circumstances without costs.

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(1) (1897) I.L.R., 21 Bom., 580, at p. 584. (2) (1887) I.L.R., 14 Calc., 400.