

ANDIAPPA
PILLAI
v.
MUTHU-
KUMARA
THEVAN.

September 1909 for admitting the further evidence though not in the shorter order of the same date endorsed on the defendant's application. I would, therefore, dismiss the Second Appeal with costs.

SADASIYA
AYYAR, J.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1912.
February 28.

SESHAGIRI ROW (DEFENDANT), APPELLANT,

v.

VAJRA VELAYUDAM PILLAI (PLAINTIFF), RESPONDENT.*

Limitation—Suit filed after limitation in wrong court—Return for presentation to proper court—Bar of limitation in spite of Limitation Act (XV of 1877), sec. 14.

If a plaint is returned for presentation to the proper court on the ground of absence of jurisdiction in the court to which it was originally presented, the suit when presented to the new court is a new suit and cannot be regarded as a continuation of the infructuous suit in the wrong court.

This is the basis of section 14 of the Limitation Act (XV of 1877). Hence if the suit when originally filed in the wrong court would have been ordinarily barred by limitation as being barred during the holidays of that court, after which alone it was filed, the suit when filed in the new court must be held to be barred in spite of section 14 of the Limitation Act.

Mohidin Rowthen v. Nallaperumal Pillai [(1911) 21 M.L.J., 1000], followed.

Takuroodeen Mahomed Eshan Chowdry v. Kurimban Chowdry [(1865) 3 W.R. (C.R.), 20]. *Kielat Chunder Ghose v. Nuseebunnissa Bibee* [(1871) 16 W.R. (C.R.), 47], and *Assan v. Pathamma* [(1899) I.L.R., 22 Mad., 494], distinguished.

SECOND APPEAL against the decree of S. AUTHINARAYANA AYYAR, the acting Temporary Subordinate Judge of Coimbatore, in Appeal No. 47 of 1909, presented against the decree of T. A. RAMAKRISHNA AYYAR, the District Munsif of Coimbatore, in Original Suit No. 958 of 1907.

The facts of this case are stated in the judgment.

T. Subrahmanya Ayyar for appellant.

V. Viswanatha Sastri for respondent.

BENSON AND
SUNDARA
AYYAR, JJ.

JUDGMENT.—The facts of this case are quite similar to those in *Mohidin Rowthen v. Nallaperumal Pillai* (1), and according

* Second Appeal No. 483 of 1910.

(1) (1911) 21 M.L.J., 1000.

to the decision in that case the suit is clearly barred; but it is contended that an argument of importance was not submitted to the court in that case, which would have materially influenced the judgment. That argument is that when a plaint returned for presentation to the proper court on the ground of absence of jurisdiction in the court to which it was originally presented is represented to the proper court, the suit itself must be regarded as a continuation of the infructuous suit in the wrong court. This argument cannot be upheld. Proceedings instituted without jurisdiction cannot be deemed to be legally valid so as to be capable of being continued in another court. In the case in *Takuroodeen Mahomed Eshan Chowdry v. Kurimbuz Chowdry*(1), cited for the appellant the suit was regarded as transferred from one court to another. In such a case of course it is the same suit that is continued in the court to which the transfer is made. The case in *Khelat Chunder Ghose v. Nuseebunnissa Bibee*(2), is not in point as there the question was not one of limitation though in one portion of the judgment the learned Judges who decided the case speak of the suit being the same where a plaint returned by one court is represented to another court. In *Assan v. Pathumma*(3), this Court held that the original plaint must be taken to have been merely amended and the case is therefore not similar to this case. *Abhaya Churn Chuckerbutty v. Gour Mohun Dutt*(4), is a decision against the respondent's contention. Section 14 of Act XV of 1877 proceeded on the basis that where a plaint was returned under section 20 of Act XIV of 1882 and presented again to another court, the suit must be regarded as a new one and not as a continuation of the former suit. We see no reason to differ from the decision in *Mohidin Rowthen v. Nallaperumal Pillai*(5). We allow the Second Appeal and dismiss the suit. We make no order as to costs.

SESHAGIRI
• ROW
• V.
VAJRA
VELAYUDAM
PILLAI.
—
BENSON
AND
SUNDARA
AYYAR, JJ.

(1) (1865) 3 W.R., (C.R.), 20.

(2) (1871) 16 W.R., (C.R.), 47.

(3) (1899) I.L.R., 23 Mad., 494.

(4) (1875) 24 W.R., (C.R.), 26.

(5) (1911) 21 M.L.J., 1000.