APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Spencer.

MIRA MOHIDIN ROWTHER AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

NALLAPERUMAL PILLAI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1911. August 16 and 22.

Limitation Act (IX of 1908), ss. 3, 4 and 14—Filing suit in a wrong court on the day of its reopening after recess—Expiry of limitation during recess, effect of—Meaning of "prosecution" in section 14—"Court" in section 4, meaning of.

According to section 14 of the Limitation Act it is only the period during which a suit is actually prosecuted in a wrong court that can be excluded in favour of a plaintiff, but not the period before the filing of the suit, though the court was then closed for recess. So, if the period of limitation for the suit expired during the period of recess of the wrong court wherein the suit was filed on the day of its reopening, the suit must be held to be barred.

It is only the period of closing of the proper court in which the suit must be instituted that can be taken account of under section 4.

Abhoya Churn Chukerbutty v. *Gour Mohun Dutt* (1875) 24 W.R. (C.R.), 26, followed.

Per SPENCER, J.—Although the word "Court" in section 4 is not qualified by the adjective "proper" as it is in other parts of the Act, it would not be reasonable to take account of the closing and reopening of any other court than that in which the suit was rightly instituted.

Per curiam.—According to section 3 the concessions awarded by the different sections of the Limitation Act are independent and cumulative.

APPEAL under section 15 of the Letters Patent (24 and 25 Vict., Cap. 104) against the judgment and order of SANKARAN NAIR, J., in Civil Revision Petition No. 154 of 1910 presented against the decree of K. SRINIVASA RAO, the Subordinate Judge of Tuticorin, in Small Cause Suit No. 263 of 1909.

The facts are given sufficiently in SPENCER, J.'s judgment.

N. Rajagopalachariar for the appellants.

K. Srinivasa Ayyangar for the respondents.

AYLING, J.—In this case plaintiffs wish to exclude the period from the 14th June 1908 (expiry of 3 years from date of cause of AYLING, J.

* Letters Patent Appeal No. 4 of 1911.

MIRA MOHIDIN ROWTHER v. NALLAPERUMAL PILLAI. AND AYLING, J.

action) to the 6th July 1908 (the date of filing the plaint in the Madura Sub-Court) as well as the period from the 6th July 1908 onwards and it is necessary for them to do so in order to save limitation. Admittedly section 14 of the Limitation Act cannot be extended to cover the period from the 14th June 1908 to the 6th July 1908. It is contended on behalf of plaintiffs that it is covered by section 4; and it is argued apparently with reason that the concessions awarded by the different sections of the Limitation Act are independent and cumulative. On the other hand, it is not denied that the proper Court in which the suit should have been filed reopened before the 6th July 1908 and respondents' vakil quotes the decision in *Abhoya Churn Chukerbutty* v. *Gour Mohun Dutt*(1), as authority for holding that in such circumstances section 4 cannot operate in plaintiff's favour. Appellant's vakil does not attempt to distinguish this case; but merely argues that the decision is wrong. I am not only prepared to follow the ruling in question, but entirely concur in it.

I consider that the only effect of section 4 is to extend the period of limitation from the 14th June 1908 to the date of reopening of the proper Court. When that date expired and no plaint was presented the suit became effectively time-barred and section 14 cannot assist plaintiffs, inasmuch as it could only take effect from the 6th July 1908.

I would dismiss the appeal with costs.

SPENCER, J. SPENCER, J.—The cause of action or this small cause suit arose on June 14, 1905 and June 14, 1908 was therefore the last day on which plaintiff's suit could ordinarily be filed.

They actually filed their suit on July 6, 1908, in the Madura West Sub-Court, as on June 14 that Court was closed for the recess and July 6 was the reopening day. On an objection being taken by defendants to the jurisdiction of the Madura West Sub-Court the plaint was returned on February 17, 1909, for being presented to the Tuticorin Sub-Court and it was so presented on the next Court day, viz., February 19.

It has been found that the plaintiffs' action in going first to the Madura West Sub-Court was *bona fide* and not a mere device to save limitation. The learned judge who heard this revision petition held that plaintiffs were entitled under section 14 of the

(1) (1875) 24 W.R. (C.R.), 26.

Limitation Act to deduct the period from July 6 to February 17 during which they were prosecuting their suit with due deligence in the Madura Court, but not the period from June 15 to July 5 during which the Madura Court was closed. It is conceded that if this last mentioned period is deducted the suit will have been filed in time, but not otherwise. The appellants (plaintiffs) invoke the aid of section 4 of the Limitation Act of 1908 (section 5 of Act XV of 1877). Their pleader points out that the institution of every suit is by section 3 of the Act made subject to all the provisions contained in sections 4 to 25 and argues therefrom that the effect of the concessions in these sections may be cumulative. He quotes the decisions in *Jawahir Lal* v. *Narain Das*(1), *Siyadat-un-nissa* v. *Muhammad Mahmud*(2), *Tukaram (Gopal)* v. *Pandurang (Sadaram)*(3), *Saminatha Ayyar* v. *Venkatasubba Ayyar*(4), *Silamban Chetty* v. *Ramanadhan Chetty*(5), and *Banee Kant Ghose* v. *Haran Kishto Ghose*(6) to illustrate that all the provisions of the above sections that are appropriate to the suit concerned may be applied, that courts have been wont to put a fair and liberal construction on the law of limitation and in many cases have allowed the provisions of more than one section to operate in the calculation of time in a particular suit, *e.g.*, if the time for presenting an appeal expires on a day when the court is closed an appellant who has not obtained copies of the decree and judgment appealed against may by applying for copies on the date when the court reopens obtain an extension of time for filing his appeal by the period requisite for obtaining copies, and thus reap the benefit both of section 4 and section 12.

I am not at variance with the principles enunciated in these decisions, but I observe that none of them deal with the case of proceedings instituted in the wrong court, except the last on the list which related to an execution application made in a court not competent to execute the decree, that in this case the section upon a reading of which the decision turned, was section 15 of Act IX of 1871 and that the law has since been altered so as to include applications as well as suits.

The only decision to which our attention has been directed in which the facts were similar to the present is that of *Abhoya*

(1) (1878) I.L.R., 1 All., 644.
(2) (1897) I.L.R., 19 All., 342.
(3) (1901) I.L.R., 25 Bom., 584.
(4) (1904) I.L.R., 27 Mad., 21.
(5) (1910) I.L.R., 33 Mad., 258.
(6) (1875) 24 W.R., 405.

AYLING AND SPENCER, JJ.

MIRA MOHIDIN ROWTHER v. NALLAPERUMAL PILLAI.

Churn Chuckerbutty v. *Gour Mohun Dutt*(1). In that case a suit was filed in a District Munsif's Court and was finally decreed, but in appeal it was discovered that the District Munsif had no jurisdiction and the suit was ultimately returned for being filed in a Small Cause Court. The plaintiff sought to exclude not only the time occupied by the prosecution of his suit in the two courts of original and appellate jurisdiction but also the period during which the District Munsif's court was closed for vacation before his suit was first instituted and the period between the Appellate Court's decision and the return of his plaint by the lower court. The circumstances of that case differed from those of the case which we are considering in that an appeal intervened between the proceedings in the court in which the suit was wrongly instituted and the proceedings in the proper Court and also because there was in that case a second ground for declaring the suit to be time-barred owing to the plaintiff's negligence in not applying for the return of his plaint as soon as the appeal was decided. The intervention of an appeal will, however, make no difference under Explanation II to section 14. The Calcutta High Court decided both points against the plaintiff and I am not prepared to hold that the view taken by them was unsound. I agree with the learned judge who decided the revision petition that the prosecution of the suit in the Madurâ Sub-Court can only be deemed to have commenced on July 6 when the plaint was presented. Although the word "Court" in section 4 is not qualified by the adjective "proper" as it is in other parts of the Act, it would not be reasonable to take account of the closing and reopening of any other court than that in which the suit was rightly instituted. It seems to me that after June 14 the plaintiffs' claim to recover money from defendants was no longer alive, as a plaint presented in the Court having jurisdiction to entertain it, would have been rightly rejected as time-barred, and that nothing that plaintiffs could do after that date would have the effect of reviving a time-expired claim.

The appeal is dismissed with costs.

(1) (1875) 24 W.R., 26.