

## APPELLATE CIVIL.

*Before Sir V. Ramesam, Kt., Officiating Chief Justice, and  
Mr. Justice Cornish.*

1931,  
August 17.

MARI NAGANNA, MINOR, AND ANOTHER (DEPENDANTS 2 AND 3),  
APPELLANTS,

v.

PERURI KRISHNAMURTHI (PLAINTIFF), RESPONDENT.\*

*Indian Limitation Act (IX of 1908), ss. 4, 6 and 8—Ex-minor—Suit by—Three years period allowed by ss. 6 and 8 for, expiring on day when Court is closed—Suit filed by him on re-opening day—Not barred by virtue of sec. 4—Effect of that section.*

Where the three years allowed by sections 6 and 8 of the Indian Limitation Act to an ex-minor to institute a suit expire on a day when the Court is closed, a suit filed by him on the re-opening day is, by virtue of section 4 of that Act, in time.

Section 4 of the Limitation Act does not extend the period of limitation. But it enables the plaintiff, by excluding the time during which the Court is closed, to institute his suit on the re-opening day and so to have the benefit of the three years period which the Act gives him for that purpose.

APPEAL under clause 15 of the Letters Patent against the judgment of REILLY J., dated the 6th August 1928, in Second Appeal No. 824 of 1925 on the file of the High Court preferred against the decree of the Court of the Subordinate Judge of Cocanada in Appeal No. 142 of 1924 (Appeal Suit No. 45 of 1924, Additional Sub-Court, Cocanada) preferred against the decree of the Court of the District Munsif of Peddapur in Original Suit No. 141 of 1923.

*C. Rama Rao* for appellants.

*P. Somasundaram* for respondent.

## JUDGMENT.

RAMESAM Offg. C.J.—The facts out of which this letters patent appeal arises are as follows:—

The suit was filed on an unregistered bond dated 26th February 1915. The bond was taken in favour of a minor by his guardian. The minor attained majority on 12th May 1920 and computing three years provided under section 6 of the Limitation Act the suit ought to have been filed on or within the 12th May 1923. But on that date the District Munsif's Court of Peddapur was closed and so the suit was filed on the re-opening day, i.e., 4th June 1923. The Subordinate Judge held that the suit was in time and on second appeal our brother REILLY J. agreed with the Subordinate Judge's view. This letters patent appeal is filed against the judgment of REILLY J. The question is whether section 4 of the Limitation Act can be utilized after getting an extension by reason of the provisions of section 6 of the Limitation Act.

I may at once observe that there is no direct decision on the point. The learned Advocates have referred us to decisions with reference to section 4 and other sections which have a possible bearing. First we have got a decision in *Narasimha Deo Garu v. Krishnachendra Deo Garu*(1). In that case two brothers—members of a joint family—filed a suit to recover their share of a zamindari. It was found that the first plaintiff attained majority more than three years and two months prior to suit and that the suit was barred by reason of the two plaintiffs being members of a joint family on the application of section 7 of the Limitation Act. But apart from this ground, there was a further ground on which the learned Judges, ABDUR RAHIM and SPENCER J.J., held that the second plaintiff's claim was barred, viz., that

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(1) (1919) 37 M.L.J. 256; 10 L.W. 156.

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the period of two months which is the period of notice of suit given under section 49 of the Court of Wards Act cannot be deducted under section 15(2), while the plaintiffs had the benefit of the three years allowed under sections 6 and 8. That decision is distinguishable, for section 15 and sections 12 to 14 and 16 deal with computing periods of limitation and provide for the exclusion of certain periods in such computation. I also entertain some doubts about the correctness of the second ground of the decision. Nor has section 4 anything to do with computation of the period of limitation. After making all the necessary computations, if the period expires on a day when the Court is closed section 4 permits the suit to be filed on the re-opening day. The indulgence given by section 4 does not depend upon any computation. Therefore the decisions under the sections which deal with the computation of the period of limitation ought not to be used in connection with section 4.

Another case relied on is a decision in *Shevdas Daulatram v. Narayen*(1). The question there was whether section 4 of the Limitation Act can be utilized in cases where the party gets the benefit of section 31 and it was held that it could not be so utilized. But this decision has been dissented from in *Murugesu Mudali v. Ramasami Chettiar*(2) and *Somisetti Seshayya Chetty v. Rolla Subbadu*(3), where all the decisions are collected, and it appears that other High Courts also have dissented from it. We are inclined to agree with all these decisions in dissenting from the case in *Shevdas Daulatram v. Narayen*(1).

The next case referred to is a decision in *Subbarayan v. Natarajan*(4). In that case at page 795, after putting

(1) (1911) I.L.R. 38 Bom. 268.

(3) (1930) 32 L.W. 502.

(2) (1913) 26 M.L.J. 23.

(4) (1922) I.L.R. 45 Mad. 785.

the question " what is meant by a period of limitation ? ", I observed :

" In the first place it probably does not include mere periods of extension, such as the period of two years under section 31 of the Limitation Act [quoting here *Dayaram v. Laxman*(1)] and the period of three years referred to in section 8 of the Limitation Act "

[quoting the case in *Narasimha Deo Garu v. Krishnachendra Deo Garu*(2), as the only authority]. The decision in *Dayaram v. Laxman*(1) was followed in *Shevadas Daulatram v. Narayan*(3), which, as I have said, has been dissented from repeatedly.

The other decision is the same as that of *Narasimha Deo Garu v. Krishnachendra Deo Garu* (2), as to which I have already expressed my doubts.

The observation in *Subbarayan v. Natarajan*(4) must have been made by me because the decisions were there ; and, because it was not clear that I should agree with them, I used the word "probably". It seems to me that that judgment would stand better if that sentence is expunged. My final conclusion in that judgment was that a period of limitation need not be necessarily a period of limitation under the Limitation Act but it may be contained anywhere provided it is a strict period of limitation, and I held that the period in section 48 of the Code of Civil Procedure was not a period of limitation in the stricter sense. My reasons differed somewhat from those of my learned brother SPENCER J.

It will be convenient now to refer to the other cases which relate to the combined use of section 4 with the other sections of the Act. One is *Bai Hemkore v. Masamalli*(5). There it was held that section 4 of the Act

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(1) (1911) 13 Bom. L.R. 284. (2) (1919) 37 M.L.J. 256 ; 10 L.W. 156.

(3) (1911) I.L.R. 86 Bom. 268. (4) (1922) I.L.R. 45 Mad 785.

(5) (1902) I.L.R. 26 Bom. 732.

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cannot be utilized when its application precedes the benefit to be derived under section 19 of the Limitation Act.

In *Ummathu v. Pathumma*(1) a similar question arose whether the benefit of section 4 can be utilized when it precedes the application of section 14 of the Limitation Act and myself and SPENCER J. held that it could not be so utilized. At page 823 I referred to *Bai Hemkore v. Masamalli*(2), observing that it was held there "that section 4 cannot be tacked on prior to the period of extension given by section 19."

These two decisions do not help the appellants in the present case. Here the respondent wants to use section 4 as the last step for his suit. Having utilized all other exclusions in computation permitted by the Limitation Act, whatever they are, as the period of limitation expired on a day when the Court is closed, he wishes to file the suit on the re-opening day. Section 4 comes in as the last step to help the plaintiff. This was not the case in the two decisions just mentioned. In my opinion the phrase "the period of limitation prescribed for any suit, etc.," in section 4 is wide enough to include a period of time contained in the first Schedule of the Limitation Act but computed with the aid of one or more of the sections 12 to 16 of the Limitation Act or starting from the date of attaining majority under section 6 of the Act. In the present case the period of limitation is three years from 12th May 1920 when the plaintiff attained majority according to the first Schedule taken with section 6 of the Act. Such period expired on a day when the Court was closed and the suit could therefore be filed on the reopening day.

In my opinion the decision of REILLY J. is right and the appeal ought to be dismissed with costs.

(1) (1921) I.L.R. 44 Mad. 817.

(2) (1902) I.L.R. 26 Bom. 782.

CORNISH J.—The short question for decision appears to me to be whether there is anything in sections 6 and 8 of the Limitation Act to prevent a suitor who comes within those sections from having the benefit of section 4. In my opinion there is not. Section 4 provides an exception to the general rule laid down in section 3. Section 6 enables a person, who was a minor at the time from which the period of limitation is to be reckoned, to institute a suit within the same period after he attains majority as would otherwise have been allowed from the time prescribed therefor in the third column of the first Schedule. This concession is cut down by section 8 which says that

“nothing in section 6 shall be deemed to extend for more than three years from the cessation of the disability the period within which any suit must be instituted.”

The illustrations to section 8 make it quite clear that what is meant is that, when time has begun to run against a person during his minority, in no case is the period in which he can institute a suit to be extended for more than three years after the cessation of the disability. In other words, by the operation of sections 6 and 8 the prescribed period within which an ex-minor can institute a suit is limited to three years from the date when he reached majority. If the three years so prescribed expire on a day when the Court is closed, the position seems to me to be precisely within the terms of section 4. Section 4 does not extend the period of limitation beyond the prescribed period. But it enables the plaintiff, by excluding the time during which the Court is closed, to institute his suit on the re-opening day and so to have the benefit of the three years period which the Act gives him for that purpose.

I agree that the appeal should be dismissed with costs.

A.S.V.

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