

APPELLATE CIVIL.

*Before Mr. Justice Mockett.*1939,
December 8.

BODA SUBBA RAO (PLAINTIFF), PETITIONER,

v.

KANDREGULA NARASIAH (DEFENDANT),
RESPONDENT.*

Madras Village Courts Act (I of 1889), ss. 13 and 20—Suit cognizable by Village Court—Village Court open but the District Munsif's Court having jurisdiction closed for the long vacation—Suit filed on reopening day in District Munsif's Court—Suit out of time if filed in village Court but in time if it could be properly instituted in District Munsif's Court—Scope of sec. 20 (A) and sub-sec. (2)—Suit if barred—Indian Limitation Act (IX of 1908) sec. 4—Code of Civil Procedure (Act V of 1908), sec. 15—Effect of.

On 22nd June 1936 the plaintiff filed a suit in a District Munsif's Court for the recovery of the balance due on a promissory note for Rs. 20 which was a suit cognizable by the Village Court under section 13 of the Madras Village Courts Act. The promissory note had been renewed from time to time and the last renewal was dated 12th June 1933. The District Munsif's Court was closed for the long vacation from 9th May 1936 to 19th June 1936. 20th June 1936 was a penultimate Saturday and 21st was a Sunday. On behalf of the defendant it was contended that the Court of the Village Munsif was open during the vacation of the Court of the District Munsif and as such the promissory note became barred on 12th June 1936.

Held: The suit was not barred.

There was no compulsion on the plaintiff to go to a Village Munsif's Court. His right to go to a normal Court subject to normal procedure, i.e., the District Munsif's Court, was not taken away because a Court of a special nature, i.e., a Village Munsif's Court, happened to be open to him.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of the

* Civil Revision Petition No. 214 of 1937.

District Munsif of Ramachandrapur in Small Cause Suit
No. 162 of 1936.

SUBBA RAO
v.
NARASIAH.

N. Bapiraju for petitioner.

T. Bhujanga Rao for *M. S. Ramachandra Rao* for
respondent.

JUDGMENT.

MOCKETT J.—A short point is raised in this petition on which there is no authority whatever. The plaintiff-petitioner sued the defendant on the balance of a promissory note for Rs. 20. The promissory note is dated 5th July 1927, renewed by payment on 13th June 1930 and again on 12th June 1933 so that it would become barred on 12th June 1936. The District Munsif's Court of Ramachandrapur was closed for the long vacation from 9th May 1936 to 19th June 1936. The 20th was the penultimate Saturday and the 21st was a Sunday and so the petitioner filed his suit on 22nd June 1936. It is not contended that under ordinary circumstances the suit would not be within time; but the point was taken before the learned District Munsif that this was a suit which is cognizable by a Village Court under section 13 of the Madras Village Courts Act. That is so. It is therefore argued that this suit could have been filed in the Court of the Village Munsif which was open during the vacation of the Court of the District Munsif and that it became barred on 12th June 1936 and any period subsequent thereto is not available to the plaintiff. The District Munsif took the view that the plea of limitation on which the defendant relied before him was well-founded. He rested that finding on the fact that

MOCKETT J.

“normally the suit ought to have been filed in the Village Court and simply because the suit is barred by time the

SUBBA RAO
v.
NARASIAH.
MOORETT J.

plaintiff cannot take advantage of the concurrent jurisdiction of this Court to try suits which are primarily triable by Village Courts."

Before me reliance has been placed by both sides on section 20 (A) of the Madras Village Courts Act which states that if a suit which is triable by a Village Court is instituted in the Court of a District Munsif, he may, unless sufficient reasons exist to the contrary, transfer it to the Village Court. I may also refer to sub-section (2). It is argued that the spirit of the Act is that suits of this value should in the first place be tried under the Village Courts Act. There are of course two great differences between the two tribunals. The District Munsif's Court is regulated by the provisions of the Civil Procedure Code. The Court of the Village Munsif is not. The latter view seems to me to be the effect of the decision in *Augustus Brothers v. Fernandez*(1). If that is so, I think it is right not to apply section 15, Civil Procedure Code, to a suit of this sort. Section 15, Civil Procedure Code, says :

"Every suit shall be instituted in the Court of the lowest grade competent to try it."

And I think that must refer to Courts subject to the Code. The procedure of the Village Courts is very special and decidedly of a comprehensive character. I notice however that, although the provisions of the Indian Limitation Act will apply to suits under the Village Courts Act (section 20), there is no provision applying the Civil Procedure Code to such suits.

The point which I have to decide appears to have behind it no authority—that I have already indicated—and I must therefore decide the question as a matter of first impression after hearing the interesting arguments of the learned Counsel on either side. In the absence of

(1) (1915) 29 M.L.J. 474.

authority I do not consider that the period allowed by section 4 of the Limitation Act was intended to be cut down. I do not think that I ought to imply that a litigant should be deprived of his right to go to a normal Court subject to normal procedure because a Court of a very special nature, the Village Court, happened to be open to him. To take away the right given by the Limitation Act requires, I think, some more substantial basis than implication. *Prima facie*, the plaintiff is entitled to sue in the District Munsif's Court. There is no compulsion to go to the Village Munsif's Court. *Prima facie*, owing to the long vacation of the District Munsif's Court and the dates of the promissory note the plaintiff was entitled under section 4 of the Limitation Act to wait until the 22nd June before filing the suit. In the absence of authority I see no reason why that right should be curtailed.

The result is, in my view, this petition should be allowed with costs in this Court; but in the lower Court each side will bear its own costs. The matter will go back for decision by the District Munsif. It will be open to the defendant to raise any points other than the point that the plaintiff had agreed to give up his claim which has already been decided. The defendant indicates that he will rely upon the terms of the Madras Agriculturists Relief Act.

SUBHA RAO
v.
NARASIAH.
MOCKETT J.

G.R.
