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question, therefore, of the discharge or otherwise of the respondent's mortgage is not a question which could be determined in this suit. This is sufficient for the disposal of the appeal, and it is not necessary to decide whether or not, as a matter of fact, the amount of the respondent's mortgage has been fully satisfied. I concur in the order proposed by the learned Chief Justice.

Appeal dismissed.

FULL BENCH.

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Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Aikman.

MATHURA SINGH (PLAINTIFF) *v.* BHAWANI SINGH AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 *(Indian Limitation Act), section* 14—*Limitation—"other cause of a like nature" to defect of jurisdiction—Error in procedure.*

In cases in which section 14 of the Indian Limitation Act, 1877, is pleaded as protecting the plaintiff from the bar of limitation, if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff, that cause is of like nature to defect of jurisdiction within the meaning of section 14. It is not necessary that the cause which prevented the former Court from entertaining the suit should be a cause which was independent of and beyond the control of the plaintiff.

Hence where the inability of the Court to entertain the former suit arose from misjoinder of plaintiffs and causes of action, and there was on the plaintiff's part in the former suit no want of good faith or due diligence, the plaintiff was held entitled to the benefit of the time during which he was prosecuting the former suit, that is, from the time when the plaint in that suit was filed until the time when it was returned to the plaintiffs for amendment.—*Chunder Madhub Chuckerbutty* v. *Ram Koomar Chowdry* (1), *Brij Mohan Das* v. *Mannu Bibi* (2), *Deo Prosad Sing* v. *Pertab Kairee* (3), *Bishambhur Haldar* v. *Bonomali Haldar* (4), *Ram Subhag Das* v. *Gobind Prasad* (5), *Jema* v *Ahmad Ali Khan* (6), *Mullick Kefait Hossein* v. *Sheo Pershad Singh* (7), *Bai Jamna* v. *Bai Ichha* (8), *Narasimma* v. *Muttayan* (9), *Tirtha*

* First Appeal No. 166 of 1898, from a decree of Maulvi Syed Zain-ul-abdin, Subordinate Judge of Ghazipur, dated the 30th March 1898.

(1) (1866) B. L. R., Sup. Vol., 553; 6 W. R., C. R., 184.
(2) (1897) I. L. R., 19 All., 348.
(3) (1883) I. L. R., 10 Calc., 86.
(4) (1899) I. L. R., 26 Calc., 414.
(5) (1880) I. L. R., 2 All., 622.
(6) (1890) I. L. R., 12 All., 207.
(7) (1896) I. L. R., 23 Calc., 821.
(8) (1886) I. L. R., 10 Bom., 604.
(9) (1890) I. L. R., 13 Mad., 431.

Sami v. *Seshagiri Pai* (1), *Subbarau Naydu* v. *Yagana Pantulu* (2), *Venkiti Nayak* v. *Murugappa Chetty* (3), and *Assan* v. *Pathumma* (4) referred to.

THE suit out of which this appeal has arisen was originally brought by three plaintiffs, Tilakdhari, Mathura Singh and Chotu Singh, for contribution on the basis of a registered agreement, dated the 19th March, 1887. The suit was filed on the 14th March, 1893. On the 21st December, 1893, the suit was dismissed for misjoinder of parties and causes of action; but on appeal to the High Court the case was remanded to the Lower Court with directions to return the plaint for amendment. The Lower Court returned the plaint for amendment on the 19th of September, 1896. The suit was then continued by Tilakdhari, the names of the other plaintiffs being struck out. On the 23rd September, 1896, the other two plaintiffs, Mathura Singh and Chotu Singh, filed separate suits. Mathura Singh's suit was dismissed as barred by limitation, and he appealed to the High Court, urging that the whole period from the 14th March, 1893, to the 23rd, or, at least the 19th September, 1896, ought to be excluded in his favour from the computation of the period of limitation.

Munshi *Gobind Prasad*, for the appellant, drew attention to the alteration of the wording of the sections bearing upon this point in the various Limitation Acts which had been passed by the Indian Legislature. In Act No. XIV of 1859, section 14, the words were "from defect of jurisdiction or other cause shall have been unable to decide upon it." Section 15 of Act No. IX of 1871, read "from defect of jurisdiction or other cause of a like nature is unable to try it," while section 14 of the present Limitation Act (XV of 1877), reads "is unable to entertain it." From these changes it is to be inferred that the Legislature intended to give a plaintiff relief where some cause, such as defect of jurisdiction, prevented the court *in limine* from considering the case on its merits.

Where there was no want of good faith on the part of a plaintiff and it was not shown that he had not been prosecuting his suit with due diligence, the authorities showed that the cause of a like nature to defect of jurisdiction need not necessarily be a cause

(1) (1893) I. L. R., 17 Mad., 290.
(2) (1895) I. L. R., 19 Mad., 90.
(3) (1896) I. L. R., 20 Mad., 48.
(4) (1897) I. L. R., 22 Mad., 494.

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wholly independent of the plaintiff. The following authorities were cited:—*Chunder Madhub Chuckerbutty* v. *Ram Koomar Chowdry* (1), *Ram Subhag Das* v. *Gobind Prasad* (2), *Deo Prosad Sing* v. *Pertab Kairee* (3), *Jema* v. *Ahmad Ali Khan* (4), *Narasimma* v. *Muttayan* (5), *Tirtha Sami* v. *Seshagiri Pai* (6), *Putali Mehiti* v. *Tulja* (7), *Bai Jamna* v. *Bai Ichha* (8), *Subbarau Nayudu* v. *Yagana Pantulu* (9), *Venkiti Nayak* v. *Muragappa Chetti* (10), *Assan* v. *Pathumma* (11), *Mullick Kefait Hossein* v. *Sheo Pershad Singh* (12), *Bishambhur Haldar* v. *Bonomali Haldar* (13), *Brij Mohan Das* v. *Mannu Bibi* (14) and *Salima Bibi* v. *Sheikh Muhammad* (15).

Mr. *S. Sinha*, for the respondents, argued that the plaintiff in the present case had not been acting with due diligence or in good faith. As showing the absence of good faith he referred to the fact that the plaintiff, at a very early stage in the proceedings, had notice that the plea of misjoinder had been raised; and also that he need not have waited until the plaint was returned. The suit was not prosecuted with due diligence. In addition to the rulings which had been referred to on behalf of the appellants, counsel for the respondents also referred to *Luchmun Pershad* v. *Nunhoo Pershad* (16), *Rajendro Kishore Singh* v. *Bulaky Mahton* (17) and *Krishnaji Lakshman* v. *Vithal Ravji Renge* (18).

STRACHEY, C. J.—The only question in this case which has been referred to the Full Bench is whether the suit is barred by limitation, or whether it is protected from being barred by the provisions of section 14 of the Indian Limitation Act, 1877. The suit was a suit for contribution based on a registered agreement executed on the 19th March 1887. The plaintiff sues, alleging that he and the defendants were liable under a decree held by the Maharaja of Dumraon, that certain zamindari property

(1) (1866) B. L. R., Sup. Vol., 553: 6 W. R., C. R., 184.
(2) (1880) I. L. R., 2 All., 622.
(3) (1883) I. L. R., 10 Calc., 86.
(4) (1890) I. L. R., 12 All., 207.
(5) (1890) I. L. R., 13 Mad., 431.
(6) (1893) I. L. R., 17 Mad., 299.
(7) (1879) I. L. R., 3 Bom., 223.
(8) (1886) I. L. R., 10 Bom., 604.
(9) (1895) I. L. R., 19 Mad., 90.
(10) (1896) I. L. R., 20 Mad., 48.
(11) (1897) I. L. R., 22 Mad., 494.
(12) (1896) I. L. R., 23 Calc., 821.
(13) (1899) I. L. R., 26 Calc., 414.
(14) (1897) I. L. R., 18 All., 348.
(15) (1895) I. L. R., 18 All., 131.
(16) (1872) 17 W. R., C. R., 266.
(17) (1881) I. L. R., 7 Calc., 367.
(18) (1887) I. L. R., 12 Bom., 625.

of his was sold in excess of his liability under the decree, and that under the agreement he is entitled to recover that excess from the other executants, that is, the defendants. The suit was instituted on the 23rd September 1896. It is admittedly barred by limitation unless the plaintiff is entitled to exclude the time during which he was prosecuting a former suit. The Court below has held that he is not entitled to exclude that time, and has therefore dismissed the suit. From that decision the plaintiff has appealed to this Court, and he relies on the first paragraph of section 14, which is as follows:—"In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which from defect of jurisdiction, or other cause of a like nature, is unable to entertain it." The plaintiff seeks to exclude from the period of limitation the time occupied by a suit which he brought together with two other plaintiffs. That suit was brought on the 14th March 1893. It was a suit founded on the same agreement, for the same relief, and against the same defendants, as the present suit. Each of the plaintiffs claimed contribution as here, alleging that his property had been sold to an extent in excess of his liability under the Maharaja's decree. That suit was dismissed by the Court of first instance on the ground of misjoinder of plaintiffs and causes of action. On appeal by the plaintiffs this Court, on the 2nd June 1896, held that the first Court was right as regards misjoinder, as the plaintiffs were in all respects separate: their respective properties which had been sold in execution were separately held, and had been separately sold; and under the agreement the sales gave to each a separate cause of action. But this Court held that the first Court, instead of dismissing the suit, ought, under section 53 of the Code of Civil Procedure, to have returned the plaint for amendment by striking out the names of all the plaintiffs except one, who should be allowed to continue the suit alone. Accordingly this Court remanded the case under section 562 with a direction to the first Court to return the plaint for amendment in

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the manner stated. The case was therefore returned to the first Court, and on the 14th September 1896, the plaintiffs applied to that Court to make certain amendments in the plaint, or in the alternative to return the plaint, as directed by the High Court, for amendment in the manner which the High Court had suggested. On the 19th September 1896 the Court ordered that the plaint should be returned for amendment within five days, and thereupon the names of the present plaintiff and one of his co-plaintiffs were struck out from the plaint, and that suit was continued by the plaintiff Tilakdhari, alone. On the 23rd September 1896 the present suit was filed. If section 14 of the Limitation Act is applicable, I think that the plaintiff must be held to have been prosecuting the former suit within the meaning of that section from the date of its institution, the 14th March 1893, until the 19th September 1896, when the Court returned the plaint for amendment, and enabled him to be struck out of that suit, and so to file the present. In that view, if the section is applicable, this suit would be within time by one day. The question is whether section 14 applies. Up to a certain point I think that there is no difficulty. I think that there is no reason to doubt that the plaintiff prosecuted the former suit with due diligence and in good faith. It has been attempted to show want of due diligence and good faith, but the attempt has, I think failed, and I need say no more as to that. In the next place, I think that the present suit is undoubtedly founded, so far as the present plaintiff is concerned, on the same cause of action as the former suit. In the third place, I think that by reason of the misjoinder in the former suit the Court was "unable to entertain" that suit, by which I mean was unable to consider the questions involved in that suit. It was unable to entertain it by reason of sections 26, 31 and 45 of the Code of Civil Procedure, which show that plaintiffs cannot join in respect of distinct causes of action against the same defendants. In such a case either the plaint must be rejected, if not amended so as to remove the defect (and here from the nature of the case no amendment could have remedied the defect, so as to make that suit maintainable by all the then plaintiffs), or else the suit must be dismissed. In any event the Court could not have dealt with that suit upon the merits. In the fourth place, it

cannot be said that the Court was unable to entertain the former suit from defect of jurisdiction. But the question is—was the Court unable to entertain the suit from "other cause of a like nature" to defect of jurisdiction? Before dealing with these words it is necessary to bear in mind the essential object of section 14 and the principle which underlies it. The principle is, broadly speaking, the protection against the bar of limitation of a man honestly doing his best to get his case tried on the merits, but failing through the Court being unable to give him such a trial. That is the principle; and I think it is clearly applicable, not only to cases in which a man brings his suit in the wrong Court, that is, a Court having no jurisdiction to entertain it, but also where he brings his suit in the right Court, but is nevertheless prevented from getting a trial on the merits by something, which, though not a defect of jurisdiction, is analogous to that defect. Now the corresponding words in section 14 of the Limitation Act of 1859 were "or other cause." In section 15 of the Limitation Act of 1871 the words were first introduced in their present form "or other cause of a like nature." I think it is quite clear that in making this change the Legislature was adopting the view of the majority of the Full Bench of the Calcutta High Court in *Chunder Madhub Chuckerbutty* v. *Ram Coomar Chowdry* (1). The majority of the Court held that the words "other cause" in the Act of 1859 must be construed as meaning "other cause of a like nature." Their judgments give instances of what, in their opinion, would not be causes of like nature to defect of jurisdiction. For example, in the case before them they held that those words would not apply where the plaintiff had been non-suited on account of his neglect to state in his plaint the boundaries of the land which he claimed. Other instances which they gave were the failure of a plaintiff to appear or to produce his witnesses on the day fixed for the hearing, and his failure in a suit for damages for a wrongful act to specify the act of which he complained. Sir Barnes Peacock and Mr. Justice Trevor held in effect that "other cause of a like nature" meant a cause not including any neglect on the part of the plaintiff either in stating his case or in other respects. Again, they say that it means a cause "not

(1) (1866) B. L. R., Sup. Vol., 553; 6 W. R., C. R., 184.

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connected with the plaintiff's own negligence." It is important to see why they adopt that meaning. Their reason is, that in the case of any cause which included any neglect on the plaintiff's part, he could not be said to have prosecuted the suit *bonâ fide* and with due diligence as required by the earlier words of the section. They do not, that is, enter into an inquiry as to what causes are of a like nature to defect of jurisdiction in the abstract and apart from section 14—an inquiry which would be difficult and perhaps impossible, and which would probably involve the laying down of propositions of dangerous generality. They seek for a test of likeness to defects of jurisdiction within the four corners of the section itself, supplied by its own words, and having reference to its requirements. Mr. Justice Jackson, who agreed with Sir Barnes Peacock and Mr. Justice Trevor, used less guarded language. He said:—"It appears to me that the inability of the Court must be either from unavoidable circumstances over which no one has any control, or something incidental to the Court itself and quite unconnected with the acts of the parties." I think that an earlier passage in the same judgment shows that this is too sweeping. As Mr. Justice Jackson himself points out, a plaintiff's going to the wrong Court can hardly be described as an unavoidable cause over which no one has any control, or as quite unconnected with the acts of the parties. Still earlier in his judgment he says that it must be shown that the Court was unable to decide the case "from some cause quite unconnected with the default or negligence of the plaintiff." Now although he there adds the word "default" to the "negligence" spoken of by Sir Barnes Peacock, he goes on to give the same reason as the Chief Justice. He says:—"To hold otherwise would be inconsistent with the use of the words *bonâ fide* and with due diligence." I think therefore that by the word "default" also he must have meant some act of the plaintiff inconsistent with *bonâ fides* or with due diligence. The result may, I think, be stated as follows:—First, if the Court's inability to entertain the suit results from any cause connected with any want of good faith or due diligence on the plaintiff's part, that cause is not of a like nature to defect of jurisdiction. Secondly, if the Court's inability to entertain the suit results from a cause quite unconnected with any

want of good faith or due diligence on the plaintiff's part, that cause is of a like nature to defect of jurisdiction. There is a third proposition which, I think, is established by later cases, namely, that, given good faith and due diligence, a cause is not prevented from being of like nature to defect of jurisdiction merely because it was in the plaintiff's own power to avoid, or resulted from his own act or from a *bonâ fide* mistake of law or procedure. I think that is the result of the decision of the Full Bench in *Brij Mohan Das* v. *Mannu Bibi* (1), and of the Calcutta High Court *Deo Prosad Singh* v. *Pertab Kairee* (2), and the observations of the Division Bench in *Bishambhur Haldar* v. *Bonomali Haldar* (3). As pointed out in the first of the Calcutta cases just mentioned, the test cannot be whether the cause was one within the plaintiff's own power to avoid, because it is equally in the plaintiff's own power to avoid suing in a Court which for defect of jurisdiction is unable to entertain the suit. Two decisions of this Court have been discussed in the argument. The first is the case of *Ram Subhag Das* v. *Gobind Prasad* (4). There the former suit had failed by reason of misjoinder of plaintiffs and causes of action. In the second suit this Court held that the defect in the former suit was not a cause of like nature to defect of jurisdiction, apparently because it was "a defect for which the plaintiff must be held responsible." If that means a defect which the plaintiff could have avoided, I think that this proposition is too wide for the reasons given in the passage to which I have just referred in the judgment in *Deo Prosad Sing* v. *Pertab Kairee*. Not a word is said as to whether the plaintiff in the former suit acted without good faith or due diligence. The next case in this Court, *Jema* v. *Ahmad Ali Khan* (5), is, I think, clearly distinguishable. There the former suit was dismissed on the ground that the debt sued for was due, not to the plaintiff alone, but to the plaintiff and a partner who had not joined in the suit. The judgment expressly says "it was not merely a case of procedure; it was a case of a plaintiff coming into Court and failing to prove a cause of action in himself against the defendant, and

(1) (1897) I. L. R., 19 All., 348.
(2) (1883) I. L. R., 10 Calc., 86.
(3) (1899) I. L. R., 26 Calc., 414, at pp. 416, 417.
(4) (1880) I. L. R., 2 All., 622.
(5) (1890) I. L. R., 12 All., 207.

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thus failing to establish the defendant's liability to him, the plaintiff in the suit." Clearly the failure of the plaintiff to prove his cause of action and to establish the defendant's liability does not, in the first place, make the Court "unable to entertain the suit," because the suit is entertained and dismissed; and in the second place, is in no sense analogous to defect of jurisdiction in the Court. The dissent which the judgment in that case expresses from the decision in *Deo Prosad Sing* v. *Pertab Kairee* and its approval of the decision in *Ram Subhag Das* v. *Gobind Prasad* must, I think, be regarded as *obiter*. I shall only refer briefly to the principal cases decided by the other High Courts which were cited to us. I agree with the decision in *Deo Prosad Sing* v. *Pertab Kairee* (1), which was a case of misjoinder of causes of action. In the case of *Mullick Kefait Hossein* v. *Sheo Pershad Singh* (2), the abortive suit was instituted on distinct causes of action against different sets of defendants severally, and it was held that the inability of the Court to entertain that suit was due to a cause of like nature to defect of jurisdiction. It is curious that the judgment does not in any way consider whether the former suit was prosecuted in good faith and with due diligence, but it may be assumed that the Court found on those questions in the plaintiff's favour. The only Bombay case that seems to be in point is *Bai Jamna* v. *Bai Ichha* (3), where it was held that, assuming the Court to have been within the meaning of section 14 unable to entertain the former suit, the cause was not of a like nature to defect of jurisdiction, as it was the plaintiff's own laches in not producing a registered certificate. That is substantially to the same effect as the view of Sir Barnes Peacock and Mr. Justice Trevor in the early Full Bench case in the Calcutta High Court. The view taken of the section by the Madras High Court appears to have fluctuated. In *Narasimma* v. *Muttayan* (4), the Court agreed with the decision in *Deo Prosad Sing* v. *Pertab Kairee*, but gave no reasons. In *Tirtha Sami* v. *Seshagiri Pai* (5), the Court disagreed with *Deo Prosad Sing* v. *Pertab Kairee*, but gave no reasons. In *Subbarau Nayudu* v. *Yagana Pantulu* (6), the former suit had failed by reason of the plaintiff having

(1) (1883) I. L. R., 10 Calc., 86.
(2) (1896) I. L. R., 23 Calc., 821.
(3) (1886) I. L. R., 10 Bom., 604.
(4) (1890) I. L. R., 13 Mad., 451.
(5) (1893) I. L. R., 17 Mad., 239.
(6) (1895) I. L. R., 19 Mad., 90.

acted in accordance with a rule made by the High Court which, by the time the suit came to be decided, was discovered to be *ultra vires*. In the subsequent suit it was held that the plaintiff was entitled to the benefit of the section because there had been no default, negligence or want of *bond fides* on his part, and the judgment of Mr. Justice Jackson in the early Calcutta Full Bench case was relied on. In *Venkiti Nayak* v. *Murugappa Chetti* (1), the Full Bench made what appears to me to be a rather startling extension of the principle laid down in the preceding case. They applied it to a case where the former suit had been dismissed because the plaintiff had joined certain matters without the leave required by section 44 of the Code. They do not consider how it came about that the plaintiff did not obtain, and apparently did not even apply for, the leave which the Court was perfectly competent to have given under section 44. They do not inquire whether in that respect or otherwise in the former suit the plaintiff had acted with good faith or due diligence. That case seems to me to have given section 14 of the Limitation Act a dangerously wide extension. The last Madras case is *Assan* v. *Pathumma* (2), a case, like the present, of misjoinder of plaintiffs and causes of action. The Court followed the previous Full Bench decision, as to which the judgment forcibly observes:—"When the provision thus applies to a proceeding which becomes abortive owing to an unauthorized joinder of matters, the joinder whereof the Court on application of the parties could have authorized, how can it consistently be held that the provision does not apply to a proceeding which fails on account of a misjoinder that the Court could not sanction and which is prohibited by the law absolutely?" Elsewhere in their judgment, no doubt, the Court held that good faith and due diligence on the plaintiff's part were proved.

I think that the result of the authorities taken as a whole, and the view which I take of the true principle, may be fairly summarized by saying that if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff, that cause is of like nature to defect of jurisdiction within

(1) (1896) I. L. R., 20 Mad., 48. (2) (1897) I. L. R., 22 Mad., 494.

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the meaning of section 14 of the Act. I think that this view of the words "other cause of a like nature" corresponds most closely with the object of the Legislature in enacting the section as stated by me in the earlier part of this judgment. Now, applying this principle to the present case, the inability of the Court to entertain the former suit arose from misjoinder of plaintiffs and causes of action. There was on the plaintiff's part in that former suit no want of good faith or due diligence. That being so, it is immaterial that the plaintiff in framing that suit made a *bonâ fide* mistake of procedure. I think that in the present suit he is entitled under section 14 to the exclusion of the whole of the period from the 14th March 1893 to the 19th September 1896, that consequently the present suit was within time, and that the Court below was wrong in dismissing it as barred by limitation. That is the answer I would give to this reference to the Full Bench.

BANERJI, J.—My answer to the reference is the same as that of the learned Chief Justice. The question which we have to determine is whether the period of the pendency of the former suit should, under section 14 of the Limitation Act, be excluded in computing the period of limitation for the present suit. If that section applies, it is beyond question that the whole period from the commencement of the first suit to its termination including the period which intervened between the date of decision by the first Court and that of the institution of an appeal to this Court, should be excluded. The ruling of the Full Bench in *Ajoodhya Pershad* v. *Bisheshur Sahai* (1), is conclusive on this point. Now does section 14 apply to this case? Two essential conditions for the application of that section are that the first suit has been prosecuted with due diligence and that it has been prosecuted in good faith. Where negligence, or inaction, or bad faith is established against the plaintiff, he cannot avail himself of the benefit of the section. The mere fact of diligence and good faith on the part of the plaintiff being proved will not, however, make the section applicable unless the further condition is fulfilled that the Court in which the first suit was prosecuted was unable to entertain it by reason of defect of jurisdiction or other cause of a like nature. However diligent the plaintiff

(1) N.-W. P., H. C. Rep., 1874, p. 141.

may have been, and whatever may have been the amount of good faith with which he prosecuted the first suit, the cause which led to the failure of the first suit must have been a cause of the nature mentioned above and must have prevented the Court from entertaining the suit, that is, as the learned Chief Justice has remarked, from considering the questions involved in the suit. A cause like the absence of a right of action in the plaintiff will not make section 14 applicable. That was the cause in *Jema* v. *Ahmad Ali Khan* (1). The ruling in that case therefore is not an authority against the appellant, though it must be admitted that there are expressions of opinion in the judgment in that case which are undoubtedly against him. In the present case no question of want of jurisdiction arises. The reason which prevented the Court from entertaining the first suit *qua* the present plaintiff was a misjoinder of plaintiffs and causes of action. Is such a misjoinder a cause of a like nature to defect of jurisdiction within the meaning of section 14? This question was answered in the negative in the ruling of this Court in *Ram Subhag Das* v. *Gobind Prasad* (2), and that case is a direct authority against the plaintiff-appellant. The Calcutta Court, however, has held the contrary view in *Deo Prosad Sing* v. *Pertab Kairee* (3), and in *Mullick Kefait Hossein* v. *Sheo Pershad Singh* (4), and so has the Madras High Court in the recent case of *Assan* v. *Pathumma* (5). That case is on all fours with the present case. The rulings of the Madras High Court are, as pointed out by the learned Chief Justice, not consistent; but the tendency of that Court in recent cases has been in favour of the view taken in the case last mentioned. I agree with the rulings mentioned above, and am unable to concur with the view taken by this Court in *Ram Subhag Das* v. *Gobind Prasad*. The reason assigned by the learned Judges who decided that case for holding a misjoinder of causes of action not to be a cause of a similar nature to defect of jurisdiction is that it is a defect for which the plaintiff must be held responsible. But, as pointed out in *Deo Prosad Sing* v. *Pertab Kairee*, the plaintiff is equally responsible for filing a suit in the

(1) (1890) I. L. R., 12 All., 207.
(2) (1880) I. L. R., 2 All., 622.
(3) (1883) I. L. R., 10 Calc., 86.
(4) (1896) I. L. R., 23 Calc., 821.
(5) (1897) I. L. R., 22 Mad., 494.

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wrong Court. The test therefore which was applied by this Court in the case of *Ram Subhag Das* v. *Gobind Prasad* is not the true test. It seems to me that section 14 applies where the plaintiff has acted in good faith and with due diligence, but where he has made some *bonâ fide* mistake of law, procedure or fact, which has precluded the Court from considering the issues involved in the case, either by reason of absence of jurisdiction, or by reason of rules of procedure prescribed in the Code of Civil Procedure, or some other cause of a similar nature; the inability, however, of the Court to consider the case must not be due to wilful neglect or default on the part of the plaintiff. I do not think it is easy to lay down a hard-and-fast rule or to enumerate all the causes which should be regarded as of a like nature to absence of jurisdiction, but I am clearly of opinion that a cause like the one which precluded the Court from hearing the former suit of the plaintiff is a cause which comes within the purview of section 14 of the Indian Limitation Act.

The learned counsel for the respondents attempted to establish that in the present instance the plaintiff did not act with due diligence or in good faith. As showing the absence of good faith he referred to the fact that in the suit which the plaintiff jointly with Tilakdhari Singh and Chhotu Singh brought in the Shahabad Court a plea of misjoinder was raised. But it appears from the judgment in that case that the defendant's plea was to the effect that there was a non-joinder of plaintiffs, and that the Court was of opinion that there was a mi-joinder of defendants. It cannot therefore be said that when the former suit was instituted in the Court below, the plaintiffs in that suit were not acting in good faith when they jointly filed their plaint. There was clearly no want of diligence on the part of the plaintiff, inasmuch as he was not in a position to bring a new suit until the plaint in the former suit was returned to the plaintiffs for amendment. For the above reasons I hold that the plaintiff's claim is not barred by limitation.

AIKMAN, J.—I also am of opinion that on the facts as set forth by the learned Chief Justice the plaintiff in this case is entitled to the benefit of section 14 of the Indian Limitation Act, 1877, and that his suit is not beyond time.

It is clear that the Legislature did not intend to limit the privilege given by that section to cases in which the civil proceeding has been instituted in a wrong Court. Had this been its intention, the words "or other cause of a like nature" would not have been found in the section. To what cases do the words just quoted refer? The question is not free from difficulty, but after careful consideration I am of opinion that the intention of the Legislature was that, given good faith and due diligence on the part of the plaintiff, he was not to suffer from any *bonâ fide* mistake in procedure which would have the same effect as if he had gone to the wrong Court, that is, which would have had the effect of preventing the Court *in limine* from approaching the consideration of the case on its merits. I think the Legislature endeavoured to make this intention clear by the alteration which it made when enacting Act No. XV of 1877. In the concluding words of the first paragraph of the section in the preceding Act, No. IX of 1871, the words were "a Court which is unable to try it." In the present Act for the word "try" the Legislature has substituted the word "entertain." As has been pointed out in the case of *Deo Prosad Sing* v. *Pertab Kairee* (1), the responsibility of the plaintiff for the mistake which led to the earlier suit being thrown out is no true criterion as to whether section 14 is applicable. It is unnecessary for me to refer to the cases which have been cited in the judgment of the learned Chief Justice and my brother Banerji. I concur in the answer proposed to be given to the reference.

On the appeal going back to the Bench which made the reference the following order was passed:—

STRACHEY, C. J., and BANERJI, J.—The result of the judgment of the Full Bench is that the decree of the Court below dismissing the suit as barred by limitation must be set aside and the case remanded to that Court for disposal on the merits under section 562 of the Code. In dealing with the agreement of the 19th March 1887, the Court will have regard to our judgment in First Appeal No. 165 of 1898, which was delivered on the 20th of February last. The appellant will have his costs of this appeal.

Appeal decreed and cause remanded.

(1) (1883) I. L. R., 10 Calc., 86.