

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

BASVANAPPA *bin* SHIVRUDRAPPA (ORIGINAL DEFENDANT), APPELLANT
v. KRISHNADAS GOVARDHANDAS MADIWALE (ORIGINAL PLAINTIFF), RESPONDENT².

1920.

July 16.

Indian Limitation Act (IX of 1908), section 14—Plaint—Return of plaintiff—Proceedings do not end until the party gets back his plaintiff—Suit filed on the opening date after vacation—Presentation of plaintiff into another Court—Exclusion of time—Calculation should be made as if the second Court had been closed for vacation.

When a party is ordered to take back his plaintiff and present it in the proper Court, the proceedings do not end until the party gets back his plaintiff within the meaning of Explanation I to section 14 of the Limitation Act, 1908.

The plaintiff sued to recover a sum due on account of dealings with the defendant between 20th May 1913 and 3rd June 1913. The suit was filed in the Hubli Court on the 7th June 1916, the date the Court re-opened after the vacation and was then in time. On defendant's pleading that he was an agriculturist, the plaintiff was ordered on the 15th January 1917 to be returned for presentation to the proper Court. The plaintiff took away the plaintiff on the 25th January 1917 and presented it on the same day in the Haveri Court. It was contended that even if the period from 7th June 1916 to 25th January 1917 was excluded, the suit filed in the Haveri Court would still be four days out of time as the period which was allowed to be excluded owing to the Hubli Court being closed for the vacation when the plaintiff was filed in that Court could no longer be taken advantage of, after the order had been made to take back the plaintiff and file it in another Court,

Held, that the suit in the Haveri Court was in time as the plaintiff was entitled to take advantage of those days during which the Hubli Court was closed for the vacation, and the calculation should be made in the same way as if the second Court had been closed for the vacation.

Mira Mohidin Rowther v. Nallaperumal Pillai⁽¹⁾, not followed.

SECOND appeal against the decision of E. Clements, District Judge of Dharwar, modifying the decree passed by B. S. Kembhavi, Subordinate Judge at Haveri.

Suit to recover money.

² Second Appeal No. 858 of 1919.

⁽¹⁾ (1911) 36 Mad. 131.

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The plaintiff sued to recover a sum of Rs. 866-3-3 alleged to be due on account of cotton dealings with the defendant between 20th May 1913 and 3rd June 1913.

The suit was originally filed in Hubli Court on the 7th June 1916, the date on which the Court re-opened after the vacation.

The defendant then pleaded that he was agriculturist. This plea was upheld and the Hubli Court directed by its order dated the 15th January 1917, that the plaint be returned for presentation to the proper Court. The Subordinate Judge returned the plaint on the 25th January 1917 with an endorsement that it was returned that day. On the same date, the plaintiff presented the plaint into Haveri Court.

The defendant contended, *inter alia*, that the suit was barred by limitation.

The Subordinate Judge held that the suit was barred by limitation because the plaintiff was not vigilant in taking back his plaint and therefore he was not entitled to have the time between 15th January to 25th January excluded. The suit was accordingly dismissed.

On appeal, the District Judge held that the plaintiff was not responsible for the delay in taking away the plaint; that the suit was in time when it was entered in the Hubli Court and therefore it was in time when it was presented in the Haveri Court on the 25th January 1917. He, therefore, reversed the decree and allowed a part of the plaintiff's claim.

The defendant appealed to the High Court.

Nilkant Atmaram, for the appellant.

S. Y. Abhyankar, for the respondent.

MACLEOD, C. J.:—The plaintiff filed this suit to recover a sum of Rs. 866-3-3 alleged to be due on

account of cotton dealings with the defendant between 20th May 1913 and 3rd June 1913. The suit was filed in the Hubli Court on the 7th June 1916, and admittedly was then within time because the Court opened after the vacation on the 7th June. The defendant then pleaded that he was an agriculturist with the result that the suit had to be filed in another Court, and the plaint was ordered on the 15th January 1917 to be returned for presentation to the proper Court. The plaintiff actually took away his plaint on the 25th January and presented it on the same day in the Haveri Court. Clearly section 14 of the Indian Limitation Act applies and the time taken up in the former application from the date on which it was instituted till the date on which the proceedings therein ended, had to be excluded. It was first argued that the proceedings ended on the 15th January instead of 25th January when the plaint was returned. Clearly when a party is ordered to take back his plaint and present it in the proper Court, the proceedings do not end until the party gets back his plaint. But then it is urged, that if we exclude the period from 7th June 1916 to 25th January 1917 and consider whether the suit filed in the Haveri Court was within time, the suit in the Haveri Court will still be four days out of time, the argument being that the period which was allowed to be excluded owing to the Hubli Court being closed for the vacation when the plaint was filed in that Court could no longer be taken advantage of, after the order had been made to take back the plaint and file it in another Court. Reliance was placed on the case *Mira Mohidin Rowther v. Nallaperumal Pillai*⁽¹⁾. With all due respect it seems to me that the result, if that case were followed, would be most inequitable. Bearing in mind that the suit when filed

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in the first Court was in time, and that the time which was taken up by the proceedings in that Court can be excluded, it would be a most extraordinary result that when the suit was filed in the proper Court, it should be held to be time-barred. Clearly the plaintiff is entitled to take advantage of those days during which the first Court was closed for the vacation, and the calculation should be made in the same way as if the second Court had been closed for the vacation. In my opinion, therefore, the decision of the lower appellate Court was perfectly correct, and the appeal must be dismissed with costs.

FAWCETT, J. :—I agree.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

July 16.

BAPU TATYA DESAI, MINOR, BY HIS GUARDIAN RAU TATYA DESAI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. BALA RAVJI DESAI (ORIGINAL DEFENDANT), RESPONDENT^a.

Indian Limitation Act (IX of 1908,) section 7—Suit by brothers—Joint Hindu family—Eldest brother competent to give a valid discharge as manager of the family—Suit, by minor brothers barred.

In 1915, three brothers, members of a joint Hindu family, sued to recover possession of property after setting aside a sale deed passed by their mother during their minority on the 28th July 1905. Plaintiffs Nos. 1 and 2 were minors and plaintiff No. 3 was more than twenty-one years of age at the date of the suit. The suit was held barred as against plaintiff No. 3, but a question having arisen whether it was barred as against plaintiffs Nos. 1 and 2 under section 7 of the Indian Limitation Act, 1908,

Held, that it was barred as against plaintiffs Nos. 1 and 2 also, inasmuch as plaintiff No. 3 on his attaining majority became the manager of the joint family and as such could give a valid discharge and acquittance of all claims against the defendants without the concurrence of the minor plaintiffs.

^aSecond Appeal No. 649 of 1919.