

underneath each building and not on the whole Survey Numbers. It seems to us, therefore, on these grounds, the appeal should be dismissed with costs.

*Decree confirmed.*

J. G. R.

1921.

SHOLAPUR  
MUNICIPALITY  
v.  
SHANKAR  
SHESHBHAT

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

NAGINDAS KAPURCHAND (ORIGINAL PLAINTIFF), APPLICANT v. MAGANLAL PUNACHAND (ORIGINAL DEFENDANT), OPPONENT<sup>c</sup>.

1921.

July 5.

*Indian Limitation Act (IX of 1908), section 14—Exclusion of time—Suit brought in a Court without jurisdiction—Order of return of plaint for presentation to the proper Court—Actual return of plaint some days later—Time from the date of the order to the date of return should be excluded.*

The plaintiff filed a suit in a Court without jurisdiction. The Court, on the 24th June 1920, ordered the plaint to be returned for presentation to the proper Court; but the plaint was not actually returned till the 29th June 1920. The plaint was presented to the proper Court the same day; but the Court declined to deduct the five days from the 24th to 29th June 1920 from the period of limitation, and held a greater part of the claim to be time-barred. The plaintiff having applied to the High Court:—

*Held*, that the lower Court was wrong in disallowing the five days which elapsed between the 24th and 29th June.

THIS was an application under the Extraordinary Jurisdiction of the High Court, from a decree passed by P. M. Bhatt, First Class Subordinate Judge at Broach.

The plaintiff filed a suit in the Small Cause Court at Surat to recover Rs. 214-11-6 from the defendant.

The Surat Court was of opinion that it had no jurisdiction to try the suit; and ordered, on the 24th June 1920, the plaint to be presented to the proper Court, viz., Small Cause Court at Broach. The plaint was not returned that day, but was detained in Court for the purpose of being copied, and was not actually

<sup>c</sup> Civil Extraordinary Application No. 67 of 1921.

1921.

NAGINDAS  
KAPURCHAND  
v.  
MAGANLAL  
PUNACHAND.

returned till the 29th June 1920, on which day it was presented to the Broach Court.

In the Broach Court, the plaintiff proved his whole claim ; but the trial Judge declined to deduct the five days from the 24th to 29th June from the period of limitation, and held the whole of his claim, with the exception of items of Rs. 0-12-6, barred by limitation.

The plaintiff applied to the High Court.

*D. R. Manerikar* for *S. S. Patkar*, Government Pleader, for the applicant.

No appearance for the opponent.

MACLEOD, C. J. :—We think the Judge was wrong in disallowing the five days which elapsed between the 24th June and 29th June, on which latter date the plaintiff got back his plaint from the first Court. We see no reference in the judgment to the affidavit of the plaintiff that he had asked for the plaint on the 24th June, that he was told that a copy was to be made, and that the plaint would be returned after the copy was made. But in any circumstances a party cannot always get back his plaint on the same day as an order is made that the plaint has been filed in the wrong Court ; and as long as the plaintiff has exercised ordinary diligence in pursuing his claim, there is no reason why the period up to the day when he gets back his plaint should not be taken into account. Therefore, in this case, the Rule will be made absolute by directing the lower Court to allow the plaintiff the five days which elapsed between 24th June and 29th June in getting back the plaint and pass the necessary decree.

Costs costs in the suit.

*Rule made absolute.*

R. R.