

Appellate Jurisdiction. (a)

Referred Case No. 34 of 1870.

CHEIGU NANGIAH GAURI NANGIAH

against

PIDATALA VENCATUPPAH.

The plaintiff's suit was barred by the Limitation Act on the 11th May 1870. His plaint was presented in the Court of the District Munsif's Court of Cuddapah on the 21st of May. He had presented his plaint on the 5th May in the Court of another District Munsif who had no jurisdiction, and it was returned by the latter District Munsif on the 7th May in order that it might be presented to the Court having jurisdiction to determine the suit, within one month from the date on which it was returned.

Held, that the plaintiff's suit was barred by the provisions of the Limitation Act (XIV of 1859).

THIS was a case referred for the opinion of the High Court by G. Ramanjulu Naidu, the District Munsif of Cuddapah, in Suit No. 546 of 1870.

1870.
August P.
R. C. No. 34
of 1870.

The case stated was as follows :—

This is a suit brought to recover Rupees 40 due on a Bond, dated 10th of Marjaseru, Rudrotgauri, 4th January 1864, executed by the defendant for Rupees 43-8-0, conditioned to pay on demand Rupees 23 thereof with regulated interest (at 1 per cent per mensem), and the residue Rupees 20, on the 10th May 1864, or in default to make good this 20 Rupees with interest at 10 Pice for every 4 Rupees.

The plaint stated that the defendant had paid a portion of Rupees 23, but not the balance, that the plaintiff foregoes this balance the claim thereto being barred by the Limitation Law ; and that he claims the residue Rupees 20 with interest, namely :—

	Rs.	A.	P.
Principal of the Bond	43	8	0
Paid 21st October 1864	Rs. 9	11	0
Barred by Limitation	„ 13	13	0
	23	8	0
	Residue or balance Rs.	20	0
Interest as stipulated	„	18	12
Batta to a Messenger	„	1	4
	Total...Rs.	40	0

(a) Present : Scotland, C. J. and Innes, J.

1870. The defence was "the Plaint Bond is true, there is
August 1. "Limitation bars, not indebted."
R. O. No. 34
of 1870.

The case came on for hearing on the 7th July 1870, but was adjourned for further consideration subject to the decisions of the Honorable High Court upon the points in para. 9.

It will be observed that the Bond sued on, which was not registerable when executed, is dated 4th January 1864; and as the first instalment there of Rupees 23 was payable on demand, the claim in so far as this instalment or a portion thereof was concerned was barred on the 5th January 1870, (II, H. C., 472).

As regards the second instalment Rupees 20 of the Bond, as it was payable on the 10th of May 1864, the plaintiff should have sued for it, within the 11th of May 1870 (IV, H. C., 330); but his plaint was presented in this Court on the 21st May 1870, during the adjournment.

The plaintiff, however, has this fact in his favor:—He presented his plaint at first to the District Munsif's Court at Nundiyalumpett (now transferred to Budwail) in this Zillah on the 5th of May 1870, and it was returned by that Court on the 7th idem for presentation within one month, to the Court (this Court) having jurisdiction in the matter because the defendant's place of residence was not within the jurisdiction of that (Nundiyalumpett) Court.

The plaintiff then presented his plaint in this Court within the said one month from the 7th of May 1870, *i. e.* on the 21st May 1870, but not within six years from the 10th May 1864 (the date on which the second instalment Rupees 20 fell due) to the 11th of May 1870 (the date on which the six years' limitation expired under Clause 16, Section 1, Act XIV of 1859).

In returning the plaint to the plaintiff as in Para. 6, the Nundiyalumpett Court seems to have acted under Section 3 of the Amendment Act No. XXIII of 1861.

I. But was it competent to that Court to limit a time for the presentation of the plaint in this Court?

II. Ruling 15 and the Clause following it in the Rules of Practice, head "plaints," appear to have reference to plaints

presented to, returned by, and representable to the same Court. Do they (Ruling 15 and its Clause) apply to plaints presented to and returned by one Court, and representable in another Court?

1870.
August 1.
R. C. No. 34
of 1870.

III. Is or is not the plaint presented to this Court on the 21st of May 1870 barred by Clause 16, Section 1 of the Limitation Act?

My opinion as to the 1st of the above points is that the Nundiyalumpett Court was not competent to fix any time. If that Court thought fit to give plaintiff one month's time, another Court would give a plaintiff 2, 3, 4, 5, or 6 months' time. In the present case, when the plaintiff presented his plaint at first in the Nundiyalumpett Court, he had five clear days between the 5th and 11th of May 1870, and Nundiyalumpett is only within 20 miles from Cuddapah. If to the said five days, 3 more (the 5th, 6th and 7th of May 1870) are added, as being the delay in the Nundiyalumpett Munsif's Court, in returning his plaint to the plaintiff, he had full eight days to present his plaint in the Cuddapah Court, which eight days were more than enough to travel a distance of 20 miles. It was the plaintiff's duty to ascertain the whereabouts of the defendants during the six years he had. If he is permitted to make this inquiry at the 11th hour, we will be aiding him in his attempts to evade the Limitation Law. The Nundiyalumpett Court therefore, if it can at all do so, could have given plaintiff or the plaintiff can add only three days to the unexpired portion of the six years he had on the 5th of May 1870, within which he should have filed his suit (Section 14, Act XIV of 1859).

As regards the second point, it appears to me that the ruling and clause referred to, apply to plaints returned by, and representable to the same Court, in the absence of any ruling of the High Court that they are applicable to other Courts too.

The 3rd point too, I would, for the reasons given in Para. 10 decide affirmatively, that is that the suit is barred, unless the High Court give a contrary opinion.

The questions for the decision of the High Court are those stated in Para. 9.

1870.
August 1.
E. C. No. 34
of 1870.

No council were instructed.

The Court delivered the following

JUDGMENT:—We are opinion that it was not the duty of the Nundiyalumpett District Munsif's Court to name a time for the presentation of the plaint in the proper Court under Section 3 of Act XXIII of 1861, and that the case must be looked at just as if he had not named a time. Now as the presentation of a plaint is the commencement of a suit, we should probably have held that the bar of the suit was saved by the provision in Section 14 of the Act of Limitations if it had appeared that by excluding the time between the presentation and return of the plaint the period of limitation was not exceeded, but the fact is otherwise. We therefore hold that the suit was barred when presented to the District Munsif's Court of Cuddapah.

Appellate Jurisdiction. (a)

Civil Mis. Regular Appeal No. 15 of 1870.

A. VENKATA NARASIMHA APPAROW NAIDU...*Petitioner.*

K. VENKATAKRISTNIA and another...*Counter-Petitioners.*

While a decree for money was being executed by the sale of immovable property, the judgment-creditor petitioned the Court to stay the sale for two days as the defendants, the judgment-debtors, had entered into a razinamah with him. On the same day the judgment-debtors petitioned the Court to continue the sale for three days. Two days afterwards the judgment creditor presented a Petition to the Court, stating that the judgment-debtors had executed a note in his favor for Rs. 8,500 in part payment of the decree and promising to execute a deed of sale on a stamp, but a sum of Rs. 9,600 having been subsequently offered, the judgment-debtors failed to execute the deed of sale: and he prayed that the judgment-debtors might be examined in respect of the sale for Rs. 8,500, and that the sale to him be confirmed.

The Civil Judge made an order refusing to accede to the prayer of the judgment-creditor.

Held, (Innes, J. dissenting) that the order of the Civil Judge was right.

1870.
August 4.
O. M. R. A.
No. 15
of 1870.

THIS was an appeal against the order of E. C. G. Thomas, the Civil Judge of Vizagapatam, dated the 15th October 1869, passed in Miscellaneous Petition, No. 795 of 1869.

Rama Row, for the counter-petitioner.

(a) Present: Holloway, Innes and Kiudersley, JJ.