

Saminadha Vs. Samban

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Court : Chennai

Decided On : Jul-15-1892

Reported in : (1893)ILR16Mad274

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Saminadha

Respondent : Samban

Judgement :

1. The question is whether the suit has been rightly dismissed as being out of time. The facts are as follow:

2. The appellant, claiming to be entitled to a sum of Rs. 174-14-0 as his share of moneys realized under an agreement, dated 28th August 1885, entered into between himself and defendant for taking emigrants to Burmah, instituted against defendant on the 2nd September 1887 Original Suit No. 91 of 1888 on the file of the District Munsif of Negapatam. That suit was pending on the Negapatam Munsif's file till 5th March 1888, when it was transferred to the District Munsif of Tiruturaipundi. The suit as brought was silent as to any settlement of accounts and if there had been no such settlement, it was properly instituted as a regular suit and having been brought within three years from the date of commencement of the partnership was well within time, even if the date of the agreement be taken as that from which the period of limitation should be calculated. But in the course of

his examination as a witness in the Tiruturaipundi Munsif's Court plaintiff stated that there had been a settlement of accounts between himself and defendant after the latter's return to this country from Rangoon in June-July 1887. In consequence of this alleged settlement the suit was one triable in a Court of Small Causes. It was, therefore, dismissed and the plaint returned to the appellant for presentation in the proper Court. This was on the 1st March 1889.

3. On the 27th idem appellant filed his suit in the Subordinate Court, at Negapatam--on the Small Cause side--having added to the plaint that there had been a settlement of accounts in August 1887 when the balance of Rs. 174-12-0 was found against the defendant which the latter agreed to pay within one week. Objection was then taken on behalf of defendant that as by these additions the nature of the suit had been altered, 'it was not competent for him (plaintiff) to use the Court fee already paid on the plaint'--the meaning of which appears to be that the original plaint which had been returned for the very purpose of presentation in a Court of Small Causes was no longer available for the purpose, because of the addition thereto of the clause showing how the suit came to be one cognizable by such a Court! However, the objection was allowed to prevail and plaintiff allowed to withdraw the suit 'with permission to bring a fresh suit writing the plaint on a new stamp.' This was on the 19th November 1889, and the new suit was filed on the 6th of the following month.

4. Under these circumstances, is plaintiff entitled to a deduction, under Section 14 of the Limitation Act, of the period from 2nd September 1887 to 1st March 1889, during which his Original Suit No. 91 of 1888 was pending on the files of the District Munsifs of Negapatam and Tiruturaipundi? It must here be observed, however, that even without this deduction the suit is within time if the cause of action be taken to have been in August 1887, when, according to the plaint, a settlement of accounts took place. It is only in case of the cause of action being held to have arisen in June 1885 that the deduction in question is necessary; and if the suit is one that is otherwise maintainable in a Court of Small Causes, we are of opinion that plaintiff is entitled to a deduction of the time during which his regular suit was pending on the files of the District Munsifs of Negapatam and Tiruturaipundi.

5. The cases referred to by the Subordinate Judge are not in point. There was in neither of those cases a suit pending in a Court which was unable to entertain it 'from defect of jurisdiction or other cause of a like nature'--and we do not think there is ground for holding the appellant to have been wanting in due diligence. We allow this appeal, therefore, and setting aside both the learned Judges' order and the Subordinate Judge's decree, remand the suit for replacement on the file and disposal on merits.

6. Respondent should pay appellant's costs of this appeal and also of revision petition No. 228 of 1890 and bear his own costs in both the cases before this Court.

7. The other costs will be costs in the suit.

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