

(1880) 01 AHC CK 0012

Allahabad High Court

Case No: None

Ram Subhag Das

APPELLANT

Vs

Gobind Prasad and
Another

RESPONDENT

Date of Decision: Jan. 10, 1880

Citation: (1880) ILR (All) 622

Hon'ble Judges: Robert Stuart, C.J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The question with which we have to deal in this appeal is whether the suit has been instituted within the term allowed by the Law of Limitation. The cause of action accrued to the plaintiff on the 21st September 1877, and it appears that he and his brother jointly instituted a suit against defendants in the Court of the Subordinate Judge on the 26th August 1878, and it was removed for disposal to the Court of the Judge, and the plaint was returned to the plaintiffs on the ground of misjoinder of plaintiffs on the 16th September 1878. A plaint was then filed by plaintiff in the Court of the Judge on the 23rd September 1878, and the Judge rejected it on the 1st October 1878, on the ground that it should be filed in the Court of the Subordinate Judge, and the plaintiff was directed to file it accordingly. The plaintiff appealed to the High Court from this order, and the order was affirmed on the 28th January 1879. On the 8th February the plaintiff applied to the Judge for a return of the plaint in order that he might file it in the proper Court, and having obtained it on the 10th April he filed it in the Court of the Subordinate Judge on that day. Now as the cause of action accrued on the 21st September 1877, the time allowed by law for instituting the suit would expire on the 21st September 1878, and calculating to the 10th April the suit will be six months and twenty days after time, unless the plaintiff can show that the excess period should be excluded in computing the period of

limitation under the provisions of Section 14 of the Law of Limitation. But looking to the proceedings taken it is clear that at most the only time which plaintiff might claim to exclude under the provisions of Section 14 would be from the 23rd September 1878, to the 10th April 1879, when he was prosecuting the suit in the Court of the Judge and in the High Court. But assuming that he could satisfy us that the whole of that period should be excluded, the present suit instituted on the 10th April 1879, will still be beyond time. The plaintiff cannot claim to exclude from the computation any other period, for from the 26th August 1878, to the 16th September 1878, he was prosecuting his suit in a Court which had jurisdiction, and the inability of the Court to entertain it did not arise from defect of jurisdiction or other cause of a like nature, but from misjoinder of plaintiffs, a defect for which plaintiff must be held responsible, and from the 16th to the 23rd September he was not prosecuting his suit in any Court, and cannot claim to have that period excluded. The appeal fails, as there is no reason to interfere with the order as to costs, and we dismiss it with costs.