

1869
Dec. 22.

Special Appeal No. 396 of 1869.

NANDVALLABH, by his Guardian HARGOVAN. ... *Appellant.*
ALLIBHAI ISYAGANI: *Respondent.*

Limitation—Plaint presented during vacation.

Where a plaint was presented to a karkun left in charge of a Court during vacation, and the cause of action on which the suit was brought became barred before the vacation ended, it was held that as the Judge was the proper person to receive plaints, the presentation to the karkun was invalid, and did not prevent the period of limitation from running.

This was a Special Appeal from the decision of C. G. Kemball, District Judge of Surat, in Appeal Suit, No. 10 of 1869, reversing the decree of the Munsif of Jambusar.

This action was brought by Hargovan, who was the uncle and sued as guardian of Nandvallabh, minor son of Mithala Bhanabhai, to recover Rs. 643-11-3, balance due of principal and interest on a bond dated the 13th of May 1865.

The plaint was presented on the 11th of May 1868 to the chief karkun of the Munsif's Court, who was left in charge while the Court was closed during the six weeks' vacation. When the Munsif returned after vacation, he found that the suit was on behalf of a minor, and that the person who presented the plaint had not obtained any certificate of administration to the minor's property. As an application for such certificate had been made in 1867, the Munsif granted time to Hargovan to produce it before he registered the plaint. The certificate was obtained on the 28th of July 1868, and the plaint was registered on the 26th of August following. The defendant urged that the suit was barred by lapse of time, as the plaint had been registered after the three years' limitation had expired on the 13th of May 1868; and, further, that the plaint had been presented by an unauthorized person, who had not obtained a certificate of guardianship at the date of presenting the plaint.

The Munsif of Jambusar held that though the plaint was registered after three years from the date of the bond, yet

it was presented in time, as an application for a certificate had been made long before the filing of the suit and the certificate had been obtained at the time of the registration of the plaint. He held upon the merits that the bond was proved, and decreed for the plaintiff.

1869

Nandvallabh, by
his Guardian
Hargovanv.
Allibhai Isyagani

The defendant appealed from this decision to the District Court, when, the District Judge laid down the following issues:—

(1) Was the plaint instituted within time ?

(2) Was it competent, under the circumstances, for the plaintiff, Hargovan, to present the plaint, or for the Court to receive it ?

He said that "Sec. 25 of the Civil Procedure Code required that all suits should be commenced by a plaint presented to a Court. On the 11 of May 1868, when this plaint was presented, the Court was closed during the vacation. If holidays were *dies non juridici*, the alleged presentation to the *sheristedar* in charge of the office was not a valid presentation. The vacation did not end till some days after the expiry of the three years." The Judge therefore held that the plaintiff's remedy was barred. He also held that Hargovan had no right to institute the action, under Sec. 2 of Act XX. of 1864, and that the Munsif, instead of granting him time, was bound at once to have rejected the plaint under Sec. 32 of the Civil Procedure Code.

The Judge accordingly reversed the decree of the Munsif. The plaintiff appealed from this decision, and the appeal was heard before COUCH, C. J., and MELVILL, J.

Nanabhai Haridas for the appellant.

Dhirajlal Mathuradas for the respondent:—The law requires that presentation be made to the Court; for presentation is followed by verification, which can only take place before the Court. If the period of limitation expires during vacation, the presentation must be made before the vacation commences: *Rajkisto Roy v. Denobhundo Surnah* (a).

(a) 3 Calo. W. Rep. S. C. C. Ref. 5.

1869
 Nandvallabh
 by his Guardian
 Hargovan
 v.
 Allibhai Isyagani

COUCH, C. J.:—The person to whom the plaint was presented was not authorised to receive plaints. The Court was closed for the vacation, and at that time therefore the plaint could not be presented to the Court as required by Sec. 25 of the Civil Procedure Code. Great mischief might arise if a person left, as it is called, in charge, could, in the absence of Judge, receive plaints, and by an endorsement thereon prevent the operation of the law of limitation. The plaint cannot be considered to have been duly presented until the opening of the Court on the first day after vacation. The Judge was therefore right in considering the claim to be barred, and on this ground we confirm the decree.

MELVILL, J. concurred.

Decree confirmed with costs.

Sept. 7.

Referred case.

Anpurnabai Plaintiff.
 Sakharam Jagannath Defendant.

Small Cause Court—Cause of Action—Defendant living outside jurisdiction—Act. XXIII. of 1861, Sec. 4.

The provisions of Sec. 4 of Act. XXIII. of 1861. are applicable to Courts of Small Causes in the Mofussil.

Case referred for the opinion of the High Court by the Judge of the Court of Small Causes at Puna, under Act. X of 1857.

“Anpurnabai, the widow of Keshavrao Jagannath, presented this plaint, suing Sakharam Jagannath and three other brothers of her deceased husband for arrears of maintenance for one year. One only of the defendant’s brothers is alleged to live within the jurisdiction; the others are stated to reside beyond the jurisdiction in Khandesh, and in Sind.

“Act XI. of 1865 declares, in Sec. 6, what suits are cognizable by Courts of Small Causes, and in Sec. 8 it provides that Courts of Small Causes may try all such suits