

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

as are cognizable by such Courts, if the defendant, at the time of the commencement of the suit, shall dwell or personally work for gain or carry on business within the local limits of the jurisdiction of the Court; or if the cause of action arose within the said local limits, and the defendant, at the time of the commencement of the suit, shall by his agent or servant carry on business or work for gain within those limits.

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Anurnabai
v.
Sakharan
Jagannath.

"The jurisdiction of the Court does not arise, unless all the defendants in a suit at its commencement dwell or work for gain, or carry on business within the local limits assigned to it.

"It is contended for the plaintiff that the authority of the High Court may be obtained, under Sec. 4 of Act. 23 of 1861; but I doubt whether this section is applicable to suits brought in this Court.

"Sec. 47 of Act 11 of 1865 extends the provisions of the Code of Civil Procedure to suits instituted in Courts of Small Causes, but only so far as they are or may be applicable, excluding expressly their application in matters provided for in the said Act; and as the jurisdiction of such Courts is restricted by Sec. 8 to suits in which the defendant dwells or works for gain, or carries on business within the local limits assigned to such Courts, Sec. 4 of Act 23 of 1861 does not, in my opinion, apply to a suit brought in this Court.

"I therefore submit, for the consideration of the High Court, the question whether Sec. 4 of Act XXIII. of 1861 is applicable to suits brought in a Court of Small Causes."

PER CURIAM (COUCH, C. J., LLOYD and MELVILL, JJ.)

The Court concurs with the Calcutta and Madras High Courts in considering that Sec. 4 of Act XXIII. of 1861 applies to a suit brought in a Small Cause Court. An order should be made under that section, authorising the trial of this suit in the Court of Small Causes at Puna.