

Present : Ennis J. and Garvin A.J.

1921.

MUDIANSE *et al.* v. SIRIYA *et al.*

180—D. C. Kegalla, 5,717.

Action under s. 247—Plaint returned for want of jurisdiction—Civil Procedure Code, s. 47—Subsequent presentation of plaint to right Court—Date of action—Prescription.

Where a plaint returned to the plaintiff under section 47 of the Civil Procedure Code for want of jurisdiction is presented subsequently to the right Court, the plaint is not to be deemed to have been presented from the date of the earlier presentation to the wrong Court.

THE facts are set out in the judgment.

Keuneman (with him *Schokman*), for defendants, appellants.

Canakarathne, for plaintiffs, respondents.

November 3, 1921. ENNIS J.—

This was an action under section 247 of the Civil Procedure Code.

It appears that the present defendants were successful in their claim in the claim inquiry, the order in which was passed on September 30, 1919.

On October 10 the plaintiffs filed an action in the Court of Requests. On December 13 the defendants filed answer, in which they took exception to the jurisdiction of the Court. On January 25, 1921, on the day fixed for trial, the plaint was returned under section 47 of the Civil Procedure Code. It would seem to have been clear that the Court of Requests had no jurisdiction in the case, as the amount and the value involved was over Rs. 300. On January 25 the plaint was presented to the District Court.

In that Court an issue was framed whether the action was barred in that it had been instituted fourteen days after the order in the claim inquiry.

The learned Judge held that action had not been barred, and this appeal is from that order.

Two cases have been cited to us in support of the contention that the action was not out of time. These two cases are *Werthelis v. Daniel Appuhamy*¹ and *Nagan v. Rodrigo*.² In each of these cases the Supreme Court allowed the plaint to be returned under section 47, even though the case had reached the stage of an

¹ (1909) 12 N. L. R. 196.

² (1914) 17 N. L. R. 34.

1921.

ENNIS J.

*Mudiansae
v. Siriya*

appeal, but neither of these cases decides the point as to whether on a plaint being returned under section 47 and presented to another Court, the day of the institution of the action is the date of the first presentation to the wrong Court. In my opinion such a contention is untenable. There is nothing in the provision of section 47 to show within what time the returned plaint is to be presented to the right Court, and there is nothing to compel the plaintiff to present the plaint to any other Court. Neither are there any words expressly saying that the plaint when so presented shall be deemed to have been presented from the date of its earlier presentation to the wrong Court.

In my opinion the section cannot be used indefinitely to prolong the period of limitation provided in section 247.

In the circumstances I would allow the appeal, with costs, and dismiss plaintiffs' action, with costs.

GARVIN A.J.—I agree.

Appeal allowed.

