APPELLATE CIVIL.

Before C. C. Ghose and Panton JJ.

1923

Feb. 21.

AHIDANNESSA BIBI

v.

ISUF ALI KHAN.*

Limitation—Person obtaining succession certificate, how far bound to distribute shares in the property of the deceased to those entitled to them—Suit for money against one heir obtaining succession certificate by other heir—Limitation Act (IX of 1908), Sch. I, Arts. 62, 120, 123.

Article 62 of the first schedule of the Limitation Act, 1908, governs a suit against one of the heirs of a deceased person obtaining succession certificate for the collection of debts due to the estate of the deceased by the other heirs for the recovery of their share in the money realised by the defendant.

Abdul Ghaffar v. *Nur Jahan Begam* (1) followed.

SECOND APPEAL by Ahidannessa Bibi and others, the plaintiffs.

The plaintiffs were some of the heirs of one Azmatulla Khan, who carried on business as a hatter in Calcutta. The defendants were the other heirs of the said Azmatulla. On the death of Azmatulla, defendant No. 1 obtained a certificate under the Succession Certificate Act for the collection of all debts which were due to the deceased and, according to the plaintiffs, the said defendant, on the strength of the certificate, realised all these debts, but did not account for the moneys so realised or pay to the plaintiffs their share of the

* Appeal from Appellate Decree, No. 1804 of 1920, against the decree of S. C. Mallik, District Judge of Hooghly, dated April 6, 1920, reversing the decree of Kedarnath Chowdhuri, Subordinate Judge of that district, dated July 31, 1917.

(1) (1915) I. L. R. 37 All. 434.

same. On these allegations, the plaintiffs prayed for an account of these moneys and for recovery of Rs. 2,054 odd representing their share thereof on a declaration that they were entitled to nine annas' share therein. The defence, *inter alia*, was that some of these debts had been barred by limitation even before the succession certificate had been obtained. The other defences are stated in the judgment of their Lordships.

The Subordinate Judge, who tried the suit, decreed it. On appeal, by defendant No. 1, who alone contested the suit in the Court of first instance, the District Judge decreed the appeal and dismissed the suit on the ground of limitation.

The plaintiffs thereupon appealed to the High Court.

Dr. Saratchandra Basak (with him *Moulvi Fazlul Huq and Babu Prakashchandra Pakrashi*), for the appellants. The present suit being one for accounts, Art. 120 of the Limitation Act applied and plaintiffs were entitled to institute the suit within six years from the time that defendant refused to render accounts. The suit was therefore not barred by limitation. There is another aspect of the matter. The holder of a succession certificate is a trustee liable to account for money received by him to the heirs of the deceased: *In the Matter of the Petition of Nobodip Chunder Biswas* (1). See also Limitation Act, Sch. I, Art. 123.

Babu Sharatchandra Ray Chaudhuri (with him *Moulvi A. S. M. Akram*), for the respondents. This case is on all fours with the Allahabad case *Abdul Ghaffar* v. *Nur Jahan Begam* (2). Limitation Act, Sch. I, Art. 62 applies. Even an executor is not a

(1) (1882) I. L. R. 8 Calc. 868. (2) (1915) I. L. R. 37 All. 434.

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trustee after obtaining probate. Much less is the holder of a succession certificate. If Art. 120 of the first schedule of the Limitation Act be made applicable, the plaintiff can have limitation at his own choice.

GHOSE AND PANTON JJ. The facts which have given rise to this appeal, shortly stated, are as follows:—One Azmatullah Khan carried on business as a hatter in Calcutta. On the death of Azmatullah, the defendant No. 1, who is a son of the deceased by his wife, the defendant No. 4, obtained a certificate under the Succession Certificate Act for the collection of debts due to the estate of the deceased. It is alleged on behalf of the plaintiffs, who are the sons of the deceased by his wife, the plaintiff No. 4, and also by the latter, that the defendant No. 1 realised all the debts due to the estate of the deceased, but has not accounted for the moneys so realised and has not paid to the plaintiffs their share of the same. The plaintiffs, therefore, prayed for an account of these moneys and for recovery of their share thereof, it being alleged that the plaintiffs are entitled to a nine annas' share in the said moneys. The defendants alleged that accounts had already been rendered to the plaintiffs, once in 1313 B. S. and again in 1316, and that as the plaintiffs had themselves realised some of the debts due to Azmatulla and had already got more than what was due to them, there was nothing due to the plaintiffs by the defendant No. 1. It was also alleged that, in any event, the suit was barred by limitation.

The Subordinate Judge, who tried the case in the first instance, held that the share of the plaintiffs was annas nine as claimed by them and that the plaintiffs had not realized anything and that the defendant

No. 1 had not rendered any accounts. He also found that the suit had been instituted within time and accordingly ordered the taking of accounts. On appeal, the lower Appellate Court found that the share of the plaintiffs was only eight annas and not annas nine as claimed by them. It was further found that there had been no submission of accounts to the plaintiffs as alleged by the defendant No. 1. On the question of limitation, the lower Appellate Court held that Art. 62 of the first schedule of the Limitation Act applied to the facts of the present case and not Art. 120 and in that view of the matter held that the suit was barred by limitation.

The plaintiffs have appealed against the judgment of the lower Appellate Court and on their behalf it has been contended that the suit was not barred by limitation. Under Art. 62 of the Limitation Act a plaintiff in a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use has a period of three years from the date when the money is received to institute a suit for the same. In the present case the lower Appellate Court found that the moneys in question were last collected by the defendant No. 1 in December, 1909, and that inasmuch as the present suit was not instituted till the 29th July, 1916, it was barred by limitation, if it be held that Art. 62 is the proper article applicable to the facts of this case. It is, however, contended on behalf of the appellants that inasmuch as the present suit was one for accounts, the plaintiffs had six years' time under Art. 120 to institute their suit and that time ran against the plaintiffs from the date when there was a definite refusal on the part of the defendant No. 1 to render accounts. Under Art. 120 time runs from the date when the right to sue accrues and, as pointed out by

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the lower Appellate Court, if in a suit for accounts time is made to run from the date when the defendant refuses to comply with the plaintiff's demand for accounts, there would practically be no limitation in a suit for accounts, for the plaintiff, in such a case, may choose to wait as long as he likes and all that he would have to do to save limitation even under Art. 120 is to send a letter of demand to the defendant and to institute a suit within six years of the refusal thereof. From the dates mentioned above, it would clearly appear that if the plaintiffs' suit were held to be governed by Art. 62, it was out of time, and even if Art. 120 were made applicable, it was still out of time. It was next contended on behalf of the plaintiffs, as was also contended in the Court below, that the suit was really one under Art. 123 of the Limitation Act, it being one for a distributive share of the property of an intestate. The debts in question were collected by the defendant No. 1 by virtue of the certificate under the Succession Certificate Act and the defendant No. 1 could not be described to be a person, who, either as an executor or an administrator, represented the estate of the deceased, and he was not under any obligation to distribute the shares in the property of the deceased to those entitled to them. In our opinion, therefore, Arts. 123 and 120 had no application to the facts of the present case. We think this case is covered by the decision of the Allahabad High Court in *Abdul Ghaffar* v. *Nur Jahan Begam* (1) and that Art. 62 applied to it. The result, therefore, is that we agree with the view taken by the learned District Judge on the question of limitation and that this appeal fails and must be dismissed with costs.

S. M. *Appeal dismissed.*

(1) (1915) I. L. R. 37 All. 434.