

1916

NAUBAT RAI  
v.  
DHAUNKAL  
SINGH.

It seems to us that, regard being had to the provisions of this section the *onus* lay upon the appellants to show that they had no notice of the contract in favour of the plaintiff. Having regard to the evidence in the case and the surrounding circumstances, we have no doubt whatever that the appellants (or at any rate Naubat Rai who acted for himself and his co-purchasers) were fully aware of the contract for sale in favour of the plaintiff. The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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January, 7.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice  
Muhammad Rafiq.*

NAJM-UN-NISSA BIBI (PLAINTIFF) v. AMINA BIBI AND OTHERS  
(DEFENDANTS).\*

*Civil Procedure Code (1908), section 109—Appeal to His Majesty in Council—  
“Substantial question of law”—Position of holder of certificate under the  
Succession Certificate Act, 1889.*

*Held that the nature of the legal position of a person who has collected the  
debts of a deceased person by virtue of his being the holder of a succession  
certificate granted under the provisions of the Succession Certificate Act, 1889,  
is a substantial question of law such as would support the granting of special  
leave to appeal to His Majesty in Council.*

THE facts of this case were as follows :—

One Shaikh Minnat-ullah died leaving his widow, Musammat Najm-un-nissa, the plaintiff appellant, and his father, Khadim Husain, as his heirs. Subsequently Khadim Husain died leaving the defendants respondents as his heirs. Under a mortgage-deed dated 14th February, 1891, Nasrat-ullah and Musammat Karamat Bibi had borrowed Rs. 7,296 from Minnat-ullah. After the death of Khadim Husain, the first defendant, Musammat Amina Bibi, his widow, obtained a succession certificate in regard to this debt due from the mortgagors, and together with the other defendants brought a suit for sale of the property mortgaged, making Musammat Najm-un-nissa a defendant to that suit. A decree for sale was obtained and in execution of that decree the mortgaged property was sold and purchased by the decree-holders on the 21st of May, 1906, and the sale was confirmed on the 15th of June, 1906. Musammat Najm-un-nissa brought this suit for recovery of one-fourth of the decretal amount together with interest on the

\* Application No. 17 of 1915, for leave to appeal to His Majesty in Council.

1st of June, 1912, and she prayed in the alternative for possession of a fourth share of the property purchased by the decree-holders. The Subordinate Judge gave the plaintiff a simple money decree disallowing a part of the claim for interest. On appeal by the defendants, the High Court holding that the suit was governed by article 62 of the first schedule to the Limitation Act and having been brought more than three years after the right to sue accrued to the plaintiff was barred by limitation, dismissed the suit. (The case is reported in I. L. R., 37 Allahabad, p. 233.)

The plaintiff applied for leave to appeal to His Majesty in Council.

Maulvi *Iqbal Ahmad*, for the applicant :—

One of the questions involved in the case is as to what is the position of a person who obtains a succession certificate and realizes the debts due to a deceased person, *quid* the other heirs of the deceased who are also entitled to a share in the debt so realized. It is submitted that he is in the position of a trustee and a suit against him for recovery of the shares of the other heirs in the debt realized by him is not barred by any length of time. He referred to section 25 of Act VII of 1889 and to the case of *Prankisto Biswas v. Nobodip Chunder Biswas* (1). In any case article 120 of the first schedule to the Limitation Act and not article 62 of the said schedule will govern such a suit. Though the valuation of the suit is below Rs. 10,000, it is submitted that the appeal involves a substantial question of law and one of general importance.

The Hon'ble Dr. *Sundar Lal*, (with him the Hon'ble Mr. *Abdul Raof*), for the respondents :—

The suit is governed by article 62 of the first schedule to the Limitation Act; *Abdul Ghaffar v. Nur Jahan Begam* (2). Section 10 of the Limitation Act applies to express trusts as distinguished from trusts arising by implication of law and from resulting and constructive trusts. Moreover, the implied trust alleged by the plaintiff was not created for any specific purpose and section 10 of the Limitation Act was not applicable. Again,

(1) (1882) I. L. R., 8 Cal., 868.

(2) (1915) I. L. R., 37 All., 484.

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NAJM-UN-  
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the question involved in this appeal is neither a substantial question of law nor one of general importance.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J. :—This is an application for leave to appeal to His Majesty in Council. The value of the suit in the court below was under Rs. 10,000 and the value of the proposed appeal is also under Rs. 10,000. This Court did not affirm the decree of the court of first instance. It is still, however, necessary to consider whether or not the case is a fit one for appeal to His Majesty in Council. The case is reported in I. L. R., 37 All., 254. The question of law involved is as to the legal position of a person who has collected the debts of a deceased person by virtue of his being the holder of a succession certificate granted under the provisions of the Succession Certificate Act, Act VII of 1889. This Court held that a suit by one of the persons entitled to a portion of the estate was barred by limitation, applying article 62 of the Limitation Act. On behalf of the appellant it is contended that the holder of a succession certificate to collect the debts is a trustee for the persons entitled and that the provisions of section 10 of the Limitation Act apply and that even if this is not so, the proper article is article 120 of the Act. There is no doubt that the Succession Certificate Act provides for the granting of the certificate, that the effect of such certificate is that the holder of the certificate can give a good discharge to all the debtors of the deceased and that nothing in the Act shall interfere with his liability to account to the persons beneficially entitled to the estate. We think that a substantial question of law of general public importance as to the status of the certificate holder is involved in the present appeal. We accordingly grant a certificate that the case is a fit one for appeal to His Majesty in Council. We reject the prayer for consolidation.

*Application granted.*