

(1948) 12 CAL CK 0005
In the Calcutta High Court
Case No : A.F.A.D. No. 752 of 1945

Golam Panjatan Ahmed

APPELLANT

Vs

Najafannessa Bibi and Others

RESPONDENT

Date of Decision : 13-12-1948

Acts Referred:

Limitation Act, 1908 — Article 145, 62

Citation : AIR 1952 Cal 230

Hon'ble Judges : Kamal Chunder Chunder, J

Bench : Single Bench

Advocate : Kumud Bandhu Bagchi, for the Appellant; Muhammad Asir, for the Respondent

Final Decision : Allowed

Judgement

Kamal Chunder Chunder, J.—This is a defendant's appeal (in a suit?) for recovery of Rs. 1,700/- including interest from the defendant alleged to have been kept in deposit with the defendant. Both the Courts below decreed the suit. The question is one of limitation.

2. Briefly, the facts are that one Akkel Alii Choudhury had married the sister of the defendant and the defendant also had married Akkel Ali's sister. The plaintiffs were the two minor children of Akkel. It appears that Akkel died in Agrahayan, 1327 B.S. From the plaint as also from the evidence, it is to be found that about a month after Akkel's death, the defendant took charge of all the properties of the two minors, and also of a sum of Rs. 1,677/4 as. which was then in the iron chest. He managed the properties of Akkel and acted as de facto guardian of the minors. Then on the 22nd Pous, 1328 B.S. he gave a receipt in the name of the two minors in which he admitted receipt of this money, and he said that this money remained in "amanat" with him. Because the word "amanat" is used, the Courts below have taken it that there was a deposit made on the 22nd Pous, 1328 B.S. as would come under Article 145 of schedule II of the Indian Limitation Act. It is clear that originally the money was taken as de

facto guardian of the minors as the assets of the minors" estate. It was money had & received for the use of the minors. The subsequent document is an acknowledgment of liability by the guardian; and the proper translation of the word "amanat" in this connection would be that the amount "remained in "his charge" or "was held by him". There was no such thing as deposit in law, because the money had been received by him long before for the use of the minors as part of their estate. The receipt is of about 1921, and the suit was filed on the 4th March, 1943. It is clear that there was no Court guardian appointed at any time. Therefore no question of the period of limitation being extended by minority can arise as the suit was after 22 years of the receipt granted. It is further clear from the plaint that one of the heirs was dead, but died after having attained majority and made demands for repayment. Under the circumstances, Article 145 has no application, and the proper article to apply is Article 62 of the Indian Limitation Act. The suit was clearly barred by limitation.

3. This appeal is, therefore, allowed. The decrees of the Courts below are set aside and the plaintiffs' suit is dismissed but without costs in any of the Courts.

4. Leave to appeal under clause 15 of the Letters Patent is asked for and refused.