

ALLAHABAD HIGH COURT

Suraj Narain

Vs

Seth Jhabhu Lal

(Mathur, J.)

28.01.1944

JUDGMENT

Mathur, J.

1. This is an appeal by one of the defendants, against the judgment of the Civil Judge of Mirzapur, dated 1st June 1938. The plaintiffs-respondents brought the suit against the defendant-appellant and certain other persons, alleging that they were partners of a firm, named Jagannath Prasad Sahu and claimed Rs. 4,907-13-0, as due on account of dealing in shellac between the parties. The defendants-appellant pleaded that he was not a partner in the firm of Jagannath Prasad Sahu and was not liable for any money due from that firm; but the learned Civil Judge held that he was a partner and passed a decree against defendant-appellant and the assets of Jagannath Prasad. The defendant Suraj Narain has appealed and the sole point that has to be determined in this appeal is whether Suraj Narain, appellant, was a partner with Jagannath Prasad in the firm called Jagannath Prasad Sahu. On behalf of the plaintiffs copies of income-tax assessment orders for the years 1932-33, 1934-35 and 1935-36 have been filed in order to show that the defendant-appellant was a partner in the firm. It has been strenuously argued that these documents were confidential and privileged and could not be produced and admitted in evidence. Reliance has been placed on Section 54 (1) of the Income-tax Act which runs thus : "All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purpose of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof."

This section was interpreted in Promatha Nath v. Nirode Chandra Ghose by Panckridge, J., in which it is stated : "It may reasonably be said that the provision that an assessment order shall be

treated as confidential is a privilege which an assessee may waive if he thinks fit to do so. However, it would be a starting thing if a joint assessee were to be permitted to use the copy of such an order to the detriment of his co-assessee in contentious proceedings between them. If a person who has been assessed to income-tax can object to the materials in the possession of the Income tax Department being disclosed, it is surely a matter of indifference whether the person who desires to make them public is a co-assessee or a stranger."With due deference to the learned Judge, I am of opinion that Section 54 of the Income-tax Act, has been strained too far. All that the section provided for is that the documents specified shall be treated as confidential and that no Court shall require a public servant to produce them. It cannot, by any stretch of language, be taken to mean that an assessee cannot himself disclose the contents of the documents referred to therein. This is exactly what was held in Emperor v. Osman Chotani. On behalf of the appellant another single Judge case, in Anwar Ali v. Tafozal Ahmed, has been cited which lays down that certified copies, obtained by private persons of Income-tax returns, are inadmissible as the issue of such copies is unlawful under Section 54 of the Income-tax Act 1922; and a similar view was held in Devidatt Ramniranjandas v. Shriram Narayandas, where it was held that "An Income-tax Officer is prohibited under Section 54 to give certified copies of income-tax returns or of assessment orders even to the assessee on demand. Nor has the assessee a right to inspect these original documents from the custody of the Income-tax Officer."This view, in my opinion, is based on a misapprehension as in the Income-tax Manual, Edition 8, at page 312, it is clearly provided that one copy of any such order will be supplied to the assessee free of costs and without application, as soon as the order has been passed, and that additional copies would be charged for. A very narrow interpretation appears to have been placed on the words "right to inspect" in Section 76 of the Evidence Act. It does not necessarily mean that the person should have a right to inspect the original record. To my mind, it only means that he has a right to look into the order. I have therefore, no doubt in my mind that an income-tax assessment order is a public document under Section 74 of the Evidence Act, and a certified copy would be admissible under Section 65 of the same Act. The only point that needs determination is whether the copies filed in this case are certified copies or not. In Section 76 of the Evidence Act a particular form of certificate is prescribed but that form is not necessary in every case. All that is required by Section 65 is that it must be a true copy of the original and there must be something to demote that it was so. In different departments a different set of rules are provided for that purpose. In the civil Courts, for instance, a mere endorsement that it was a true copy signed by an authorised officer is sufficient. Having that purpose in view, it seems to me that these copies can be called certified copies because they bear the seal of the Income-tax Department and bear an endorsement that they were duly copied and compared. It is not known as to who actually signed this endorsement but I think it may fairly be presumed that the endorsement was signed by the persons who were authorised. It may also be noted that this objection is very belated and cannot be entertained on that account. The next question would be as to the value of these copies. They are apparently based on the statement of Badri Narain, one of the partners of the firm, before the Income-tax Officer. Badri Narain has been examined as witness on behalf of the plaintiffs and he has stated that Suraj Narain was a partner and his share was six annas. These copies of the assessment orders would be admissible into evidence as corroboration of the statement under Section 57 of the Evidence Act. The fact that this statement was made at a time when there was no controversy about the matters gives weight to that statement. Badri Narain is further supported by Nand Lal who states that he was deputed to enquire from the plaintiffs as to whether Suraj Narain was a partner in the firm of Jagannath Prasad and that he was informed by Suraj Narain himself that he was a

partner. Another witness is Maheshi Lal who is a broker and he says that he knew from personal knowledge that Suraj Narain was a partner in the firm although he made no enquiry from Suraj Narain himself. These statements, taken with other circumstances, namely, that Suraj Narain was advancing large sums of money to the firm of Jagannath Prasad Sahu, and that too on the dates, when the payments were due, from the firm, leave no room for doubt that he was a partner. In the year 1935 he advanced no less than six sums on or about the 20th of each month beginning from February to September with the exception of June and July. He has further admitted that several times he himself came of Mirzapur from his place Tanda in order to advance the money. It is also very significant that he did not file any suit for recovery of the money advanced and according to his own showing allowed at least Rs. 17,000 to be time-barred. This conduct so Suraj Narain clearly shows that he knew that this money could not be recovered as debt because it was advanced by him as a partner and, therefore, he made no attempt to recover it. There are two other documents throwing some light on the point in issue. One is a letter from Jagannath to Chapra Beopar Bardhani Sabha, Exhibit I, in which he requested the Sabha to bring the name of Suraj Narain on the register, but it appears from a note of the Secretary of the Sabha that no further steps were taken when Jagannath Prasad was asked to have the new form filled by himself and Suraj Narain and to have it verified. It is no doubt true that there is nothing to show that Suraj Narain has any notice of this application and it is also true that no further action was taken, but there is nothing to show that this application was in any way designed to fix a false liability on Suraj Narain. In the same way Jagannath Prasad had applied to the Registrar of Firms, United Provinces, to have the firm of Suraj Narain Jagannath Prasad registered and had deposited a sum of Rs. 3 for that purpose, but when the form signed by him was returned for correction no further steps were taken. Having regard to all the circumstances of the case, I am not prepared to differ from the finding of the lower Court that the appellant Suraj Narain was proved to be a partner of the firm Jagannath Prasad Sahu. I would therefore dismiss the appeal and uphold the judgment of the learned Civil Judge. The plaintiff-respondents shall get their costs from the defendant-appellant who shall bear his own.

Allsop, J.

I agree with my learned brother that Section 54 of the Income-tax Act would not preclude the use of copies of assessment orders issued to assesseees. The provisions of that section are intended to prevent income-tax officials from betraying confidences of which they are recipients. They do not prevent others from betraying confidences of which they are recipients. They do not prevent others from giving information of which they are possessed. I do not think, however, that the copies produced in this case are relevant. The law requires that copies of this kind must be certified to be correct. The form of the certificate is doubtless of no importance but there must be certificate purporting to be signed by some responsible official. In this case there is nothing of the sort. There appears to be only the initials of the clerks who made and compared the copies. Even if the copies are admissible as such, I do not see how the statements contained in them are relevant to the question whether Suraj Narain was a partner. They express merely the opinion of the Income-tax Officer based on some information of which we do not know the nature. They do not even purport to say that the witness Badri Narain made any definite statement about this matter. The evidence of Kedar Nath and Maheshi Lal is here say. There is, however, the direct statement of Badri Narain and the evidence of Nand Lal that Suraj Narain admitted the fact of partnership and this is corroborated by the conduct of Suraj Narain himself who certainly financed the shellac business and suffered a loss of Rs. 70,000. He maintains that he advanced

the money to Jagannath Prasad Sahu on loan but he had no security and never took any steps to recover the amount alleged to have been advanced. In these circumstances the inference that he was speculating in the shellac business on his own account as a partner is not unjustified and I would consequently not be prepared to hold that the Court below was wrong in accepting the statements of Badri Narain and Nand Lal as true. I agree that the appeal should be dismissed with costs.

By the Court. - We dismiss the appeal. The plaintiffs-respondents shall get their costs from the defendant-appellant who shall bear his own.

Appeal dismissed.