

## PATNA HIGH COURT

Banarsi Devi

Vs

Janki Devi

Civil Revn. No. 1041 of 1957

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

28.11.1957

### JUDGMENT

#### **R.K. Choudhary, J.**

1. This application in revision is presented by the defendant of mortgage suit No. 12 of 1956 pending in the court of the first Additional Subordinate Judge at Hazaribagh. The plaintiff-opposite party instituted a suit against the petitioner for enforcing a mortgage alleged to have been executed by her in favour of the plaintiff on the 8th of December, 1952. The petitioner put a contest in the suit and pleaded that her husband was a working partner in the cloth shop named Sri Vishnu Bastra Bhandar at Hazaribagh town, the capital of which was to be supplied by the husband, the father-in-law and the husband's brother of the plaintiff and that as a safe-guard and to ensure against loss due to neglect by the petitioner's husband the petitioner was made to execute and register a document which she was given to understand, was a security bond. Her further case is that she did not execute the mortgage bond in question knowing it to be a mortgage bond and that no consideration passed there under. She also stated that the husband, the father-in-law and the husband's brother of the plaintiff were members of an undivided Hindu Mitakshara family and that there was, thus, no occasion for taking any loan by the petitioner from the plaintiff. In order to establish that the aforesaid relations of the plaintiff were members of a Mitakshara joint family, the petitioner produced certified copies of certain documents of the Income-tax Department relating to the registration of the firm, return of income and balance sheet filed by the husband of the plaintiff and assessment of taxes therein, and made a prayer to the court that the originals of those documents should be called for from the Income-tax Department. The learned Subordinate Judge rejected the prayer of the petitioner for calling for the originals of those documents and against his order the petitioner filed Civil Revision No. 944 of 1957 in this Court. In view of the fact, however, that no order had been passed by the learned Subordinate Judge refusing to admit the certified copies of those documents in evidence, the civil revision was withdrawn at the time when it was placed for admission. Thereafter, the petitioner made an application in the court below for taking the above certified copies in evidence. The learned Subordinate Judge rejected the prayer holding that the papers which were sought to be exhibited were neither public documents nor legally obtained certified copies. Being, thus, aggrieved, the petitioner has come up to this Court in revision.

2. Mr. Prem Lal appearing for the petitioner has contended that the papers referred to above are public documents and the decision of the court below on this point is wrong in law. Several authorities have been cited in support of this contention which clearly establish that the above documents are public documents within the meaning of Section 74 of the Indian Evidence Act. I need not refer to those authorities because Mr. Bhabanand Mukherji appearing for the plaintiff-opposite party has conceded that they are public documents.

3. It has then been argued on behalf of the petitioner that the documents in question being public documents, the certified copies thereof were admissible in evidence under Section 65(e) of the Indian Evidence Act. In reply to this argument Counsel for the opposite party submitted that under Section 54(1) of the Indian Income-tax Act the above documents are inadmissible in evidence and that the certified copies thereof, which were sought to be put in evidence, were not certified copies within the meaning of Section 76 of the Indian Evidence Act and, as such, were not admissible in evidence. The decision of the question at issue is not free from difficulty, and the views of the different High Courts on this point are conflicting.

4. I will, first, take up the point whether the admissibility of the above documents is barred under Section 54 of the Income-tax Act. Sub-Section (1) of Section 54 states that 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 or a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 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. Sub-Section (2) of that Section provides that if a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine. According to this Section, the documents in question are confidential documents and they cannot be required to be produced by any public servant before a court, nor could such public servant be required to give evidence before a court in respect thereof, and if any disclosure is made in this regard, the public servant is liable to punishment.

The object of this Section seems to be that the matters referred to in such documents should be kept strictly confidential as between the assessee and the Income-tax Department so that the assessee may not hesitate in placing before the department even confidential matters for the purposes of assessment without fear of any disclosure of those matters. If, therefore, such documents are permitted to be put in evidence by persons other than the assessee, the whole object of the Section would be frustrated. In my opinion, this Section disentitles a person other than the assessee to put such documents in evidence so as to disclose the matters contained therein which under the law have to be kept confidential as between the assessee and the Income-tax Department. The position of the assessee may be different and, on the principle that a person entitled to an advantage can very well waive the same the assessee, if he so likes, can make use of such documents at the risk of disclosing matters which have to be kept confidential for him. But the documents could not be used by a person other than the assessee so as to deprive the assessee of the advantage given to him under the law.

5. It has, however, been contended on behalf of the petitioner that Section 54 provides for such documents to be confidential and prevents the court only from calling for these documents to be produced by any public servant or requiring such public servant to give evidence before it in respect thereof and that this Section does not forbid the putting into evidence of the certified copies of those documents, the matter relating to which is governed by the provisions of the Indian Evidence Act. It is contended that under Section 76 of the Evidence Act the certified copies of these documents could be obtained by the petitioner and, as such, they were admissible his evidence. The argument put forward is that a person who has got some interest in a document is entitled under that section to obtain copies thereof, and it has, therefore, been contended that the petitioner being a partner in the shop with respect to which the documents in question relate is interested in those documents and certified copies thereof obtained by her are admissible in evidence. I am unable to agree with the above contention. In order that Section 76 of the Evidence Act may be applicable the person who obtains a certified copy of a document must be one who has a right to inspect that document. If, however, that person has no right to inspect that document, a certified copy thereof given to him will not be a certified copy within the meaning of the section and will, therefore, be inadmissible in evidence. On the principle underlying in Section 54 of the Income-tax Act making documents like those in question confidential as between the maker thereof and the Income-tax Department, it is obvious that apart from the maker thereof no one has got a right to inspect the same, and that being the position, certified copies obtained thereof on behalf of a person other than the maker thereof cannot be treated as certified copies within the meaning of the Section and will not, therefore, be admissible in evidence. So far as the claim of the petitioner that she, being a partner of the shop, had a right to obtain certified copies of those documents is concerned, it is enough to say that on her own case she is not a partner of the shop in question. According to her case, her husband was a partner along with the husband of the plaintiff. Admittedly the husbands of both the petitioner and the plaintiff are alive and, therefore, there could be no question of the petitioner being a partner and claiming a right of copy as a partner.

6. The view taken by me gains support from various authorities. In *Anwar Ali v. Tafodal Ahmad*<sup>1</sup> the defendant obtained from the Income-tax Officer copies of Income-tax returns made by the plaintiff. It was held that Section 76, Evidence Act itself did not authorize the issue of certified copies of income-tax returns to the defendant, as no private person (presumably other than the plaintiff) had the right to inspect them, and issue of these copies was clearly unlawful under Section 54,

Income-tax Act. In *Ma Hla Mra Khine v. Ma Hla Kra Pru*<sup>2</sup>, the defendant sought to obtain disclosure of the income-tax returns submitted by the plaintiff by a direction to him to obtain certified copies thereof and to produce the same. The court below allowed the prayer. The High Court relying on the principle laid down in ILR 2 Rang 391 set aside the order and held as follows :

"It may be that the plaintiff has the right to obtain certified copies of these returns for her own purposes, but the object of Section 54 was to make these returns confidential as between the assessee and the income-tax department, and against the whole world, except for certain limited purpose provided by the Section itself. It would clearly be an evasion of the prohibition contained in the section were the defendant in a court of law entitled to

force the plaintiff to obtain and furnish any information from the income-tax office against her interest which the defendant was unable to obtain for herself."

In *Promatha Nath v. Nirode Chandra*. AIR 1940 Calcutta 187(*supra*) there was a dispute between the plaintiff and the defendant with regard to their shares in a particular firm which was an unregistered firm. According to the plaintiff, the defendant had only six annas share in the firm while, according to the defendant, he had eight annas interest therein, and in support of his case the defendant sought to tender certified copies of assessment orders. The plaintiff objected to their admissibility. It was held by the High Court that the original assessment orders were within the scope of Section 54 of the Income-tax Act and that a certified copy thereof produced by the defendant was not admissible. In this connection I may better quote the observation made by Panckridge, J. therein :

"I apprehend that by describing the particulars contained in an assessment order as confidential what is meant is that the Department may not disclose such particulars save with the express consent of the assessee. Under the Income-tax Manual, an assessee is entitled to one copy of an assessment order free of charge, and apparently to further copies if he is prepared to pay for them. The object of that provision of the Manual is, apparently, to enable assesseees who contemplate appearing to the Assistant Commissioner or the Commissioner of Income-tax, to prepare the relevant material which they may desire to lay before those officers.

It may be that in the case of a sole assessee there is no objection to his using the copy so obtained as evidence in legal proceedings if there are no other objections to its admissibility. 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 startling 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." In a single Judge decision of this Court in *Smt. Pandei v. Buhulal Sah*<sup>3</sup> the same view has been taken. In that case the plaintiff, the widow of one of the partners of a firm, brought a suit for a declaration that the partnership business stood dissolved from the date of the death of her husband and for accounts. One of the pleas taken in defence by the defendant was that the husband of the plaintiff was not a partner. It was stated on behalf of the plaintiff that the partnership firm had filed returns of income in certain years, and in certified copies of those returns were produced in court it would establish that the husband of the plaintiff was a partner of the firm. C.P. Sinha J., after considering the various authorities for and against the contentions railed on behalf of the parties held that the principle behind Section 54 is that all such documents as are mentioned therein, filed or statements made before the Income-tax Department are all very confidential in nature, the object being that people, that is the assesseees, should feel that they can freely state the facts with regard to their income which might involve confidential matters relating to their business without fear of the matters being disclosed, and that it is with, that end in view to give absolute freedom to the income-tax assesseees to make statements of their income to the department untrammelled by any fear of disclosure of those

statements that such restrictions have been imposed on the grant of copies and production of such documents. It was also held that no person other than the maker of the return was entitled to a certified copy of the return and, as such, the plaintiff was not entitled to have a certified copy.

7. Reliance has been placed by Mr. Prem Lal on behalf of the petitioner on the cases of *Queen-Empress v. Arumugam*<sup>4</sup> *Chandi Charan v. Boistab Charan*<sup>5</sup> and *Mutter v. Eastern and Midland Rly. Co*<sup>6</sup>. for the purpose of showing that the petitioner was interested in the documents in question and was, therefore, entitled to obtain certified copies thereof under Section 76 of the Evidence Act, and on the case of *Venkata Gopala Narasimha Rama Rao v. Chitluri Venkataramayya*<sup>7</sup>, *Suraj Narain v. Jhabhu Lal*<sup>8</sup>, *Smt. Buchibai v. Nagpur University*<sup>9</sup>, *Emperor v. Oman Chotani*<sup>10</sup> and *Somanna v. Subba Rao*<sup>11</sup> for the purpose of showing that the certified copies in question were admissible in evidence.

8. In the case of ILR 20 Mad 189 (FB) the accused wanted to have certified copies of police reports and charge-sheet. The question before the High Court was whether they were public documents and whether the accused was entitled to obtain copies thereof. There was difference of opinion between the Judges who constituted the Full Bench on the first point and I need not refer to the same as that has no relevancy to the present case. But all of them unanimously held that if the documents in question were public document, the accused was interested in them and had, therefore, the right to inspect them and to obtain copies thereof. Thus the case does not support the contention of the petitioner that even though a person has no right to inspect but has only an interest in a document, he is entitled to have a copy thereof. In ILR 31 Cal 284 also the party who wanted to have a certified copy of a certain document was held to be entitled to inspect that document. Of course, in that case reliance was placed on the case (1888), 38 Ch. D. 92 a reference to which has already been made. In that case it was held that when the right in inspect and take a copy is not expressly conferred by Statute, the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. In England there is a common law right to inspect and take copies of public documents but in India I do not think that there is any such common law right, and the rights of the parties to inspect and obtain copies depend upon the various Statutes with respect to documents referred to in those statutes.

9. Section 76 itself lays down that every public officer having the custody of a public Document, which any person has a right to inspect, shall give that person on demand a copy of it. Therefore, if the person seeking to obtain a copy has got no right to inspect that document, he cannot have a copy thereof under this Section. If that be so, a copy obtained by such a person is a copy obtained illegally and against the provision of this Section and is, therefore, inadmissible in evidence.

10. In AIR 1940 Madras 768 (FB) the assessee wanted to put in a certified copy of his statement with regard to profit and loss showing the details of his net income filed by him in respect of his return of income furnished under Section 22 of the Indian Income-tax Act. It was held that the assessee was entitled to put the certified copy of this document referred to above in evidence. Thus, that was a case of an assessee who sought to produce before the court certified copies of his own return waiving the advantage given to him by Section 54 of the Income-tax Act of treating the document confidential. Moreover, as appears from the judgment of Leach, C.J. who pronounced the judgment of the Full Bench, the assessee under the law was entitled to inspect the

documents certified copies of which were obtained by him. I will better quote the following passage from his judgment in tills connection :-

"Para 85 of the notes and instructions compiled by the Income-tax Department for the guidance of its officers states that the following persons shall, in practice, be allowed to inspect or to receive copies : (1) In any case the person who actually made the return. (2) any partner (known to be such) in a firm registered or unregistered to whose income the return relates; and (3) the manager of a Hindu undivided family to whose income the return relates, or any other adult member of the family who has been treated as representing it. There is nothing in Section 54 to prohibit this practice and it is only right that a person who is concerned with an assessment should be allowed to obtain copies of the documents relating to his assessment to income-tax should he so desire, and if copies are supplied to may put them in evidence in a suit if the Evidence Act allows it".

His Lordship further observed that Section 54 does not make the issue of a certified copy of an income-tax return to an assessee unlawful, that the return is a confidential document and cannot be disclosed to a third party, but there can be an objection to the maker of the return having a copy for his own purposes if he so desires and that so far as the assessee is concerned he is not bound to treat the document as confidential.

This case, therefore is of no assistance to the petitioner for supporting her contention that she not being a maker of the documents in question was entitled to obtain certified copies thereof and to put them in evidence. His Lordship, however, at one place observed that there is nothing in Section 54 which prohibits a party from putting in evidence a certified copy of an income-tax return, if that return is a public document and much stress has been laid on this general observation. But this observation must be read in the context of the case before the Full Bench and on so reading, it is manifest that what his Lordship meant in that case was that the assessee could not be prohibited from putting in evidence a certified copy of his own income-tax return. In AIR 1944 Allahabad 114 it was held that Section 54 could not be taken to mean, that an assessee cannot himself disclose the contents of the documents referred to therein and that the words "right to inspect" in Section 76 of the Evidence Act do not necessarily mean that the person should have a right to inspect the original record but only mean that he should have a right to look into the record. There is no dispute so far as the first part of the above decision is concerned, and I am also of the view that an assessee can waive an advantage conferred upon him by Section 54 of the Act and can disclose the contents of the documents referred to in that section. But with respect to the interpretation of the words "right to inspect" I do not feel inclined to agree with the view taken by their Lordships in that case. The Section already quoted makes it perfectly clear that the person can obtain a copy of the document which he is entitled to inspect. There is no question of either inspecting the original record or to look into the record. In AIR 1946 Nagpur 377 also it was held that it was open to the assessee to waive the right conferred by Section 54 of the Income-tax Act and to give evidence of particulars contained in documents referred to in that Section and as already pointed out, I agree with this view. But in that case it was held that under Section 76 of the Evidence Act it was not necessary that the public generally must have a right to inspect it and that it was sufficient if there was any single person who had a right to inspect. The interpretation of this Section, in my opinion, is under misconception. Though their Lordships have quoted that Section in their judgment, they appear to have omitted

to consider the effect of the words "shall give that person" used in that Section. In AIR 1942 Bombay 289 the documents, were seized by the police in a certain criminal case, and the question for decision was whether the police could be compelled to produce them in court. It was held that the production of the document could be compelled by the court. The view taken by their Lordships appears to be that the documents are confidential so long as they are in the hands of the officers of the Income-tax Department, but if they are in the hands of persons other than those officers, the documents do not continue to have the characteristic of being confidential in their hands. Be that as it may, it is not necessary to examine the correctness of that decision because that question does not arise in the present case.

11. In AIR 1958 Andhra Pradesh 200 a single judge of that court mainly relying on the general observation of Leach, C.J. already referred to while dealing with that case held that certified copies of income-tax returns could be taken in evidence under Section 65(e) of the Indian Evidence Act and if that document could be given in evidence, without requiring a public servant to produce it there is nothing in the section to prevent that from being done.

12. After considering the various authorities referred to above my concluded opinion is that a person other than an assessee is not entitled to inspect the documents characterised as being confidential in Section 54(1) of the Income-tax Act and to obtain certified copies thereof under Section 76 of the Evidence Act. I am also of the opinion that apart from the assesses such documents cannot be produced in evidence by any other person unless they come within the exceptions laid down in Sub-Section (3) of Section 54 of the Income-tax Act. In that view of the matter, the order of the learned Subordinate Judge was perfectly justified and must be upheld.

13. Moreover, the petitioner has not made any statement in her revision application as to how she could obtain the copies and as to how, in fact, she was entitled to use them. It is not stated what interest she had in the shop during the life-time of her husband who, as already stated, was alleged to be a working partner in that shop. In that view of the matter also, the application has to fail.

14. The result, therefore, is that the application fails and is dismissed with costs. Hearing fee Rs. 100/-.

**V. Ramaswami, C.J.**

15. I agree.

Application dismissed.

Cases Referred.

<sup>1</sup> ILR 2 Rang 391

<sup>2</sup> AIR 1938 Ran 276

<sup>3</sup> AIR 1958 Pat 237

<sup>4</sup> ILR 20 Mad 189

<sup>5</sup> ILR 31 Cal 284

<sup>6</sup>(1838) 38 Ch D 92

<sup>7</sup> AIR 1940 Mad 768 (FB)

<sup>8</sup> AIR 1944 All 114

<sup>9</sup> AIR 1946 Nag 377

<sup>10</sup> AIR 1942 Bom 289

<sup>11</sup> AIR 1958 And Pra 200