

ORIGINAL CIVIL.

Before Panckridge J.

PRAMATHA NATH PRAMANIK

v.

NIRODE CHANDRA GHOSH.*

1939

June 5.

Evidence—*Admissibility*—*Certified copy of assessment order*—*Indian Income-tax Act (XI of 1922), s. 54*—*Indian Evidence Act (I of 1872), ss. 74, 76, 77.*

In a suit by certain partners of an unregistered firm against another partner for accounts, the defendant sought to tender in proof of the extent of his interest in *re* partnership certified copies of certain assessment orders against the partnership and of the order-sheets of the Income-tax Officer who dealt with the assessment.

Held that copies of the various assessment orders and order-sheets are inadmissible in evidence.

APPLICATION by the plaintiffs to vary or set aside the Special Report made by a Special Referee.

The facts of the matter are fully set out in the judgment.

P. C. Ghose and *B. N. Datta Roy* for the applicant. Copies of assessment orders and order-sheets supplied by the Income-tax Department are not admissible in evidence. *Vide* s. 54 of the Indian Income-tax Act and *Anwar Ali v. Tafozal Ahmed* (1); *Asghar Ali Shah v. Achhru Mal* (2); *Devidatt Ramniranjandas v. Shriram Narayandas* (3).

Neither the assessment order nor the order-sheet is a public document, nor has any person the right to inspect them. Under the Income-tax Act there is no provision for granting certified copies of such documents although in the Notes and Instructions regarding the Income-tax Law and Rules contained in the Income-tax Manual (p. 99) there is provision for the supply of copies to an intending appellant.

*Application in Suit No. 928 of 1935.

(1) (1924) I. L. R. 2 Ran. 391.

(2) [1935] A. I. R. (Lah.) 272.

(3) (1931) I. L. R. 56 Bom. 324, 335, 339-41.

S. N. Banerjee and *S. N. Banerjee (Jr.)* for the defendant respondent. An assessee is entitled to get copies of the assessment orders without which it would be impossible to proceed under s. 30 of the Indian Income-tax Act. Although the records of the Income-tax Department may be confidential, there is nothing in the Act which prevents an assessee from using in evidence copies which he is entitled to get as secondary evidence of the assessment order. The defendant is an assessee and can obtain copies which may be used as secondary evidence.

1939
*Pramatha Nath
 Pramanik*
 v.
*Nirode Chandra
 Ghosh.*

An assessment order is a public document within the meaning of s. 74 of the Indian Evidence Act. The copies which are supplied under the instructions contained in the Income-tax Manual are clearly certified copies within s. 76 of the Evidence Act and under s. 77 of that Act such copies are admissible in evidence.

Even if the assessment order is confidential, an assessee has ample power to waive this privilege.

PANCKRIDGE J. This is an application to vary or set aside the special report made by Mr. S. C. Ghosh acting as Special Referee under a decree made by me on February 10, 1938.

The suit was instituted by two persons of the name Pramanik against the defendant on the allegation that he was the manager of a business which traded under the style of Kali Krishna Pramanik and of which the plaintiffs were the owners. On this basis the plaintiffs claimed an account on the footing of wilful default. Alternatively, the plaintiffs alleged that the defendant was a partner in the firm of Kali Krishna Pramanik, his share being six annas, the remaining ten annas being the property of the plaintiffs. On this basis they sued for partnership accounts. In this written statement the defendant denied that he was a servant of the plaintiffs, and alleged that he was a partner in the firm of Kali Krishna Pramanik,

1939

Pramaiha Nath
Pramanik

v.

Nirode Chandra
*Ghosh.**Panckridge J.*

his share in the partnership being eight annas while the remaining 8 annas belonged to the plaintiffs jointly.

When the suit was heard the plaintiffs abandoned the contention that the defendant was an employee of the firm, and accordingly the main issue between the parties was whether the defendant owned an eight annas share in the firm or a six annas share. The order for reference is in the following terms :—

The Special Referee is directed—

- (a) to enquire whether the share of the defendant in the partnership was increased to eight annas as pleaded in para. 5 of the written statement, and
- (b) also to take account of all dealings and transactions in respect of the partnership from December 5, 1919 up to May 14, 1934.

When the Special Referee had entered upon the reference, and while he was dealing with the question of the extent of the defendant's share in the partnership, the defendant's counsel sought to tender certified copies of certain documents which he had obtained from the Income-tax Department. The plaintiffs objected that these documents were inadmissible in evidence, and at their request the Special Referee has made a Special Report, in which, after setting out the circumstances of the case, he has come to the provisional conclusion that the certified copies of certain Income-tax assessment orders are admissible.

There was also an attempt to tender the order-sheet of the Income-tax Officer who dealt with the assessment, but the contention that certified copy of this is admissible is now not pressed.

The assessment orders which have been tendered purport to show that the partners in the firm of Kali Krishna Pramanik for the year of assessment 1934/1935 were Kali Krishna Pramanik, that is to say the two plaintiffs, to the extent of ten annas, and the defendant to the extent of six annas. Thereafter

the plaintiffs are shown as owning eight annas and the defendant as owning the remaining eight annas. I should add that the firm is an unregistered firm.

The plaintiffs seek to exclude these certified copies of the assessment orders on the ground that they fall within the scope of s. 54 of the Indian Income-tax Act, 1922. There is no doubt that the original assessment orders are within the scope of the section, which enacts that all particulars contained (*inter alia*) in any record of any assessment proceeding shall be treated as confidential, and that notwithstanding anything contained in the Indian Evidence Act, no Court shall save as provided by the Income-tax Act be entitled to require any public servant to produce before it any such return, account, document or record or any part of such record or to give evidence before it in respect thereof. Sub-section (2) of s. 54 imposes a heavy penalty on a public servant who discloses such particulars.

The purpose of the section is clearly to secure that assesseees shall not be deterred from making a frank statement of their income and financial position generally by the fear that the information which they supply to the department will thereafter be disclosed to other persons, who may use it to the detriment of the assesseees.

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 in the Manual apparently is to enable assesseees, who contemplate appealing to the Assistant Commissioner or the Commissioner of Income-tax, to prepare the relevant materials which they may desire to lay before those officers.

1939

*Pramatha Nath
Pramanik*

v.

*Nirode Chandra
Ghosh.*

Panckridge J

1939

*Pramatha Nath
Pramanik*
v.
*Nerode Chandra
Ghosh.*
Panckridge J.

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.

The learned Special Referee has referred to three cases, two decided by the Rangoon High Court, and one decided by the Bombay High Court in which certified copies of assessment orders have been held to be inadmissible. Certainly in the Rangoon cases the certified copies had by some means or other been obtained by a third party who sought to use them against the assessee, and I think that the same observation is true of the Bombay decision.

I need only mention two of the cases specifically, namely, the Rangoon decision in *Anwar Ali v. Tafozal Ahmed* (1) and the Bombay decision, which is a decision of an Appellate Bench sitting in appeal from the Original Side, in *Devidatt Ramniranjandas v. Shriram Narayandas* (2).

It is not necessary to hold comprehensively that in all cases where an original document is confidential, a certified copy is inadmissible, but it is sufficient to say that, in my opinion, in the circumstances of the present case the documents do not fall within the sections of the Evidence Act which deal with certified copies.

(1) (1924) I. L. R. 2 Ran. 391.

(2) (1931) I. L. R. 56 Bom. 324.

I am willing to concede that an assessment order is a public document within the meaning of s. 74 of the Evidence Act, since it is among the class of documents forming the acts or records of the acts of public officers, legislative, judicial or executive of British India, but, in my opinion, because a document is a public document it cannot be inferred that it is one to which the public or specified members of the public have a right or access. Under s. 76 every public officer having the custody of a public document which any person has the right to inspect shall give that person on demand copy of it on payment of the legal fee therefor together with a certificate of its correctness.

1939

*Pramatha Nath
Pramanik*

v.

*Nirode Chandra
Ghosh.**Panckridge J.*

There is no provision under the Indian Income-tax Act which gives an assessee a right to inspect the records of the Income-tax Department. It is true that under the Instructions in the Manual he can obtain a copy of the assessment order although nothing is said as to such copy being certified. As the Special Referee points out, the Departmental Instructions in the Income-tax Manual have of themselves no statutory authority and even assuming this particular instruction to be legally unobjectionable, it does not purport to give the assessee a right to inspect the original assessment order and compare with the copy.

Therefore the assessment order does not, in my opinion, fall within the ambit of s. 76, and it follows that if the assessee has no right to inspect it, he has no right to demand a certified copy of it under the section.

Accordingly the documents which it has been sought to tender in this case are not under s. 77 certified copies which may be produced in proof of the contents of public documents or parts of the public documents of which they purport to be copies.

1939

*Pramatha Nath
Pramanik*
v.
*Nirode Chandra
Ghosh.*
Panckridge J.

In my opinion, both on the ground of principle and on the technical grounds I have elaborated, copies of the various assessment orders which it was sought to put in evidence, are inadmissible and ought to be rejected.

I accordingly discharge the Special Report of the learned Special Referee, who will proceed with the reference, but will exclude from his consideration the copies which in terms of the Report he was proposing to admit.

The defendant must pay the costs of these proceedings.

Special report discharged.

Attorneys for plaintiffs: *Sandersons & Morgans.*

Attorneys for defendant: *S. S. Banerjee & Co.*

S. M.