claim to divide them. To my mind this is a striking piece of evidence against the present contention of the appellant. The consciousness of the members of this family therefore would undoubtedly seem to be that the income which each brother derived out of the portion of the property cultivated by him was to be his entirely. I am accordingly of opinion that the appeal fails and must be dismissed with costs of respondents 1 and 3.

MOCKETT J.—I agree.

G.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Burn and Mr. Justice Stodart.*

1939, September 1.

MYTHILI AMMAL (FIRST RESPONDENT—DECREE-HOLDER), APPELLANT,

*v.*

JANAKI AMMAL AND ANOTHER (PETITIONER AND RESPONDENT-JUDGMENT-DEBTOR), RESPONDENTS.*

*Indian Evidence Act (I of 1872), sec. 65 (a) and (e)—Income-tax return—Secondary evidence of—Certified copy—Admissibility in evidence of—Sec. 74 of Evidence Act—"Public document".*

In execution of a money decree obtained by the appellant against her husband, the second respondent, she attached a house as belonging to her husband. The first respondent, the mother of the second, filed a claim praying that the attachment might be raised on the ground that the house was her own. At the trial of that claim the appellant filed certified copies of certain income-tax returns made by the first respondent when

*Appeal Against Order No. 470 of 1937.

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she was in control of her son's estate to show that in those returns the first respondent had made statements about the house in question inconsistent with her claim to be the owner of it.

*Held* that the certified copies were not admissible in evidence.

Section 65 (*a*) of the Indian Evidence Act (I of 1872) did not apply because (i) the returns submitted to the income-tax authorities were not in the possession or power of the first respondent against whom they were sought to be proved and (ii) the said returns were not in the possession or power of a person not subject to the process of the Court or legally bound to produce them, who, having been given notice to produce, had refused to do so. The Income-tax Officer in whose custody the returns were was subject to the process of the Court. He could be summoned to attend the Court although he could not be required to produce those documents which were classed as confidential by the Income-Tax Act of 1922. Further the Income-tax Officer could not be described as a person legally bound to produce such documents.

Section 65 (*e*) of the Evidence Act did not apply because an income-tax return is not a "public document" as defined in section 74 of that Act. A return made by an assessee is not part of the act of the Income-tax Officer nor is it part of the record of the act of that officer within the meaning of section 74.

APPEAL against the order of the District Court of South Arcot, dated 29th September 1937 and made in Civil Miscellaneous Petition No. 224 of 1937 in Original Suit No. 10 of 1924 on the file of the Sub-Court, Cuddalore.

*T. R. Venkatarama Sastri* and *T. V. Rajagopalan* for appellant.

*K. Rajah Ayyar* for *K. Srinivasan* for first respondent.

Second respondent was not represented.

*Cur. adv. vult.*

STODART J.

The JUDGMENT of the Court was delivered by STODART J.—This appeal is against an order made in

execution of the decree in Original Suit No. 10 of 1924 on the file of the Subordinate Judge's Court, Cuddalore. The subject of the petition is a house, No. 40, South Car Street, Chidambaram. Mythili, the decree-holder, was entitled under the decree to recover Rs. 5,800 from her husband Mahadevan, the judgment-debtor. To realise this sum she attached the aforesaid house as belonging to her husband. Janaki Ammal, mother of Mahadevan, filed a claim praying that the attachment should be raised on the ground that the house was her own. This claim was tried by the learned District Judge, South Arcot, who held that the house did belong to Janaki. Hence this appeal by Mythili, the decree-holder.

The learned District Judge chiefly addressed himself to the question whether the purchase-money for the house which was purchased in Janaki's name came out of Mahadevan's estate or was furnished by Janaki. He held that, apart from the oral evidence of Janaki, there was no evidence that the purchase money was paid by Janaki out of her own funds but that, on the other hand, there was evidence that it did not come out of the estate of Mahadevan.

The points chiefly urged by learned Counsel for the appellant are : (i) that the learned Judge did not appreciate the evidence properly and (ii) that he shut out evidence which was produced by Mythili which if taken into account materially helped her case.

[His Lordship considered the evidence in the case and proceeded :]

Our conclusion therefore is that the learned District Judge was correct in holding that the accounts of the estate do not prove that the money paid as consideration for the purchase of the house came out of the estate of Mahadevan, husband of the appellant.

MYTHILI v. JANAKI. STODART J.

The only other point which we have to decide arises on the contention of learned Counsel for the appellant that the learned District Judge was wrong in shutting out the income-tax returns filed by Janaki when she was in control of Mahadevan's estate. The original returns are of course in the office of the income-tax authorities. Their contents were sought to be proved by certified copies. The contention of learned Counsel is that in these returns Janaki has made statements about this house inconsistent with her present claim to be the owner of it. Now, what Janaki said in the returns submitted to the income-tax authorities can be proved by exhibiting the returns themselves. This has not been done. And it is difficult to see how it could be done since such returns are confidential. It is the policy of the law that statements made in these returns shall not be brought up in Court against the person making them or for that matter against anyone else. But the learned Counsel contends that income-tax returns can be proved by secondary evidence. As we read section 65 of the Indian Evidence Act we do not find it possible to accede to this contention. Section 65 enumerates the cases in which the contents of a document may be proved by secondary evidence. Section 65 (*a*) does not apply, because (i) the documents now in question are not in the possession or power of Janaki against whom they are sought to be proved and (ii) the documents are not in the possession or power of a person not subject to the process of the Court or legally bound to produce them who having been given notice to produce has refused to do so. The Income-tax Officer in whose custody the documents are, is subject to the process of the Court. He can be summoned to attend the Court although he cannot be required to produce

these documents which are classed as confidential by the Income-Tax Act; *see* section 54 of the Act. Again the Income-tax Officer cannot be described in the circumstances just explained as a person legally bound to produce such documents. The learned Counsel faced with this difficulty falls back on section 65 (*e*) of the Evidence Act by which secondary evidence is allowable of the contents of a public document. "Public document" is defined in section 74 of the Indian Evidence Act and means a document forming the act or record of the act—

(i) of the sovereign authority,
(ii) of official bodies and tribunals, and
(iii) of public officers, legislative, judicial and executive.

It is urged upon us that the income-tax return, inasmuch as it is made in compliance with a notice issued under section 22 (2) of the Income-Tax Act, and when made becomes the basis of an assessment made under section 23, is therefore part of the record of the act of assessment. We do not agree in this view. Section 23 of the Act is :—

"If the Income-tax Officer is satisfied that a return is correct and complete he shall assess the total income of the assessee and shall determine the sum payable by him on the basis of such return."

We think this section is perfectly clear. In the matter of assessing a person to tax, when does the Income-tax Officer perform an act within the meaning of section 74 of the Indian Evidence Act? The answer can only be when he assesses the income of that person and determines the sum payable. And the record of that act is the notice of demand made in the prescribed form under section 29 of the Income-Tax Act in which the Income-tax Officer communicates his

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STODART J.

decision to the assessee and requires him to pay the tax. We find it quite impossible to infer from the words of the Act that the return made by the assessee is either part of the act of the Income-tax Officer—indeed we think that such a proposition is absurd on the face of it—or that it is part of the record of the act of that officer. And indeed a reference to section 54 of the Income-Tax Act demonstrates that a return made by an assessee cannot possibly be part of the record of the act of the Income-tax Officer. In that section such returns are made confidential. No Court can require any public servant to produce them before it. A public servant who discloses the contents of such returns except in certain special circumstances is punishable with imprisonment which may extend to six months and is also liable to fine. But if the return is, as now argued, a public document, anyone who happens to come into possession of a certified copy of it can produce the copy into Court, and so prove the contents of the return, thus defeating the express provisions of section 54. From the fact that certified copies of the returns made by Janaki have been tendered in evidence in the present case, we presume that the granting of certified copies is in certain circumstances permissible by some rule made under the Income-Tax Act. Most probably they can be granted to the person who has made the return for his own private information, since that would not come under the head of disclosure under section 54 (2). But that does not mean that a third party who has, in some way come into possession of the certified copies can use them to his own advantage. If it did then we would be faced with the ludicrous position that the Income-tax Officer, though forbidden to

disclose the contents of the returns, could by furnishing certified copies facilitate such disclosure.

We agree with the learned District Judge that the certified copies—they were actually marked as exhibits in the lower Court and numbered XXXV and XXXVA —are not admissible in evidence.

On the merits of the case we have been taken very carefully through the evidence by learned Counsel on both sides and we think the conclusions of the learned District Judge are correct. We would only add that it has not been shown that in February 1918 when Janaki bought this house, she had any reason to deceive her son or to act prejudicially to his interests. On the contrary the evidence is that at that time she was much attached to him. If she had intended to buy the house for him and not for herself there was no reason whatever why she should not have bought it in his name. We dismiss this appeal with costs.

N.S.

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## APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Patanjali Sastri.*

IN RE MUTHUSWAMI CHETTIAR, (13TH COUNTER-PETITIONER), PETITIONER IN THE CRIMINAL REVISION CASE No. 245 OF 1939.*

1939, September 19.

*Code of Criminal Procedure (Act V of 1898), ss. 107 and 112—Notice under—Nature of information to be stated.*

A notice issued to the petitioner under section 112, Criminal Procedure Code, stated *inter alia* that the petitioner was a

* Criminal Revision Cases Nos. 245, 246, 298, and 340 of 1939 (Criminal Revision Petitions Nos. 226, 227, 276 and 316 of 1939).