

favour of Abdul Ghafur Khan, plaintiff, declaring that the sale of Abdul Majid Khan's one-third share in the house to Jan Muhammad, defendant No. 3, is subject to the plaintiff's mortgage charge of Rs.175. Having regard to all the circumstances, I would leave the parties to bear their own costs throughout.

ABDUL RASHID J.—I agree.

A. N. K.

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KHAN

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MANGAT RAI-  
GANGA SAHAI.

TEK CHAND J.

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*Appeal accepted.*

### MISCELLANEOUS CIVIL.

*Before Tek Chand and Abdul Rashid JJ.*

HAJI GHULAM RASUL-KHUDA BAKHSH

(ASSEESSES) Petitioners,

*versus*

COMMISSIONER OF INCOME-TAX, PUNJAB—

Respondent.

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*July 1.*

**Civil Miscellaneous No. 214 of 1937.**

*Indian Income-tax Act (XI of 1922) Ss. 2 (14), 26 (A) — Change in constitution of a Firm — introducing new partners — Registration of — whether Income-tax authorities can refuse registration on finding that the change was not a genuine transaction.*

The assessee Firm, consisted of two partners, the two brothers G. R. and K. B. till 1st July, 1932, G. R. having a 12/16 and K. B. a 4/16 share in the firm. On 1st July, 1932, the constitution of the firm was changed and the three sons of G. R. became partners in the firm to the extent of 3/16, 3/16 and 2/16 respectively, G. R.'s share being reduced from 12/16 to 4/16. A partnership deed was executed evidencing the fact that the firm in future consisted of five partners with shares as stated above, and an application was presented to the Income-tax authorities under s. 26 (A) of the Indian Income-tax Act for the registration of the firm. The Income-tax Officer rejected the application holding that the deed of partnership was a bogus one and that the three sons of G. R. were merely 'dummies' and not real partners in the firm.

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The Income-tax Commissioner upheld this finding. On an application presented to the High Court under s. 66 (3) by the assesseees it was contended on their behalf that under the provisions of ss. 2 (14) and 26-A of the Income-tax Act, read with rules 2 to 4 framed under the Act, the Income-tax authorities were not competent to refuse registration.

*Held*, (dismissing the application) that it was open to the Income-tax authorities to go into evidence, both circumstantial and direct to determine whether the instrument of partnership was a genuine document or whether it merely embodied a bogus transaction for the purpose of evading the tax, and having found that the partnership deed did not embody a genuine transaction they were fully entitled to refuse registration of the firm.

*Petition under section 66 (3) of the Indian Income-tax Act, praying that the Commissioner of Income-tax, be directed to state and refer the case to the High Court for the decision of law points.*

KIRPA RAM BAJAJ, for Petitioners.

JAGAN NATH AGGARWAL and S. M. SIKRI, for Respondent.

ABDUL  
RASHID J.

ABDUL RASHID J.—This is an application, under section 66 (3) of the Indian Income-tax Act, praying that the Commissioner of Income-tax may be required to state the case of the assessee. “ firm *Haji Ghulam Rasul-Khuda Bakhsh* ” to this Court for the decision of the questions of law arising therein.

The firm *Haji Ghulam Rasul-Khuda Bakhsh* consisted, according to the case for the assessee, of two partners, namely, the brothers *Haji Ghulam Rasul* and *Haji Khuda Bakhsh*, till the 1st July, 1932. *Haji Ghulam Rasul* had a 12/16th and *Haji Khuda Bakhsh* 4/16th share in the firm. On the 1st July, 1932, the constitution of the firm was changed and the three sons of *Haji Ghulam Rasul*, namely, *Abdul Wahid*, *Abdul Rahman* and *Abdul Ghaffar*, became

partners in the firm to the extent of 3/16th, 3/16th and 2/16th respectively. The share of *Haji Ghulam Rasul* was reduced from 12/16th to 4/16th.

On the 21st March, 1934, a partnership deed was executed evidencing the fact that the firm consisted of five partners, and that their shares were as specified above. On the strength of this deed of partnership an application was presented to the Income-tax authorities, under section 26-A of the Indian Income-tax Act, for the registration of the firm. The Income-tax Officer was of the opinion that the deed of partnership was a bogus one, and that the three sons of *Haji Ghulam Rasul* were merely 'dummies' and not real partners in the firm. The Income-tax Officer gave a number of reasons for holding that the share of *Haji Ghulam Rasul* was 12/16th and that his sons were working in the firm as assistants of their father and not as real partners. On these findings the application for the registration of the firm was dismissed, and the firm was assessed to income-tax as originally constituted. Against this decision an appeal was preferred to the Assistant Commissioner of Income-tax. He affirmed the decision of the Income-tax Officer, and gave additional reasons for holding that the deed of partnership did not embody a genuine transaction. The Income-tax Commissioner was approached under section 66 (2) of the Indian Income-tax Act to refer the case of the assessee to this Court. On his refusal to do so an application was preferred to this Court under section 66 (3) as already mentioned.

It was contended on behalf of the assessee that the provisions of sections 2 (14) and 26-A of the Indian Income-tax Act coupled with rules 2 to 4 framed under the Act left no option to the Income-tax

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authorities to refuse registration once an instrument of partnership specifying the individual shares of the partners was presented to them by the assessee. It was urged that the certificate produced by the assessee as regards the shares of the different partners must be regarded as conclusive of the matter by the Income-tax authorities, and that the manner in which they could prevent evasion of taxation was to resort to the provisions of section 48 of the Income-tax Act and disallow refunds in the case of persons who were not proved to be genuine partners of the firm in question.

In my opinion the contention put forward on behalf of the assessee is devoid of all force. The instrument of partnership specifying the individual shares of partners referred to in section 26-A of the Income-tax Act means obviously a genuine instrument of partnership. If there is evidence, direct or substantial, showing the bogus nature of the so-called instrument of partnership, it is open to the Income-tax authorities to refuse registration of the firm in question. Reference may be made in this connection to the case of *Dickenson v. Gross* (1). In that case a farmer had entered into a deed of partnership with his three sons with the admitted intention of reducing the income-tax liability in respect of the profits. There were, however, circumstances showing that the deed of partnership did not embody a genuine transaction between the father and the sons. In these circumstances it was held that as a partnership did not exist in fact, there was no partnership for the special purposes of the Income-tax Act.

In a case reported as *Abowath Brothers v. Commissioner of Income-tax, Burma* (2), where a deed was

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(1) (1927) 11 T. C. 614. (2) (1933) 7 I. T. C. 38.

drawn up as a partnership deed between the assessee and his major son for avoiding income-tax, the two minor sons not being admitted to the benefits of partnership, but no capital account was opened or any capital shown as the son's contribution. It was held that there was material on which the Income-tax Officer could find as a fact that a partnership did not exist. This case was not a case of a Hindu undivided family and was not governed by section 25-A of the Act.

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Reference may also be made to a Bombay case reported as *Sookinaboo Salebhoy v. Commissioner of Income-tax, Bombay* (1). In that case the assessee was a Muhammadan lady, and a document was put forward for registration as an instrument of partnership between the lady and her three minor children. This document purported to show the shares of the different partners in the profits of the firm without stating the business of the firm, or its assets, or wherefrom the profits were derivable and there was no combination of property, labour or skill other than the income proposed to be shared with her children which the lady received from certain investments in shares of a large sum of money left by her father. Registration was refused by the Income-tax authorities on the ground that the whole transaction was illusory and bogus and that the deed of partnership was executed for the purpose of evading income-tax only. It was held by the High Court that the circumstances showed that in point of fact there was no partnership as defined in section 239 of the Indian Contract Act.

The principle underlying all the rulings mentioned above is that it is open to the Income-tax authorities

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to go into evidence, both circumstantial and direct, to determine whether the instrument of partnership is a genuine document or whether it merely embodies a bogus transaction for the purpose of evading the tax. These rulings are fully applicable to the facts of the present case. It appears to me, therefore, that the Income-tax Officer was fully entitled to refuse registration of the firm if as a fact he found that the instrument of partnership did not embody a genuine transaction.

The next point urged by the learned counsel for the assessee is that the *onus* of showing that the three sons of *Haji Ghulam Rasul* were not partners in the firm was on the Department and that this *onus* had not been discharged. On this point also I do not agree with the contention put forward on behalf of the assessee. It was for the assessee, who applied for registration, to prove that a partnership in fact existed and who were the partners. In a case reported as *Raghu Karson v. Commissioner of Income-tax, Bihar & Orissa* (1) it was claimed on behalf of the assessee that he was carrying on business in partnership, the partners being members of his family entitled to and paid a share in the profits. The Income-tax Officer was not satisfied with the evidence called in support of the contention by the assessee and assessed him as an individual on the profits of the business. It was held that the assessee having failed to discharge the *onus* of establishing that the business managed and controlled by him was a partnership, he was rightly assessed as an individual on the profits of the business. The *onus* would thus rest on the person, who applies for the registration of the firm, to prove that a genuine

instrument of partnership has been executed and that all the persons named therein are actual persons and not "dummies."

In the present case it was alleged by the assessee that the three sons of Ghulam Rasul had become partners on the 1st July, 1932. No deed of partnership was, however, executed till the 21st March, 1934. No application for the registration of the firm was made till the 20th March, 1934. On the conclusion of the financial year 1932-33 the profits were not divided between the different partners. A division of profits took place on the 31st March, 1934, and a sum of Rs.12,776 is alleged to have fallen to the shares of the three sons of Ghulam Rasul. They are alleged to have withdrawn their entire profits on the same day. No evidence, has, however, been tendered to show what became of the profits in the hands of Abdul Wahid, Abdul Rahman and Abdul Ghaffar. The three sons of Ghulam Rasul live in the houses belonging to their father and all their household expenses continue to be paid by Ghulam Rasul. There is no proof that any of the sons of Ghulam Rasul contributed anything towards the capital of the firm nor has it been established that they possess any separate property from which the losses, if any, could have been recovered.

The above mentioned circumstances, in my opinion, provide ample material for the finding that the firm really consists of *Haji Ghulam Rasul* and *Haji Khuda Bakhsh* only and that the three sons of *Haji Ghulam Rasul* are not partners in the firm but are merely assisting their father in running the business. In this view of the matter no question of law arises in the present case. I would, therefore,

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dismiss this application. The parties will bear their own costs of these proceedings.

TEK CHAND J.      TEK CHAND J.—I agree.

A. N. C.

*Application dismissed.*

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**REVISIONAL CIVIL.**

*Before Skemp J.*

MURAD AND OTHERS (DEBTORS) Petitioners,

*versus*

OFFICIAL RECEIVER, JHANG, AND ANOTHER  
Respondents.

**Civil Revision No. 890 of 1936.**

*Punjab Relief of Indebtedness Act (VII of 1934) S. 25 : members of notified agricultural tribe — adjudicated insolvents — Appeal to District Judge against adjudication order — Application by insolvents during pendency of appeal to Local Debt Conciliation Board to effect a settlement — whether District Judge can proceed with the appeal after receipt of notice from Board to stay proceedings — Jurisdiction of High Court to revise the order of the District Judge — Provincial Insolvency Act (V of 1920) S. 75, proviso — and S. 28 (5) — whether exempts land of agriculturist from being taken into account under the section.*

Three brothers, members of a notified agricultural tribe were adjudicated insolvents on the petition of a creditor. They appealed against the order of adjudication to the District Judge, and pending the hearing of the appeal applied to the Local Debt Conciliation Board set up under the Punjab Relief of Indebtedness Act. Before the hearing of the appeal, the Board issued a letter to the District Judge to stay proceedings. The District Judge refused to stay the appeal holding that he had jurisdiction to hear it and rejected it.

*Held*, that although the order made in appeal by the District Judge is final under s. 75 of the Provincial Insolvency Act, the High Court under the proviso to the section,

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Jan. 28.