APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Blackwell.

SIR CHINUBHAI MADHOWLAL BART. (ORIGINAL ASSESSEE), APPLICANT *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND AND ADEN (ORIGINAL REFERROR), OPPONENT.*

1937
March 23

Indian Income-tax Act (XI of 1922), section 66—Reference—Costs of getting reference settled by Government Solicitor and Advocate General—Costs in discretion of Court.

Sub-section (*6*) of section 66 of the Indian Income-tax Act, 1922, merely deals with the costs of a Reference on the application of an assessee, and not with the costs of the Reference made by the Commissioner on his own motion under sub-section (*1*) of section 66.

It is the application of an assessee to the Commissioner to state a case and make a Reference to the High Court which starts the proceedings, which ultimately result in the Reference and the Court can deal with all costs of and subsequent to the application.

In a proper case, the Taxing Master is entitled to allow to the assessee, if he has been given his costs, the costs of obtaining proper advice in settling the application, and where the costs are given to the Commissioner, the Taxing Master is entitled to allow the Commissioner the costs of getting the Reference settled by the Government Solicitor and the Advocate General.

APPLICATION to review the Assistant Taxing Master's order.

On March 12, 1936, the High Court (Beaumont C. J. and Rangnekar J.) made in Civil Reference No. 11 of 1935 an order answering a certain question referred to the Court in the negative, and directing the assessee to pay the costs on the Original Side scale.

When the costs came to be taxed, the Commissioner of Income-tax claimed a sum of Rs. 110 consisting of two items, viz. Rs. 36 for instructions for Reference and drawing the same, and Rs. 74 as costs for having the draft reference settled by counsel.

The assessee objected to the amount being allowed to the Commissioner on the ground, *inter alia*, that there was no rule in the High Court Rules according to which such costs could be allowed against the assessee.

*Civil Application No. 1165 of 1936.

1937

SIR CHINUBHAI v. THE COMMISSIONER OF INCOME-TAX, BOMBAY

The learned Assistant Taxing Master allowed the Commissioner the amount as claimed, holding that those costs were necessary for the attainment of justice.

The assessee applied to the High Court praying that the Assistant Taxing Master's order might be reviewed.

Shavaksha, with *Mulla Mulla & Co.*, for the applicant.

Sir Kenneth Kemp, Advocate General, with *G. Louis Walker*, Government Solicitor, for the Opponent.

BEAUMONT C. J. This is an application to review the Assistant Taxing Master's order in relation to the costs of Civil Reference No. 11 of 1935, which was a reference to this Court made by the Commissioner of Income-tax under section 66 (2) of the Indian Income-tax Act.

The order made on the reference was that the assessee should pay the costs of the Commissioner on the Original Side scale. In taxing the costs, the Assistant Taxing Master has allowed a fee for getting the reference settled by the Government Solicitor and the Advocate General; and the question is whether he had any power to make such an allowance.

The argument of Mr. Shavaksha for the applicant (assessee) is that under section 66 (2) the assessee is entitled on payment of Rs. 100 referred to in that section to require the Commissioner to refer a point of law to the High Court, and that, no doubt, is so. Mr. Shavaksha contends from that, that the fee of Rs. 100 is intended to cover the costs of the Commissioner in relation to the preparation of the reference. The jurisdiction of the Court, however, to deal with costs is conferred by sub-section (*6*) of section 66, which is in these terms :—

"Where a Reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court."

That sub-section, therefore, merely deals with the costs of a reference made on the application of an assessee, and not with the costs of a reference made by the Commissioner

on his own motion under sub-section (*1*) of section 66. The question is, what costs has the Court discretion to deal with under sub-section (*6*) of section 66.

It seems to me that it is the application of the assessee to the Commissioner to state a case and make a reference to the High Court which starts the proceedings, which ultimately result in the reference, and in my opinion the Court can deal with all costs of and subsequent to the application. In a proper case, the Taxing Master is entitled to allow to the assessee, if he has been given his costs, the costs of obtaining proper advice in settling the application; and where the costs are given, as in this case, to the Commissioner,—in my opinion, the Taxing Master is entitled to allow the Commissioner the costs of getting the reference settled by the Government Solicitor and the Advocate General. It is entirely in the discretion of the Taxing Master to decide whether the case is of sufficient difficulty to justify the Commissioner in adopting that course. If the Taxing Master thinks that it is a simple case, he probably will not allow the fees for settling it. But most of these cases are not very simple, and it is of importance that they should be settled with accuracy by somebody acquainted with the art of draftsmanship.

It is said that in effect the assessee is really paying more than 100 rupees, which he is required to pay by the section for getting a reference to the High Court, if he has also to pay the costs for getting the reference settled. But that is a matter in the discretion of the Court. In many cases where this Court gives costs to the Commissioner, we direct that the costs be "less Rs. 100", if we think that in the particular case the 100 rupees deposit ought to be taken into account. In the present case, I rather gather from the judgment, that we thought that the reference never had any chance of success, and, therefore, we did not make any allowance for the 100 rupees. But whether the assessee ought to pay the costs, plus the 100 rupees, is

1937

SIR CHINUBHAI *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY

Beaumont C. J.

a matter which can always be adjusted by the Court when it is dealing with costs.

I think that the decision of the Assistant Taxing Master was right, and the application must be dismissed with costs, which should be taxed on the Original Side scale.

BLACKWELL J. I agree, and have nothing to add.

Application dismissed.

Y. V. D.

APPELLATE CIVIL.

Before Mr. Justice Barlee and Mr. Justice Divatia.

1937
April 9

SADASHIV WAMAN PATIL (ORIGINAL DEFENDANT NO. 2), APPELLANT *v.* RESHMA MARD WAMAN PATIL AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 3), RESPONDENTS.*

Hindu law—Adoption—Co-widows—Senior widow—Right to adopt—Preferential right—Relinquishment in favour of her junior—Source of senior widow's right—Transfer for consideration—Public policy—Adoption by senior widow after relinquishment—Validity of adoption—Power of widow to adopt, whether inherent or delegated.

An arrangement between a widow on the one hand and some other person claiming to be interested in the estate on the other hand, under which the widow agrees not to adopt or is prohibited from adopting, would be against public policy. But the case of co-widows does not stand on the same footing. Both the widows have got the right to continue the line by adoption, the senior widow having only a preferential right.

Suriya Rau v. Raja of Pittapur,[1] referred to.

A transfer by way of relinquishment of the right to adopt by a senior widow in favour of her junior, who has also got the right to adopt and thus continue the line of her husband, cannot be regarded as against public policy. Such right can be validly relinquished in favour of a junior widow and the senior widow would not be entitled to resile from such relinquishment on the ground of public policy.

Such relinquishment can be the subject matter of a valid agreement between the widows and enforceable as such irrespective of the fact that a junior widow has not

*First Appeal No. 370 of 1932 (with First Appeal No. 358 of 1932).

(1) (1886) 9 Mad. 499, s.c. L. R. 13 I. A. 97.