

(1938) 09 MAD CK 0035
In the Madras High Court
Case No : O. S. No. 3 of 1928

PENTAPATHI VENKATRAMANA AND OTHERS

APPELLANT

Vs

PENTAPATHI VARAHALU AND OTHERS.

RESPONDENT

Date of Decision : 22-09-1938

Acts Referred:

Evidence Act, 1872 — Section 76
Income Tax Act, 1922 — Section 54

Citation : (1939) 7 ITR 560

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

VARADACHARIAR, J. - This appeal arises out of a suit for the taking of the accounts of certain dissolved partnerships. The parties belong to the Vysia community and are members of one family though belonging to different branches which had become divided many years ago. Defendants 1, 2 and 3 are the eldest members in the group and they are the sons of one Chinna Venkanna. Defendants 4 to 23 are the descendants of defendants 1 to 3. Chinna Venkanna had two sons Appayya and Venkanna. The plaintiff and defendants 24 and 25 are the sons of Appayya. The 28th defendant is a grandson of Venkanna, the brother of Appayya. The 26th, 27th and 29th defendants are respectively the sons of defendants 24, 25 and 28. These families had admittedly been carrying on trade in Vizianagaram; for the purpose of the present suit, it is necessary to deal with three businesses which are referred to in the record as Kottu No. 1, Kottu No. 2 and Kottu No. 3. Kottus Nos. 1 and 3 seem to have been carried on in the market and Kottu No. 2 in the house. Kottus Nos. 2 and 3 were carried on in the name of the first defendant while Kottu No. 1 was carried on in the name of the 2nd defendant. It is admitted that in Kottu No. 1 defendants 1, 2 and 3 had an eight annas share as representing their family, defendants 24 and 25 had a four annas share as representing their joint family including the plaintiff, and defendant 28 had the remaining four annas share. It is also admitted that in Kottu No. 2, the family of defendants 1 to 3 had a twelve annas share, the family of defendants

24 and 25 had a three annas share and the 28th defendant had a one anna share. As regards Kottu No. 3, the plaintiff and defendants 24 and 25 contend that their branch was entitled to a three annas share in this also as in Kottu No. 2; but defendants 1 to 23 maintain that this Kottu was their exclusive concern and that the branch of the plaintiff and defendants 24 and 25 or the branch of defendant 28 had no interest in it.

*

*

*

Proceeding now to the merits, we may first dispose of the case as regards Kottu No. 3. If it was the exclusive concern of defendants 1 to 3 as found by the learned subordinate judge, no further question will arise in respect of it in this suit. But if, as the plaintiff for himself and as representing the other members of his branch would be entitled to three sixteenth share in the assets of that concern on the taking of accounts; because it is the common case, as we have already pointed out, that the accounts of this Kottu were not taken into consideration at all at the time of Exs. IV and V. It is proved by the admission of D. W. 18 and by the entries found in several pages in Ex. A series, the account books of Kottu No. 3 that during a period of more than a year the 24th defendant had off and on written several pages in these accounts. The explanation given by D. W. 18 in respect of this circumstance is obviously absurd, namely, that the 24th defendant was there to train one of the witnesses sons in the business because the witness son referred to has long ago had his training in business. The evidence of D. Ws. 2 and 3, whose reliability we see no reason to doubt, proves that for quite a long time the 24th defendant had been working in Kottu No. 3 and the evidence of D. W. 2 is supported by the entries in the account book (Ex. 1) produced by him showing that moneys payable by the witness in respect of transactions between him and Kottu No. 3 has on many occasion been paid to the 24th defendant. No reason has been suggested why if the 24th defendant had no interest in this concern, he should have been taking so much active part in its conduct. But all doubt on the matter is set at rest by the admission made in Ex. LXIX by the first defendant in whose name this business stood. It is a statement on oath made by him before the Income Tax Officer in October 1926. It deals with the various concerns in which the parties were interested and the accuracy of the statements there made in respect of Kottu No. 1 and Kottu No. 2 has not been disputed. Dealing with Kottu No. 3 he said that it was a branch of the house (inti) shop, i.e. No. 2. He added "the shares of the partners are the same as those of the main shop, i.e., the house shop (Kottu No. 2)." In a previous paragraph he had stated who the partners in Kottu No. 2 were and what their respective shares were. If this statement is admissible in evidence, there can be no doubt that it clearly proves the truth of the plaintiffs case.

It was contended on behalf of the contesting defendants that the statement Ex.

69 was not admissible in evidence, and this contention was accepted by the lower Court. We are unable to accede to this contention. The objection is based on Section 54 of the Indian Income Tax Act of 1922. There can be no doubt that this contention. The objection based on Section 54 of the Indian Income Tax Act of 1922. There can be no doubt that this provision is stricter and wider in scope than the corresponding provision in the Act of 1886 and decisions like those in *Jalobratam Dey v. Bulloram Dey* and *Venkatachella Chettiar v. Sampathu Chettiar* may not be good under this section. But the question for decision in the present case is not whether the court can compel any public servant to produce before it any document of the kind mentioned in Section 54, but whether the court is precluded from admitting in evidence a certified copy which has been given to one of the partners by the Income Tax authorities, even when such a statement is otherwise relevant under the provisions of the Evidence Act. Clause (1) of Section 54 first declares that all particulars contained in certain documents "shall be treated as confidential" and it then proceeds to direct that no court shall insist on their production by a public officer. Clause (ii) enacts a penalty in respect of the disclosure of such particulars by any public servant. It has been maintained before us that the declaration in the earlier part of Clause (i) has a wider effect than the direction in the latter part of the clause and prevents the admissibility of the copy in evidence even though it is available before the court without any summons to a public officer. Reliance has been placed in this connection upon two decisions of the Rangoon High Court reported in *Anwar Ali v. Tafozal Ahmad* and *Ma Hla Mra Khine v. Ma Hla Kra Pru*. The actual decision in the latter case has little bearing on the question now before us, because the aid of the court was there sought to obtain the information; only, instead of asking the court to send a summons to the Income Tax authorities the defendant attempted to circumvent the prohibition in Section 54 by requesting the court to compel the plaintiff to obtain and produce certified copies of the return made by the plaintiff and of a statement made by the plaintiffs agent before the Income Tax Officer.

In 2 Rang. 391, certified copy of an Income Tax return made by the plaintiff had been obtained by the defendant and was produced by him, the learned judge held it to be inadmissible, on the ground that the Evidence Act did not make admissible copies which have been unlawfully issued and certified. We do not wish to be understood as accepting the reasoning in this judgment; it is unnecessary for the purpose of this case to express a definite opinion on the point then before the learned judge. That case had to be dealt with under Clause (f) of Section 65 of the Evidence Act, which is restricted to cases in which the original is a document of which certified copy is permitted by that Act or by any other law to be given in evidence; because, the copy there produced was of an Income Tax return which cannot itself be said to be a "public" document (*Devidutt v. Shriram*). In the case before us the original was itself a public document because it was a statement recorded by the Income Tax Officer; we have only got to see whether what is produced before us is secondary evidence. A certified copy is certainly secondary evidence of a public document. Section 76

of the Evidence Act to which reference has been made in 2 Rang. 391 and in *Devidutt v. Shriram* is, in our opinion, only an enabling section as regards the issue of certified copies. We are not, as at present advised, prepared to read it as an exhaustive provision much less as a provision declaring the grant of copies illegal in any particular case. In *Devidutt v. Shriram* the learned judges were apparently inclined to think that Section 54 of the Income Tax Act did not preclude proper secondary evidence being given of the contents of documents of the kind referred to in that section, but they held that the certified copies were not admissible. Assuming that this view could be maintained as regards copies of the return, we are with all respect, unable to agree that a certified copy even of the order of assessment granted to the assessee, will be inadmissible. In holding that even the assessee is not entitled to obtain the certified copy of the assessment, the learned judge seems to have lost sight of the fact that in the rules made under the Income Tax Act, there is an express proviso for a copy of the order being granted to the assessee (See R. 99). There is, however, no express provision either enabling or prohibiting the grant of copies of sworn statements even to the assessee.

In the present case, Ex. LXIX appears to have been obtained by one of the assessee because assessment was imposed upon all the members of the firm, though the statement was made by only one of them, namely, the first defendant. Even assuming that the strict view taken in 2 Rang. 391 is correct, it is difficult to see anything illegal in the grant of copies of such documents to the assessee himself. The use of the word disclosure in the second clause of Section 54 of the Income Tax Act implies that the disclosure must be to a stranger and not to the party who made the statement. Where one partner makes a statement on behalf of the partnership, we do not think it reasonable to hold that the grant of copies of that statement to other members of the partnership is illegal. It is not clear whether the declaration of the confidential character of such statements u/s 54 was intended to have a wider scope than the enactment in the latter part of the provision. But even so, it will be meaningless to talk of a statement as confidential in respect of the very person who made the statement. If one is to have regard to the general policy of the legislature in matters of this kind, we may point out that in the penultimate proviso to Section 54 of Income Tax Act an exemption has been made in respect of documents etc., relating to a procedure u/s 26-A of the Act. That section relates to proceedings taken for the registration of partnerships for the purpose of the Act and the proviso to Section 54 distinctly contemplates that an Income Tax Officer may even be compelled to produce documents which will show the precise relationship between partners. Though Ex. LXIX was not made in proceedings u/s 26-A of the Act, the above provision is some indication that it was not the policy of the legislature to preclude from the cognisance of the court information of the kind now sought to be obtained from Ex. LXIX. We accordingly hold that Ex. LXIX is admissible in evidence and that it establishes the truth of the plaintiffs claim that the plaintiffs branch was entitled to the three-sixteenths share in Kottu No. 3.

*

*

*

OPEN