

(1964) 04 OHC CK 0011

In the Orissa High Court

Case No : S.C. Appeal No's. 56 to 58 of 1962

Tulsiram Sanganaria and Another

APPELLANT

Vs

Smt. Anni Bai and Others

RESPONDENT

Date of Decision : 22-04-1964

Acts Referred:

Constitution of India, 1950 — Article 133(1)
Income Tax Act, 1922 — Section 54

Citation : AIR 1965 Ori 9

Hon'ble Judges : S. Barman, J; R.K. Das, J

Bench : Division Bench

Advocate : Sidhartha Sankar Rao and S.C. Roy, for the Appellant; H. Sen, R.K. Patnaik, N. Mukherjee, R.C. Patnaik and S.P. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Das, J.—This is an application for leave to appeal to the Supreme Court from the judgment of this Court in F. A. Nos. 82, 83 and 84 of 1958 disposed of in one judgment on 22-12-61.

2. The appeals arose out of three money-suits filed by three different plaintiffs against a common set of defendants, but the, present appellants (defendants 12 and 13J) were the only contesting defendants. The common case of the plaintiffs was that the two joint families of Suraj-mal and Manilal constituted a partnership firm known as "Surajmal Manilal"; Pannalal one of the partners of the firm executed the suit hand-notes on behalf of the above firm in 1949 and all the members of the firm of Surajmai Manilal including the defendants were liable to pay the same.

3. The case of the contesting defendants was that they were separated from Manilal long before the execution of the suit pronotes and were not partners of the firm, Surajmal Manilal, and in any case they were not benefited by the loan and were not liable to repay the same.

4. The subordinate judge negated the contention of the appellants and decreed the plaintiff's suit. On appeal, the High Court also affirmed the said decision of the learned Subordinate Judge and dismissed the appeals. Hence this application for leave to appeal to the Supreme Court under Article 133 of the Constitution read with O. 45, Rule 2 of the Civil Procedure Code.

5. In all these cases the subject-matter of the suit as also in the appeals was less than Rs. 20000 apart from the fact that the judgment appealed against was one of affirmance. Thus, the leave application may be treated as one under Article 133(1)(c) of the Constitution. It is now to be seen whether it is a case which can be certified to be a fit one for appeal to the Supreme Court.

6. In coming to the conclusion that the appellants were the partners of the Firm Surajmal Manilal, the High Court relied upon certain Income Tax assessment orders filed by the son of Manilal as one of the assessee though the appellants, whose position is that of co-assees, objected to the admissibility of such documents in view of the prohibition laid down u/s 54(1) of the Income Tax Act. This Court relying upon the decisions reported in Katikineni Venkata Gopala Narasimha Rama Rao Vs. Chitluri Venkataramayya, ; Banarsi Devi Vs. Sm. Janki Devi, and AIR 1946 Nag 377, Buchhibai v. Nagpur University, held that the assessee can waive his right and rely on Income Tax returns, statements and orders and the certified copy of the same is admissible in evidence. The Calcutta High Court in a case reported in Promatha Nath Pramanick Vs. Nirode Chandra Ghose, , held that though an assessee may waive his privileges u/s 54, still

"it would be a startling thing if a joint assessee were to be permitted to use the copy of assessment order to the detriment of his co-assees in a contentious proceeding between them".

in view of this divergence of opinion, Mr. Sidhartha Roy, learned Counsel for the appellants, contended that the appeal involves some substantial questions of law and that it was fit case for granting certificate for leave to appeal to the Supreme Court for an authoritative decision by the Highest Court of the land. In a case for certificate under Article 133(1)(a)(b) it may be granted as a matter of course if the conditions specified therein, are satisfied, but the grant of a certificate under Clause (c) is entirely discretionary for the High Court. But in exercise of such a discretion the Court may take into consideration the existence of a substantial question of law.

In dealing with a case for leave under Article 133(1)(c) a Division Bench of the Madras High Court in a case reported in AIR 1964 Mad 166, State of Madras v. A. R. Srinivasan held that the scope of an application for leave to appeal to the Supreme Court under Article 133(1)(c) is limited to the question whether a substantial question of law of great private or public importance arises and whether having regard to all the circumstances of the case it is a matter worthy of consideration by the Supreme Court to lay down any authoritative precedent binding on all the Courts. A conflict of judicial decisions on the question of law

amongst the various High Courts or an interpretation of Statute affecting the rights of a section of the public or a question of procedural or substantive law which arisen frequently may be considered as a good ground for leave.

7. In a decision of the Supreme Court reported In Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., . the question that what should be the proper test for determination whether a point of law raised in the case is a substantial one or not within the meaning of Article 133(1) (a) and (b) came up for consideration and their Lordships held:

"That the proper test for determination of such a question would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, it is an open question in the sense that it is not finally settled by the Supreme Court, the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views."

Applying this test, it can be safely said that the question now before us is still open and is not finally settled by any of these courts. What is a substantial question of law between the parties would depend upon the facts and circumstances of each case.

8. The scope of Section 54 of the Income Tax Act came up for consideration before the Supreme Court in a case reported in Charu Chandra Kundu Vs. Gurupada Ghosh, , though in different context. There the appellant assessee himself called for in his support certain statements made by the respondent in an Income Tax proceeding. In view of the provision in Section 54(1) of the Income Tax Act, the Department objected to such production. Their Lordships upheld the objection of the department and held that the waiver by the assesses does not render the prohibition against the Court ordering production of the document inoperative. Before their Lordships the very decisions relied upon in the present First Appeals viz. AIR 1940 Mad 768 AIR 1946 Nag 377 and Banarsi Devi Vs. Sm. Janki Devi, were cited. Their Lordships Held that:

"The question whether the certified copy of the statement made by the respondent before the Income Tax officer is admissible, does not fall to be determined in these appeals"

and held further that

"We may observe that we are not called upon to express any opinion on the correctness or otherwise of these decisions. Suffice it to say that they have no application to the question to be determined in these appeals."

Had there been an expression of any opinion by their Lordships about the correctness or otherwise of those decisions, the matter would have been closed and there would have been no scope for any controversy. In the present case the correctness of those decisions comes directly for consideration.

9. We have already seen that this Court relied upon some Income Tax

assessment orders and papers to come to the conclusion that the appellants were the partners of the Firm Surajmal Manilal. The admissibility of such documents is now under contest and undoubtedly a substantial question of law between the parties. That there is a conflict of judicial opinion between the various High Courts in India and the question is still open for final decision by the Supreme Court cannot be doubted. That decision will affect a large number of cases involving this question may be taken as beyond dispute. In that view of the matter, I am of the opinion that it is a fit case where certificate for leave to appeal should be granted.

In the Result the leave prayed for is granted. The application is allowed. Parties to bear their own costs of the application.

Barman, J.

10. I agree.