

(1908) 09 MAD CK 0016
In the Madras High Court

Venkatachella Chettiar and Others

APPELLANT

Vs

Sampathu Chettiar and Others

RESPONDENT

Date of Decision : 22-09-1908

Acts Referred:

Citation : (1909) ILR (Mad) 62 : 1 Ind. Cas. 705

Hon'ble Judges : Arnold White, C.J;Sankaran Nair, J

Bench : Division Bench

Judgement

1. We are of opinion that the learned Judge is right in dismissing the suit. It is not shown that the vendees under Exhibit A were trustees or purchased the property as representatives of any class of persons. There is no evidence to prove the letting to Rangiah, the grandfather of defendants Nos. 1 and 2, and his brother Ramaswami Chetti, in the year 1860. There is no lease nor any accounts produced by the plaintiffs to prove any payment of rent by them till 1875 when it is alleged they were appointed trustees. The evidence of their appointment as trustees in that year is quite unreliable. The temple records have not been produced to prove any trust. In the course of the Insolvency proceedings the property was claimed by the defendants as their own and yet nothing was done to enforce the trust. It is proved on behalf of the plaintiffs that this property was excluded from partition and the defendants carried out certain festivals in this temple and certain other temples; contributions also appear to have been levied from certain shopkeepers for this purpose and it appeal's probable, therefore, that the defendants' share consisted of at any rate some portion, if not the whole, of the income derived from this shop. But the contributors are shown not to have formed a defined class, the

festivals were uncertain, and the defendants' contribution is not shown to have been a certain or ascertainable amount, for enforcement of

payments. On this evidence, therefore, we are unable to hold that there was any trust which could be enforced by the plaintiffs or at their instance

or that the defendants are trustees. It was then argued before us that the learned Judge was wrong in declining to admit in evidence certain

statements alleged to have been made by one of the defendants in respect of the plaint property during certain inquiries before the Income Tax

Deputy Collector. The Deputy Collector was summoned to produce the documents in appeal, and the Advocate-General represented to us that

under instructions from the Local Government the Deputy Collector declines to produce them. He contends that, u/s 38 of the Income Tax Act

and Rule 15 of the rules framed by the Government of India with reference thereto, the Collector is prevented from disclosing the particulars of

those documents, and that they are communications made to the Collector in official confidence the disclosure of which in his opinion would be

prejudicial to public interests, and that they are therefore inadmissible u/s 124 of the Indian Evidence Act. It was also contended before Mr. Justice

Boddam that they related to affairs of State and were, therefore, inadmissible u/s 123 of the Evidence Act. As the question is one of general

importance and the Advocate-General desires to obtain an authoritative ruling on the point, we proceed to give our reasons for our conclusions.

Section 162 of the Indian Evidence Act runs thus: "'A witness summoned to produce a document shall, if it is in his possession or power, bring it to

Court notwithstanding any objection which there may be to its production or to its admissibility.'" The words are quite clear and the Deputy

Collector is bound to attend with the documents. He was, therefore, wrong in declining to bring them to Court. Having brought them to Court, he

is entitled to raise his objections to their production or admissibility, and under the same section the validity of any such objection shall be decided

on by the Court'" and for the purpose of deciding on the validity of the reason that may be offered for withholding them, the Court may receive

evidence. The returns submitted to an Income Tax Collector, any statements made before him or any orders that may be made by him do not refer

to matters of State and neither the Advocate-General nor Mr. V. Krishnaswami Ayyar on behalf of the defendants has contended that they are

exempt from production under the terms of Section 123 of the Indian Evidence Act. Under the same section, i.e., 162, besides taking evidence to decide the question of admissibility "the Court may also inspect the document unless it refers to matters of State," and as the documents aforesaid in the custody of the Income Tax Collector do not refer to matters of State, the Court is also entitled to inspect them. The Collector's objection to such inspection cannot be upheld. The next question is whether they are admissible in evidence. u/s 38 of the Income Tax Act II of 1886 the Governor-General in Council may make rules for preventing any disclosure, and by Rule 15 all public servants are forbidden to make public or disclose, except for the purpose of the working of the Act, any information contained in documents produced or delivered with respect to assessments under Part IV of the second schedule of the Act, i.e., produced for the purpose of showing the income of the assessee. In an old case, *Lee v. Birrell* (1813) 3 Camp. 337, it was held by Lord Ellenborough that, notwithstanding the oath administered under the statute to a Collector of the property tax that he will not disclose anything he learns in that capacity except with their consent or by virtue of an Act of Parliament, he is bound when summoned as a witness to produce the books in his possession as there is no reference in the statute or the oath about evidence to be given in a Court of Justice, and give evidence of facts within his knowledge. The learned Advocate-General contended that the decision was not right, and was opposed to the statute itself--46 Geo. III, chap. 65, Schedule (F), which contained by implication a prohibition against giving evidence in a Court of Justice except in certain cases of prosecution for perjury. But the decision has not been dissented from in the English Courts, and is treated as authoritative in the text books. The same principle was followed in 1863 by Scotland, C.J., who compelled the production of Income Tax schedules, though the objection was taken by the officer who appeared: *Reg. v. Yakatazkhan*. 2 MS 1863, Mayne's "Criminal Law of India," 3rd edition, p. 91.

2. With reference to this rule itself under the Income Tax Act, Jenkins, J., took the same view following the above decisions in *Jadobram Dey v.*

Bulloram Dey 26 C.k 281. The same conclusion was arrived at by Subrahmaniam Ayyar, J., in the recent *Arbuthnot's* Insolvency proceedings when

he compelled the production of Income Tax returns. The case *In re Joseph Hargreaves* (1900) 1 Ch. 347, turned upon Section 115 of the Companies Act, 1882, which left it to the discretion of the Judge to order the production of certain documents including the balance sheets of the company delivered to the surveyor of taxes for the purpose of assessment of Income Tax. We have no such discretion given to us under the Income Tax Act. But it was contended by the learned Advocate-General that in these decisions the effect of Section 124 of the Evidence Act has not been considered. Section 124 is in these terms: "'No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.'" We agree with the Advocate-General that once it appears that a communication to a person was made in official confidence, it is left to him and not to the Courts to decide whether public interests would suffer by the disclosure, and the Courts have no power to compel production if he considers such production prejudicial to public interests. But it is a pre-requisite that the communication must have been made to him in "'official confidence,'" and as already pointed out, it is left to the Court u/s 162 of the Indian Evidence Act to decide the question and for that purpose it is also open to the Court to inspect the document. It was argued by the Advocate-General that the Income Tax records may contain confidential matters and it is of great importance that persons should be able to be certain that any statements which may be made by them for the purpose of Income Tax should in no case be disclosed, and as those statements must have been made in that belief they must be held to have been made "'in official confidence,'" and it would not be right to insist upon the production of the documents or to receive them in evidence. In support of this argument Section 38 of the Income Tax Act and Rule 15 already referred to were relied upon. We are unable to accept this view. Though the cases do not refer to Section 124 of the Evidence Act, they, in effect, decide that provisions of the Income Tax Act do not preclude the production of these documents in a Court of Justice, and any person, therefore, submitting any return could rely only upon the official not disclosing the information to other persons otherwise than in Court of Law. Further, on reading the sections of the Income Tax Act it appears to us, that the Rule 15 was intended for the guidance of the Income Tax officers and not to

preclude any evidence being given in a Court of Justice. The orders of the Collector u/s 14 or Section 26 of the Income Tax Act determining the

amount of the Income Tax payable, it is clear, are not privileged documents u/s 124 of the Indian Evidence Act as they are not communications

made to him. This is a strong argument against the privilege claimed for the returns or statements on which such orders are made: u/s 28 of the

Income Tax Act the Collector can compel the production of documents and enforce the attendance of witnesses. It is difficult to say that

documents produced or statements made under process of law can be said to be made in official confidence. They have to be made even if, in

fact, no confidence is reposed in the official by the person who makes the statement. We are, therefore, of opinion that neither the provision of the

Income Tax Act, nor the sections of the Evidence Act support the contention of the Advocate-General. We have accordingly called for the

production of those papers. On a perusal of those documents it appears to us, however, that they do not advance the plaintiff's claim and there is

nothing in those papers in any way inconsistent with the conclusion formed upon the other evidence.

3. We accordingly dismiss the appeal with costs.