

Unreportable

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO(OS) No.59 of 2008

DATE OF HEARING: 01.09.2008

DATE OF DECISION : 02.09.2008

Manjula Sodhi and others

.....Appellants

Through: Mr.P.K.Duggal, Advocate

- Versus -

Suneel Sodhi and Others

.....Respondents

Through: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sumeet Batra, Advocate

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR.JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Respondent no.1 herein is the plaintiff in the suit which he has filed for partition of certain properties on the pleas that those are the HUF properties. In that suit she sought permission to tender in evidence the income tax assessment orders dated 2nd March, 1976 and 15th October, 1977 as well as original notice of demand dated 15th July, 1977. This application filed by the plaintiff has been partly allowed by the learned Single Judge vide order dated 8th October, 2007. She has been allowed to

tender in evidence certified copy of the assessment order dated 15th October, 1977 of Shri M.L.Sondhi for the assessment year 1976-77 subject to costs of Rs.5,000/- payable by the plaintiff to the defendants. Against that order present appeal is preferred. It would be appropriate to take note of the contention of the learned counsel for the appellants(defendants) after recording few facts which may have some bearing.

2. The plaintiff had intended to prove these documents through Shri Kamal Nanda, Advocate. For this purpose affidavit by way of evidence of Shri Kamal Nanda was filed. Shri Kamal Nanda, Advocate was filing income tax returns on behalf of Shri M.L.Sondhi. However he declined to appear before the Court after filing of his affidavit in September, 2002. The said affidavit was, therefore, struck off the record as evidence vide orders dated 23rd September, 2005. The evidence of the plaintiff was also closed in affirmative. The defendants were directed to produce their evidence. One of the defendants has appeared as the first witness who is under cross-examination. At this stage aforesaid application was filed by the plaintiff seeking permission to tender in evidence the aforesaid documents. It was stated in the application that after Mr.Kamal Nanda refused to appear as a witness for cross-examination, the attempts were made by the plaintiff to produce the original records of the income tax to prove the said assessment orders. However, Income Tax Department

pointed out that since the record was more than 30 years old the same had been weeded out. In these circumstances the plaintiff had moved the application on the ground that she be permitted to place on record the documents which were original and more than 30 years old and, therefore, admissible in evidence even under Section 90 of the Evidence Act.

3. Appreciating the aforesaid plea in the application the learned Single Judge has allowed the prayer made in the said application *inter alia* observing as under:-

“The Supreme Court in Ram Das vs. Dy. Director of Consolidation, AIR 1971 SC 673 had held that admissibility of evidence of assessment orders is unexceptionable. In this case the question which had been agitated was about the admissibility of certain assessment orders on which reliance has been placed for deciding whether the contesting defendants were the partners of firm Surajmal Manilal on whose behalf the promotes had been executed. This Court on 12 (1976) DLT 321; Parkash Rai v. J.N. Dhar had held that Section 77 of the Evidence Act seems to have been enacted to obviate the production of the original public documents for evidentiary purposes. The same public document may be required to be produced at several places by different persons. If the production of the originals is insisted on, it would not only result in great inconvenience to the person concerned, but their continual change of places would also expose them to the risk of being lost. Frequent handling can also damage and some-time even destroy such documents. The production of certified copies thereof certainly ensures the preservation of the originals. This seems to be the object behind this section and in 134 (2006) DLT 378, S. Harpreet Singh Chawla & Anr. v. Ceat Ltd. & Anr. it was further held that under sub-section (2) of Section 74 of the Indian Evidence Act, 1872, public records kept of private documents is a public

document and in terms of Sections 76 and 77 of the Indian Evidence Act production of certified copies of these documents would be proof of the contents of the document. Therefore a public document can be proved in terms of section 76 to 78 of the Evidence Act and can also be proved otherwise. A certified copy of an assessment order, therefore, if produced will be admissible and can be considered by the Court.

The application has been filed for tendering the ordinary copy of the assessment order dated 2nd March, 1976 and certified copy of order dated 15th October, 1977. Since the copy of the order dated 2nd March, 1976 is an ordinary copy, the same cannot be tendered and cannot be accepted by the court, however, the copy of the assessment order dated 15th October, 1977 of Shri M.L. Sondhi is a certified copy bearing the stamp of Income Tax Office which is for the assessment year 1976-77 and therefore, the same is allowed to be tendered in evidence by the plaintiff, subject to a cost of Rs.5,000/- payable to the defendants and the certified copy of assessment order dated 15th October, 1977 is exhibited as 'XI'."

4. Submission of Mr.Duggal, counsel appearing for the appellant/defendant is that after the evidence of the plaintiff was closed and the defendant was in the witness box, at this stage the prayer for making such an application should not have been allowed. It is further submitted that even in the application the plaintiff had made a specific averment to the effect that the documents were in the proper custody of the plaintiff having been received by her from her husband from father Shri M.L.Sondhi for the relevant years in the safe custody. His submission was that the plaintiff's husband(defendant no.4) in the suit had died in the year 1996 from which

it would be implied that as per the plaintiff the documents were given to her before 1996. However no reason was given as to why, in these circumstances, such documents could not be tendered earlier.

5. No doubt there is a delay in moving the application. However at the same time there are certain weighty circumstances in favour of the plaintiff because of which we would not like to interfere with the order passed by the learned Single Judge. These circumstances are as under:-
6. In the plaint itself the plaintiff has referred to these documents. It is specifically averred in para 2 of the plaint that the property was acquired and constructed with the joint family funds and it was mentioned as joint family property in the income tax return filed by the defendant no.1 for the assessment year 1973-74 as Karta of HUF. In the written statement while giving reply to para 2 the defendants have not even denied the said assessment. However what is pleaded is that mere fact of assessment in income tax makes no difference in the status of the property which remains his acquired property because the Revenue Authorities are concerned only for the purpose of revenue and cannot decline and adjudicate the rights of the parties. Be that as it may, what is emphasized is that plea with regard to the assessment of the property as HUF from 1973-74 was taken at the very outset in the plaint itself. The plaintiff had also taken proper steps to prove these income tax returns as already pointed out initially affidavit of Advocate in evidence was tendered. It was

her misfortune that the said Advocate ultimately did not turn up. Mr.J.P.Sengh, learned counsel for the plaintiff submits that though coercive process could have been issued to procure the attendance of the counsel, the plaintiff did not take the step only because the counsel for the plaintiff advised that he being an Advocate such an unpleasant step be not taken. Instead it was decided to get these documents proved by getting the income tax records summoned. Even the steps in this behalf were taken but again it was found that the records have been destroyed in the office of the Income Tax Department.

7. No doubt after the plaintiff found that record with the Income Tax Department had also been weeded out, she could have filed such an application immediately thereafter and there is some delay in making the application. However, the learned Single Judge has compensated the defendants by imposing the cost of Rs.5,000/-. Moreover, only one document namely assessment order dated 15th October, 1977 is allowed to be tendered in evidence. That too when it is found that it is the certified copy bearing the stamp of Income Tax Officer which is signed in original while certifying the same. It's a public document which is more than 30 years old. Furthermore, as pointed out above, the defendant did not even dispute the said assessment in the written statement but to took different plea to explain away the same.

8. In these circumstances we are of the view that no case is made out to interfere with the discretion exercised by the learned Single Judge. We accordingly dismissed the application. However there shall be no order as to costs.

(A.K. SIKRI)
JUDGE

September 02, 2008
JK

(MANMOHAN SINGH)
JUDGE