

Keshardeo Chamria - - - - - *Appellant*

*v.*

The Commissioner of Income-tax, Bengal - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM  
IN BENGAL

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 9TH MAY, 1939

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*Present at the Hearing:*

LORD RUSSELL OF KILLOWEN.

LORD ROMER.

SIR GEORGE RANKIN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

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In this case the appellant appeals from a judgment of the High Court of Judicature at Fort William in Bengal on a reference to it by the respondent under section 66 (2) of the Indian Income-tax Act, 1922.

The question referred was framed thus:—

“ Whether in the circumstances described above the present assessee and Rai Bahadur Ramprotap Chamria were the managers of the properties appointed by or under any order of a Court within the meaning of section 41 of the Indian Income-tax Act and whether in the facts and circumstances given above the Income-tax Officer acted illegally in assessing the present assessee in respect of his share of the property? ”

The relevant facts and circumstances, which appear in the statement of case, must be stated.

In the year 1929 the appellant instituted a suit in the High Court at Calcutta (No. 183 of 1929) against one Ramprotap, and a minor grandson of Ramprotap, alleging that he was the adopted son of Ramprotap's deceased brother Amloke Chand. By way of relief he claimed declarations that he was the son of Amloke Chand, and that he was entitled jointly with Ramprotap to certain properties specified in a schedule attached to his plaint. He also asked for an enquiry as to what other properties were joint and for partition. On the 23rd May, 1930, a consent decree was made in the suit. The decree recited that the terms of settlement set forth in the schedule thereto had been agreed to by the adult parties and the guardian *ad litem* of the infant defendant, and that the Court was of opinion that it would be for the benefit of the infant

defendant that the decree should be made. The operative portion of the decree, so far as relevant, ran thus:—

“ It is declared with the consent of the adult parties and the guardian-*ad-litem* of the infant defendant by their respective counsel that the said terms ought to be carried out and the same are ordered and decreed accordingly and it is further declared with the like consent that the plaintiff is entitled to one equal half part or share of the residue of the joint estate mentioned in the said terms after setting apart the sum of Rupees Eleven lacs for allotment to the said Rai Bahadur Ramprotap Chamria in terms of clause 2 of the said terms and also setting apart premises No. 178, Harrison Road, and No. 71, Cross Street, in terms of clause 4 of the said terms (the same into two equal parts or shares being considered as divided and hereinafter referred to as the said properties) AND that the defendant Rai Bahadur Ramprotap Chamria is entitled to the remaining equal half part or share thereof. And it is further ordered and decreed with the like consent that a partition be made of the said properties with the appurtenances into two equal parts or shares and that a commission do issue directed to Rai Bahadur Badridas Goenka and Radhakissen Chamria both named in the said Terms for the purposes also mentioned therein and it is further ordered and decreed with the like consent that the said Commissioners do take an account subject to the conditions mentioned in the said terms of the joint properties (including the loss and profits of the business carried on by Rai Bahadur Ramprotap Chamria) and submit a separate report along with the return hereinafter mentioned and make a division of the said properties into two equal parts or shares and as regards the immoveable properties make the same by metes and bounds where they shall see occasion with power to them to award compensation in money by way of equalising the said partition and all deeds and writings relating to the said properties in the custody or power of any of the parties are to be produced before the said Commissioners upon oath or solemn affirmation as the said Commissioners shall direct. And it is further ordered and decreed with the like consent that the said Commissioners be at liberty to examine witnesses upon oath or solemn affirmation and do take the depositions in writing and return the same with the said Commission. And it is further ordered and decreed with the like consent that the said Commissioners do allot one equal half part or share of the said properties to the plaintiff to be held and enjoyed by him in severalty and the remaining one equal half part or share thereof to the said defendant Rai Bahadur Ramprotap Chamria to be held and enjoyed by him in severalty.”

In fact the scheduled terms of settlement did not mention any specific items of the joint estate, although they provided for partition “ of the joint properties as mentioned above.”

On the 28th July, 1930, an order was made in the suit whereby the Official Receiver was appointed receiver “ of the rents, issues and profits of the immoveable properties belonging to the parties to this suit in the plaint in this suit mentioned,” with liberty to divide the income into two equal shares and to pay one equal share to the appellant and Ramprotap respectively. The Official Receiver, however, never took possession under that order; and on the 2nd April, 1931, an order was made on the appellant’s petition in the following terms:—

“ It is ordered that the said order dated the 28th day of July last do stand varied in the manner indicated in the Schedule hereunder written and it is further ordered without prejudice to the rights of either party to apply to the Court for the re-appointment

of the said Official Receiver as the Receiver of the properties mentioned in the said Schedule (hereinafter referred to as the said properties) in the circumstances and on the conditions also mentioned in the said Schedule and the said Official Receiver be and he is hereby discharged from further acting as the Receiver of the said properties."

The schedule to that order contained a copy of para. 5 of the appellant's said petition which stated that since the order of the 28th July, 1930, the parties had agreed as follows:—

"(a) that the Official Receiver shall not take possession of the following immoveable properties and shall, without prejudice to the right of either party to apply for reinstatement of the Receiver, be discharged from acting as Receiver in respect of such properties:— [Then followed a list of the properties which included all the properties relevant to this appeal.]

"(b) that the plaintiff (present assessee) and the defendant Ramprotap are jointly given liberty to realise the rents of the above properties on joint receipts, duly to make the necessary expenses thereout and to file rent suits,

"(c) that the documents of title be kept in joint custody of the plaintiff Keshardeo and the defendant Ramprotap,

"(d) that Ramprotap and Keshardeo are also given liberty to invest the money which will come to their hands or divide the same equally,

"(e) that liberty be given to either party to apply for an order for re-appointment of Receiver of the rents, issues and profits of the abovenamed properties without any objection on the part of the other party in the event of their not being able to agree as to collections, disbursements, investments or distribution of the said rents, issues and profits and on such application being made by either party the other party shall consent to such appointment."

The arrangement so provided for remained in force until the 23rd August, 1933, when on the application of the parties the Official Receiver was again appointed Receiver. He did not, however, obtain possession until about the 24th February, 1934. The appellant and Ramprotap, while in possession, divided the receipts between themselves in equal shares.

When called upon for a return of his income for the year ending the 31st March, 1933, for the purpose of assessment for the year ending the 31st March, 1934, the appellant (on the 31st July, 1933), under the head "Property" made a return of Nil, stating that "the properties are in the hands of the Official Receiver and Joint Managers appointed in suit No. 183 of 1929 from whom the petitioner has not obtained his share"; and also that "the income from properties . . . are liable to be assessed in the hands of the Receivers under section 41 of the Act." The Income-tax Officer nevertheless assessed his total income at the figure of Rs.48,628, which included a sum of Rs.33,920 under the head "Property" in respect of properties specified in the schedule to the plaint, and in the schedule to the order of the 2nd April, 1931. The appellant appealed against this assessment, alleging that the assessment was wrong, as the properties "are in the hands of the Official Receiver appointed in suit No. 183 of 1929," and further alleging that

the assessment was wrong on the ground that his title, as claimed by him to the extent of a half share in respect of the properties, was disputed by Ramprotap.

In regard to the assessment of the appellant for the following year ending the 31st March, 1935, the same procedure took place. The appellant returned Nil under the head "Property," alleging that the assessment should be made under section 41 of the Act and that his title was in dispute; his total income was assessed by the Income-tax Officer at Rs.54,558, which included a sum of Rs.28,177 under the head "Property" in respect of the same properties as before; and the appellant appealed against that assessment.

The Assistant Commissioner dealt with both appeals together, and confirmed both assessments. It is clear from the confirmation order, which contains the grounds of his decision, that the matter was throughout dealt with on the footing that the appellant was the owner of an undivided half share of the properties in question, and that the contention raised on behalf of the appellant was that the assessments in respect of the properties should have been made under section 41 of the Act on the appellant and Ramprotap in respect of the entirety, and not upon each separately in respect of a moiety. The contention of the appellant's pleader is stated thus—"that according to an order of the Honourable High Court the management of the properties in question were taken away from the Official Receiver and made over to the assessee and Ramprotap whereby the two parties were authorised to collect rents jointly and meet the necessary expenses. It is therefore argued that the income was not allocated separately and should have been assessed on the managers and not on the parties separately"; and it is subsequently stated that in this connection the appellant relied on section 41 of the Act.

The appellant, by two petitions, required the respondent to refer to the High Court several questions as being questions of law arising out of the Assistant Commissioner's order. The respondent, however, was of opinion that the only contention of any substance was the appellant's contention that as the property in question was under the joint management of himself and Ramprotap by or under the order of the 2nd April, 1931, "the tax in respect of its income can be levied only upon such managers by virtue of the provisions of section 41 of the Income-tax Act," and that such matter would be covered by the question which he submitted for the Court's decision. The respondent stated as his own opinion that section 41 had no application to the case. He thought that the decree of the 23rd May, 1930, declared the appellant and Ramprotap to be owners of the properties in equal shares, and that the question formulated should be answered, as to both parts, in the negative.

The appellant being dissatisfied with the question as framed by the respondent, obtained an order of the High Court, dated the 30th July, 1936, ordering the respondent to show cause why he should not be required to state a

case on the questions as framed by the appellant in his petitions. The case and the rule were heard together on the 26th and 27th January, 1937, and on the 4th March, 1937, the High Court delivered judgment, their answer to the question referred being "that the assessee and Ramprotap were not managers of the properties appointed by or under any order of a Court within the meaning of section 41 of the Indian Income-tax Act, and that the Income-tax officer did not act illegally in assessing the assessee in respect of his share of the property". The appellant now appeals to His Majesty in Council from that judgment. An order was also made on the 4th March, 1937, discharging the order of the 30th July, 1936, and ordering the appellant to pay the costs of the application. From that order the appellant has not appealed.

Their Lordships have thought it necessary to state the history of the case at some length in view of the course taken by the arguments before the Board. The question for decision on this appeal is simply whether the question referred to the High Court has been correctly answered; and it is not open to their Lordships to go beyond the question or to consider matters outside its limits.

Leading counsel for the appellant stated, in opening the appeal, that he did not contend that the assessment should have been made under section 41, because (as he explained in his reply) the section even if applicable was not in his view mandatory or compulsory. His main argument was based upon the view that there was no finding that the appellant was "owner" of the property, that the decree of the 23rd May, 1930 did not establish ownership in him, that the question of the ownership of the properties was still in dispute in the partition suit, and that he could not be assessed under the head "property" in respect of buildings and lands of which his ownership (as required by section 9 of the Act) had not been established. Junior counsel for the appellant, however, took the unusual course of venturing upon ground which his leader had feared to tread, and relied whole-heartedly upon the provisions of section 41 as being fatal to the assessment.

Counsel for the respondent, however, argued that the appellant should not be allowed to travel outside the contention under section 41. This, they said, was the only contention raised before the Assistant Commissioner; and the case stated, which under section 66 (2) is limited to questions of law arising out of the order or decision of an Assistant Commissioner, treats the point involved as being merely the contention under section 41. Further, it was pointed out that the High Court judgment, though touching on other points, treats section 41 as the section with which the reference was directly concerned.

Their Lordships are of opinion that this argument of the respondent's counsel is well founded. They feel no doubt that the only objection to the assessment which was urged before the Assistant Commissioner was that the assessment could only be made under section 41, that the decision of the

Assistant Commissioner was given on the assumption of ownership in the appellant, and that the question of law referred under section 66 consists simply of the question whether on that assumption section 41 operated to compel the authorities to assess in respect of the entirety the two persons who were alleged to be acting as managers, and to prevent them from assessing one of the co-owners in respect of his moiety.

In this view of the case the only question for their Lordships' consideration is whether the case falls within section 41. That section provides as follows:—

“ 41.—In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.”

In their Lordships' opinion the case does not come within the words of the section at all. The respondent and Ramprotap were never appointed receivers or managers by or under any order of the Court. The order of the 2nd April, 1931, did not do so, nor did it purport to do so. It follows, therefore, that the section has no application to the case, and that the question referred was correctly answered by the High Court.

It is unnecessary for their Lordships to express any opinion upon the various other points which were argued before them. If the appellant desired to enlarge the area of the question referred or to add other questions, so as to raise those points, it was open to him to appeal against the order which discharged the rule. That he has not done.

Neither is it necessary to decide whether the consent decree operated to establish that the lands specified in the schedule to the plaint formed part of the joint estate, a question which, it was said, was still in dispute; although as at present advised their Lordships feel great difficulty in understanding how partition can have been ordered of parcels which were not ascertained and for the ascertainment of which no machinery was provided, or how under the orders of the 28th July, 1930, and the 2nd April, 1931, the income of the properties therein mentioned was divisible in moieties, except upon the footing that those properties formed part of the joint estate.

For the reasons indicated, their Lordships are of opinion that this appeal should be dismissed and they will humbly so advise His Majesty. The appellant will pay the respondent's costs of the appeal.



In the Privy Council

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KESHARDEO CHAMRIA

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THE COMMISSIONER OF INCOME-TAX,  
BENGAL

DELIVERED BY LORD RUSSELL OF  
KILLOWEN

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