

Mst. Kesro,
widow of Chatru
v.
Mst. Parbati
Daughter of
Phulgari
Gosain, J.

The rule of reversion is really limited to gifts made in favour of relations of this type. I know of some cases in which property gifted to a Khanna damad or a resident son-in-law also reverted, but the basis of the said judgements also remains the same as the one of *Sita Ram and others v. Raja Ram* (1). For the afore-said reasons I am of the opinion that the property in the present case does not revert to the donor's line and that the plaintiff has consequently no right to the same. I would, therefore, allow this appeal and dismiss the plaintiff's suit with costs throughout.

I may note that almost at the conclusion of the arguments an application was presented to us purporting to be one under rules 25 and 27 of Order 41, Civil Procedure Code, praying for opportunity for the additional evidence on the point of the nature of property. As I have pointed out above, Achhru Ram, J., gave that opportunity to the parties and if they failed to avail of it, they are no entitled to another opportunity at this stage. The said application is also dismissed.

Chopra, J.

CHOPRA, J.—I agree.
D. K. M

CIVIL WRIT
Before Falshaw, J.

SHAMA MAGAZINE, ASAF ALI ROAD, NEW DELHI,—
Petitioner

versus

THE STATE OF DELHI AND OTHERS,—Respondent.

Civil Writ No. 122-D of 1956.

1957
Sept., 3rd

Industrial Disputes Act (XIV of 1947)—Section 11(3) and Rule 21 of the Rules framed under the Act—Effect of—Production of documents—Provisions governing—What documents a party can be ordered to produce—Order for production of Income-tax, assessment returns if can be passed.

(1) 12 P.R. 1892.

Held, that the combined effect of section 11(3) of the Industrial Disputes Act and Rule 21 of the Rules framed under the Act is that the Tribunal's powers in relation to directing the production of documents by parties are strictly governed by the relevant provisions of the Civil Procedure Code, under which *inter alia* a party can only be ordered to produce documents which are in its possession or in its power, which evidently refers to existing documents which though not actually in the immediate possession of the party are readily available to it. It is, therefore, at once obvious that such parts of the demands of workmen in this case as involve the preparation of lists or abstracts of various kinds from existing records were improper demands and that these parts of the order of the Tribunal which directed the management to prepare and furnish such lists or abstracts were illegal.

Held further, that the order for the production of certain income-tax assessment returns is illegal. These documents are privileged under the provisions of the Income-tax Act itself, and it has even been a matter of controversy in the Courts as to whether even an assessee himself could waive his privilege and produce records of proceedings before the Income-tax authorities in other proceedings if he thought it advantageous to do so and although the correct view on this matter appears to be that the privilege attached to proceedings before the Income-tax authorities is intended primarily for the protection of assesses, and that assesses are in certain circumstances entitled to waive this privilege there can be no doubt of the flagrant illegality of the order of the Tribunal calling on the management in this case to produce income-tax assessment returns at the instance of the workmen.

Petition under Articles 226/227 of the Constitution of India, praying that this Hon'ble Court may be pleased to issue the appropriate writs, orders or directions to quash the aforesaid order of reference, the aforesaid proceedings, and the impugned order, and further praying that your honour may be pleased to make such other interim orders or directions as this Hon'ble High Court may be pleased to deem fit in the circumstances of the case.

N. C. CHATTERJEE and H. L. ANAND, for Petitioner.

BISHAMBER DAYAL, for Respondents.

JUDGMENT.

Falshaw, J.

FALSHAW, J.—By a notification, dated the 26th of August, 1955, the Delhi State Government referred an industrial dispute which was stated to exist between the management of Shama Magazine and their workmen to an Industrial Tribunal under the provisions of the Industrial Disputes Act of 1947. In the order of reference several matters were in dispute relating to conditions of service, scales of pay, dearness allowance and bonus for the year 1951-52, 1952-53 and 1953-54.

Before the Tribunal the workmen were represented by a registered trade union known as the Commercial Employees Union. The Union filed an application dated the 26th of April, 1956, for the production by the management of a large number of documents the description of which fills two typed fulscape pages. Although this application was opposed on various grounds by the management, Mr. Rameshwar Dayal, the sole member of the Tribunal, passed an order on the 16th of July, 1956, ordering the management to produce practically all the documents required by the Union on behalf of the workmen.

This is the order which is challenged in the present petition filed under Article 226 of the Constitution on behalf of the management of the Magazine. This petition was apparently filed on the 30th of August, 1956 and on the following day an interim order was obtained from Bishan Narain, J., staying the operation of the impugned order pending the hearing of the writ petition by the Motion Bench. For some reason or other the writ petition did not actually come up for admission until the 3rd of December, 1956, when it was admitted and the stay of further proceedings was ordered, but at the same time

a very early hearing was ordered. It is unfortunate that in spite of this order a period of nine months has elapsed before the petition could be heard.

Actually in the petition more than the mere order for the production of the documents in question has been challenged since the jurisdiction of Mr. Remeshwar Dayal is also challenged on the ground that he was not the Additional District Judge originally named as constituting the Tribunal in the order of reference and also that the reference of dispute relating to the period before the present partnership firm was constituted is illegal. The first of these points has not now been raised but as regards the second it is stated in the petition supported by an affidavit that the present partnership firm which constitutes the management of the Magazine was constituted on the 1st of August, 1953 and the objection raised is that the question of bonus for the years 1951-52 and 1952-53 could not legally be referred to the Tribunal.

On this aspect of the case I do not consider that there is much substance in the objection of the petitioner, since it is stated without contradiction in the affidavit filed on behalf of the workmen that whereas formerly the Magazine was being run as sole manager and proprietor by Mr. Yunus Dehlvi, the only change which has been made in the constitution of the firm since the 1st of August, 1953 is that Mr. Yunus Delhvi has taken in his three sons as partners and Mr. Yunus Delhvi is still the general manager as well as a partner in the firm. In the circumstances I do not consider that there was anything illegal in the reference of disputes relating even to the period before the 1st of August, 1953, between the management of Shama Magazine and their workmen to the Tribunal nor do I consider that it was in any way illegal for the Tribunal to order the production of documents relating to this earlier period so long as

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these documents could otherwise legally be ordered to be produced.

It is, however, contended on behalf of the management that the order for production of the documents is generally illegal as it was based without proper consideration of the relevant provisions of the Civil Procedure Code and in some respects it is otherwise illegal.

One instance of illegality in the order which has been pointed out is the order for the production of certain income-tax assessment orders. These documents are privileged under the provisions of the Income-tax Act itself, and it has even been a matter of controversy in the Courts as to whether even an assessee himself could waive his privilege and produce records of proceedings before the Income-tax authorities in other proceedings if he thought it advantageous to do so and although the correct view on this matter appears to be that the privilege attached to proceedings before the Income-tax authorities is intended primarily for the protection of assessees, and that assessees are in certain circumstances entitled to waive this privilege there can be no doubt of the flagrant illegality of the order of the Tribunal calling on the management in this case to produce income-tax assessment returns at the instance of the workmen.

The combined effect of section 11(3) of the Industrial Disputes Act, and rule 21 of the Rules framed under the Act is that the Tribunal's powers in relation to directing the production of documents by parties are strictly governed by the relevant provisions of the Civil Procedure Code under which *inter alia* a party can only be ordered to produce documents which are in its possession or in its power, which evidently refers to existing documents

which though not actually in the immediate possession of the party are readily available to it. It is, therefore, at once obvious that such parts of the demands of workmen in this case as involve the preparation of lists or abstracts of various kinds from existing records were improper demands and that these parts of the order of the Tribunal which directed the management to prepare and furnish such lists or abstracts were illegal.

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Orders of Tribunals relating to production of documents by management have come before the Courts in previous cases. In a writ petition relating to a dispute between *Mettur Chemical and Industrial Corporation, Ltd.*, and *Their workers* (1), Sri Rajagopalan, J., in his judgment which is printed has held that the provisions of the Civil Procedure Code relating to the production of documents must be strictly complied with by a Tribunal. In *Punjab National Bank, Ltd., v. Ram Kanwar and others* (2), Khosla, J., by his order, dated the 4th of January, 1957 held that proceedings before Industrial Tribunal should be conducted as far as possible in the same way as a judicial proceeding and the workmen cannot try to fill in gaps in their own case by compelling the employer to make a research into certain matters, prepare statements and produce them along with confidential information of the employer's business dealings and that an order of an Industrial Tribunal directing the employer to produce the proceedings of its Board of Directors or directing the employer to prepare evidence for the benefit of the workmen, or relating to information which is available in the office of the Registrar of Joint Stock Companies, would be in excess of its powers under section 11(3) of the Industrial Disputes Act.

(1) Labour Law Journal Vol. I of 1955 p. 27.

(2) C.W. No. 71 D of 1955.

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More recently Bishan Narain, J., in Civil Writ 373 of 1956, decided on the 11th February 1957 and I myself in Civil Writ 133-D of 1956 decided on the 6th of August, 1957 have also held that the provisions of the Civil Procedure Code must be strictly complied with before production of documents can be ordered.

It seems to me that the order in this case must be set aside since some parts of it are evidently illegal and the whole matter requires reconsideration in the light of the above observations. At the same time I cannot help observing that even after proper reconsideration of points involved much of the material which is now sought by the workmen in this case will probably have to be admitted in some form or other and it may well be that the management in this case may find it more convenient to prepare lists or abstracts even if they cannot be compelled to do so than to produce all the records and registers from which such documents could be prepared. The only material ordered by the Tribunal to be produced which I definitely rule out is the income-tax assessment returns. One point which was raised on behalf of the management was that the dispute was only between the management of Shama Magazine and its workers and, therefore, the Tribunal could not legally, as it has done order the production of the Articles of Association of the Company Shama (Overseas) Private, Ltd., with a hint that later the accounts of this Company might also have to be gone into. It is, however, stated in the affidavit filed on behalf of the workmen that the same workmen do the work for this Company in India, and it seems to me that if Shama (Overseas) Private Limited, has no separate staff of its own and uses the ordinary staff of Shama Magazine for its work at Delhi, some aspects of the working of this Company may require consideration in connection

with the present dispute, and I am certainly not prepared at this stage to order the total exclusion of matters relating to this Company in the present enquiry.

The result is that I accept the writ petition and set aside the order of the Tribunal, dated the 16th of July, 1956, but at the same time leave most of the matters involved to be reconsidered and decided in accordance with the strict provisions of the Civil Procedure Code. The parties will bear their own costs.

D. K. M.

APPELLATE CIVIL

Before Chopra and Gosain, JJ.

HARNAM SINGH,—*Plaintiff-Appellant*

versus

MST. GURDEV KAUR AND OTHERS,—*Respondents.*

Regular Second Appeal No. 684 of 1949.

Custom (Punjab)—Succession—Sister—Jats of Tehsil Kharar of Ambala District—Whether sister of the last male-holder is preferential heir to his non-ancestral property as against his 5th degree collaterals—Position of the sister, whether can be assimilated to that of the daughter.

Held, that amongst agriculturist Jats of Ambala District, custom does prevail according to which sisters succeed to non-ancestral property in preference to the collaterals of the fifth degree.

Held also, that for purposes of succession sisters could not be assimilated to the position of daughters. The principle laid down in the Full Bench, 134 P.R. 1907, has been consistently followed and the sisters have never been allowed to succeed as daughters of the father of the last male-holder. Their position *qua* succession has always been taken to be that of sisters of the last male-holder.

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