

**(1998) 07 MP CK 0018**  
**In the Madhya Pradesh High Court**  
**Case No : M.C.C. No. 192 of 1988**

Controller of Estate Duty

APPELLANT

Vs

Kusum Rani Chowdhary

RESPONDENT

---

**Date of Decision :** 06-07-1998

**Acts Referred:**

Hindu Adoptions and Maintenance Act, 1956 — Section 10

**Citation :** (1999) 239 ITR 139 : (2000) 110 TAXMAN 22

**Hon'ble Judges :** A.K. Mathur, C.J.; Dipak Misra, J

**Bench :** Division Bench

**Advocate :** V.K. Tankha, for the Appellant; B.L. Nema, for the Respondent

---

## Judgement

A.K. Mathur, C.J.—This is a reference made by the Income Tax Appellate Tribunal, Jabalpur, u/s 64(1) of the Estate Duty Act, 1953, and the following question of law has been referred by the Tribunal for answer by this court :

"Whether, the Tribunal was right in holding that on an interpretation of the terms of the adoption deed and the provisions of the Hindu law the deceased, Komal Chand, did not acquire any interest in the property of Nathu Ram at the time of adoption or later on the death of Nathu Ram ?"

2. Brief facts giving rise to this reference are that Komal Chand died on December 10, 1975. He was adopted by Nathu Ram on August 30, 1968, by a registered adoption deed. Nathuram also died on May 27, 1974, leaving behind his widow, Smt. Maharani, and the adopted son, Komal Chand. In the adoption deed dated August 30, 1968, it was stipulated that the property of Nathuram would pass to Komal Chand only on the death of Nathu Ram and his wife, Smt. Maharani. The question arose whether Komal Chand had any right in the property left by his adoptive father so as to be subject to estate duty. The Assistant Controller of Estate Duty rejected the claim on two grounds that adoption was completed on August 30, 1968, when Komal Chand became a member of the joint family of his adoptive father, Nathu Ram, and Komal

Chand's right could not be curtailed and, as such, he had a share in the family property and hence he was assessed only on 1/3rd at Rs. 1,15,876 and Komal Chand had equal right in the property from his adoptive father and adoptive mother, Smt. Maharani.

3. The appellate authority upheld the order of the Assistant Controller (Estate Duty). The matter was taken up before the Tribunal and the Tribunal relying on the principle of law stated in Hindu Law by Mulla (15th edition, at page 610) wherein it was observed that where the adopted son was a major at the time of the adoption, he may by an agreement with the adoptive father or the adoptive mother made before the adoption, consent to a limitation of his rights in the property of his adoptive father. Relying on this observation, the Tribunal interpreted the adoption deed to mean that Komal Chand had no right in the property of the adoptive father so long as his adoptive mother, Smt. Maharani, was alive in pursuance of the agreement dated August 30, 1968, and accordingly, reversed the finding. It was held that no family property of the adoptive father, Nathu Ram, devolved on Komal Chand, and therefore no part of the property passed on to Komal Chand on December 10, 1975. The Tribunal accordingly deleted addition of Rs. 1,15,876.

4. On the application made by the Revenue, the Tribunal has referred the aforesaid question of law for answer by this court. We have heard learned counsel for the parties and perused the record. It appears that the Tribunal has completely gone wrong, as the attention of the Tribunal was not invited to the provisions of the Hindu Adoptions and Maintenance Act, 1956. At the time of adoption of Komal Chand in 1968, the Act of 1956 had come into force and, therefore, reference of the Tribunal to the old Hindu Law of Mulla, which was quoted in the Tribunal's order, was totally misplaced. According to Section 10 of the Act of 1956, no person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely : (i) he or she is a Hindu ; (ii) he or she has not already been adopted ; (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption ; (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption. At the time of adoption, Komal Chand was aged 40 years which appears from annexure-D adoption deed wherein the age of Komal Chand is clearly mentioned as 40 years. Therefore, as per Clause (iv) of Section 10, no person above the age of 15 years can be given in adoption except where there is a custom or usage applicable to the parties. Since this aspect was not brought to the notice of the Tribunal, the Tribunal totally misdirected itself with reference to the old Hindu law.

5. Thus, the whole issue in the reference has totally changed. The question will now arise whether the so called adoption deed can at all be acted upon or not as the same appears to be against the provisions of law, i.e., Section 10(iv) of the

Act of 1956. However, Clause (iv) of Section 10 of the Act of 1956 contemplates that adoption of more than 15 years old can be given in case there is custom or usage applicable to the parties. But since this provision of law was not brought to the notice of the Tribunal, therefore, there is no such finding on this aspect also. If any finding is given in these proceedings, perhaps it might affect the rights of the parties in any other litigation and may cause greater hardship. Looking to the facts and circumstances of the case, we set aside the order of the Tribunal and remand the case to the Tribunal to decide the matter afresh in the light of the provisions referred to above.

6. Accordingly, this reference is answered.