
(1998) 07 MP CK 0005

In the Madhya Pradesh High Court

Case No : MCC No. 192 of 1988 6th July, 1998

CONTROLLER OF ESTATE DUTY

APPELLANT

Vs

KUSUM RANI CHOWDHARY

RESPONDENT

Date of Decision : 06-07-1998

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64

Citation : (1999) 151 CTR 199

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

Bench : Full Bench

Advocate : V.K. Tanklia and S.L. Nema, for the Appellant;

Judgement

A.K. MATHUR, C.J.:

This is a reference made by the Tribunal, Jabalpur under s. 64(1) of the ED Act, 1953, and 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 Hindu law the deceased Kornal 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 10th Dec., 1975. He was adopted by Nathu Ram on 30th Aug., 1968 by a registered adoption deed. Nathuram also died on 27th May, 1974 leaving behind his widow Smt. Maharani and adopted son Komal Chand. In the adoption deed dt. 30th Aug., 1968, it was stipulated that the property of Nathuram would pass to Kemal Chand only on the death of Nathu Ram and his wife Smt. Maharani. Question arose whether Komal Chand had any right in the property left by his adoptive father so as to subject to estate duty. The Asstt. CED rejected the claim on two grounds that adoption was completed on 30th Aug., 1968 when Kornal Chand became member of joint family of his adoptive father Nathu Ram and Kornal

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

3. The appellate authority upheld the order of Asstt. CED. The matter was taken up before the Tribunal and the Tribunal relying on the principle of law stated in Hindu Law by Mulla (15th Edn. at p. 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 Kornal Chand had no right in the property of adoptive father so long as his adoptive mother Smt. Maharani was alive in pursuance of the agreement dt. 30th Aug., 1968, and accordingly, reversed the finding. It was held that no family property of the adoptive father Nathu Ram devolved on Kornal Chand, and, therefore," no part of the property passed on Kornal Chand on 10th Dec., 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 parties and perused the record. It appears that the Tribunal has completely gone wrong, as attention of the Tribunal was not invited to the provisions of the Hindu Adoption and Maintenance Act, 1956, At the time of adoption of Kornal Chand in 1968, the Act of 1956 had come into force and, therefore, reference of the Tribunal to the old Hindu Law by Mulla, which was quoted in the Tribunal's order, was totally misplaced. According to s. 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, Kornal Chand was aged 40 years which appears from Annexure-D adoption deed wherein the age of Kornal Chand is clearly mentioned as 40 years. Therefore, as per cl. (iv) of s. 10, no person above the age of 15 years can be given in adoption except where there is 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 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., s. 10(iv) of the Act of 1956, However, cl. (iv) of s. 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.