

(1994) 03 RAJ CK 0058

In the Rajasthan High Court

Case No : Estate Duty Reference No. 108 of 1982

Controller of Estate Duty

APPELLANT

Vs

Smt. Basanti Bai (Late) (through Gulab Chand)

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Estate Duty Act, 1953 — Section 7

Citation : (1995) 211 ITR 163

Hon'ble Judges : V.K. Singhal, J;N.C. Kochhar, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated March 1, 1981, u/s 64(1) of the Estate Duty Act, 1953 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the deceased had no interest in the properties of the Hindu undivided family except the right of maintenance and, therefore, no coparcenary interest came to cease on the death of the deceased u/s 7 of the Estate Duty Act, 1953 ?"

2. The brief facts of the case are that the deceased lady was the widow of one Panthoo Lal, who died in 1928. On the death of her husband, the property passed to her. In the year 1942, she had adopted Gulab Chand as her son. Gulab Chand got married and he had four children. The deceased expired on July 9, 1977. In the estate duty proceedings a question arose as to what properties and to what extent had passed on her death. The accountable persons claimed that the deceased was not entitled to any share in the Hindu undivided family property and the entire property was of the Hindu undivided family. It was submitted that she was neither a coparcener of her husband nor was she a coparcener of her adopted son, Gulab Chand, and, therefore, no property passed

on her death so as to attract the provisions of the Estate Duty Act. The Assistant Controller of Estate Duty negated the contention of the accountable person and came to the conclusion that on the death of Panthoo Lal, the deceased, Basanti Bai, became an absolute owner of the property left by her husband and in accordance with the provisions of Section 14 of the Hindu Succession Act, 1956, any property possessed by a female Hindu whether acquired before or after the commencement of that Act has to be considered to be in the full ownership of the deceased. On the basis of adoption of Gulab Chand in 1942 it was held that the Hindu undivided family revived and, therefore, the share of Smt. Basanti Bai was diminished to 1/2 of the entire family properties.

3. In appeal before the Appellate Controller of Estate Duty, the order of the Assistant Controller of Estate Duty was confirmed. The appellate authority was also of the view that on the death of her husband, the widow stepped into his shoes and she became entitled to the same share as her husband could have had in the event of partition. Since Gulab Chand was adopted in the year 1942, it was observed that she became the owner of half share in the properties which has passed on her death.

4. In the second appeal before the Income Tax Appellate Tribunal, it was claimed that the property which vested on the death of husband of Smt. Basanti Bai in 1928 was divested on adoption of Gulab Chand as her son in 1942 and the adoption related back to the date of death of the deceased in accordance with Hindu law prior to the amendment in the Hindu Adoptions and Maintenance Act, 1956. The Income Tax Appellate Tribunal has referred to Articles 506 and 509(1), Mulla's Hindu Law, which read as under :

Article 506 :

""Adoption by widow in a joint family.--When a member of a joint family governed by the Mitakshara law dies and the widow validly adopts a son to him, a coparcenary interest in the joint property is immediately created by the adoption co-extensive with that which the deceased coparcener had, and it vests at once in the adopted son."

Article 509 :

"Alienations by widow before adoption.--(1) The rights of an adopted son spring into existence at the moment of adoption, and displace the rights of the widow and of all persons claiming under a title derived from her. The result of the adoption being to divest the widow's estate, the widow cannot after adoption alienate any portion of her husband's estate for any purpose whatever."

5. On the basis of the above provisions, it was presumed that the coparcenary interest was co-extensive with that which the deceased, Panthoo Lal, had in the Hindu undivided family property in 1928 and the same vested in Gulab Chand on the date on which he was adopted. It was further observed that the death of Panthoo Lal had taken place prior to the coming into force of the Hindu Women's

Rights to Property Act, 1937, the right that the said Act created were not available to the deceased as Section 4 of the said Act provides that nothing in that Act shall apply to the property of any Hindu dying intestate before the commencement of the Act. It was also observed that u/s 14 of the Hindu Succession Act, 1956, the right of a Hindu woman is in respect of the property which is left by her husband in accordance with the provisions of the Hindu Women's Rights to Property Act, 1937. There is no protection of the right of the lady which came to be displaced on the date of adoption of Shri Gulab Chand and in accordance with the provisions of the Hindu law, it was considered that Gulab Chand became sole coparcener of all the properties left by the husband of the deceased in 1928 and the only right which the deceased had after the date of adoption was the right of maintenance during her lifetime, since she had no interest in the property of the Hindu undivided family except the right of maintenance. It was observed that u/s 7 of the Estate Duty Act, no coparcenary interest ceased on her death. For determining the value of the right of maintenance which ceased on the date of death of the deceased, the matter was restored to the Appellate Controller of Estate Duty for quantifying the amount.

6. The submission of Mr. G.S. Bapna, on behalf of the Revenue, is that the entire property has not vested in Gulab Chand on his adoption and even before the Assistant Controller of Estate Duty the claim of the accountable person was that the deceased could get one-seventh share in the property. It is further submitted that once Smt. Basanti Bai became the absolute owner of the property left by her husband, Panthoo Lal, the provisions of Section 14 of the Hindu Succession Act would apply even in respect of the property which has passed to a female Hindu acquired before the commencement of the said Act.

7. We have considered the matter. It is not in dispute that the property of the deceased, Panthoo Lal, was Hindu undivided family property. A female, under Mitakshara law, cannot become a coparcener nor can she become a karta or manager of the Hindu undivided family. The point which has to be seen is whether on the death of her husband, when she became full owner of the property whether on adoption of Gulab Chand, the deceased, Basanti Bai, had any interest or share in the property. It is an established proposition of law that on adoption by a Hindu widow the adopted son acquires also the right of an aurasa son and those rights relate back to the date of death of the husband. As held by the apex court in the case of Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, the estate held by the widow which is a defensible estate in accordance with the provisions of Section 12 of the Hindu Adoptions and Maintenance Act, 1956, the adopted child shall not divest any person of any estate which has been vested in him/her before the adoption. In Smt. Dhani Devi and Jhavermal Vs. Controller of Estate Duty, it was held by this court that by a legal fiction an adopted son is like a posthumous son who is deemed to have come into existence before the death of the adoptive father so that there is no break in the continuity of the line. Therefore, at the time of the death of the deceased, the joint family will be deemed to have consisted of the deceased

person, his adopted son, and his wife. The wife could not have claimed partition, only the father and son could have claimed it and she could have claimed a share in the partition. In the case of Krishnamurthi Vasudeorao Deshpande and Another Vs. Dhruwaraj, the case of Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, was considered and the following principles were deduced from the said judgment (at page 61) ;

"(i) An adopted son is held entitled to take in defeasance of the rights acquired prior to his adoption on the ground that in the eye of law his adoption relates back, by a legal fiction, to the date of the death of his adoptive father, he being put in the position of a posthumous son.

(ii) As a preferential heir, an adopted son (a) divests his mother of the estate of his adoptive father, (b) divests his adoptive mother of the estate she gets as an heir of her son who died after the death of her husband.

(iii) A coparcenary continues to subsist so long as there is in existence a widow of a coparcener capable of bringing a son into existence by adoption ; and if the widow made an adoption, the rights of the adopted son are the same as if he had been in existence at the time when his adoptive father died and that his title as coparcener prevails as against the title of any person claiming as heir to the last coparcener.

(iv) The principle of relation back applies only when the claim made by the adopted son relates to the estate of his adoptive father. The estate may be definite and ascertained, as when he is the sole and absolute owner of the properties, or it may be fluctuating as when he is a member of a joint Hindu family in which the interest of the coparceners is liable to increase by death or decrease by birth. In either case, it is the interest of the adoptive father which the adopted son is declared entitled to take as on the date of his death. This principle of relation back cannot be applied when the claim made by the adopted son relates not to the estate of his adoptive father but to that of a collateral. With reference to the claim with respect to the estate of a collateral, the governing principle is that inheritance can never be in abeyance, and that once it devolves on a person who is the nearest heir under the law it is thereafter not liable to be divested. When succession to the properties of a person other than an adoptive father is involved, the principle applicable is not the rule of relation back but the rule that inheritance once vested could not be divested."

8. In Controller of Estate Duty Vs. Estate of Late Smt. K. Narasamma (Accountable person : K. Venkataramaiah), the matter with regard to the doctrine of relation back was considered. In that case the deceased Hindu died in 1930 bequeathing property to his widow and authorising her to adopt a son. The son was adopted in 1943. The widow died in 1972. It was held by the Andhra Pradesh High Court that the adoption related back to the death of the adoptive father.

9. In the case of Controller of Estate Duty Vs. Master Krishna Kumar, the

provisions of Section 12 of the Hindu Adoptions and Maintenance Act, 1956, were taken into consideration wherein it has been provided that an adopted child should be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption, and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. It has also been provided that the adopted child shall not divest any person of any estate which vested in him or her before the adoption. The decision of the apex court in the case of *Dina Ji and Ors. v. Daddi and Ors.*, AIR 1990 SC 1153, was also taken into consideration wherein the provisions of Section 12 of the said Act were interpreted and it was observed that under proviso (c) to Section 12, no portion of the property could be divested which was vested in a person before the adoption. In the present case, it has to be seen that Panthoo Lal died in the year 1928 and if the property was held by him as a Hindu undivided family property at that time the position could be a different one, than if the property was held as his individual property. The Hindu Women's Rights to Property Act, 1937, was introduced in 1937 to give better rights to women in respect of property. When a Hindu governed by any school of law other than the Dayabhaga School of Hindu law dies having at the time of his death an interest in Hindu joint family property his widow shall subject to the provisions of Sub-section (3) have in the property the same interest as he himself had. Sub-section (3) of Section 3 of the aforesaid Act provides that any interest devolving on a Hindu widow under the provisions of that section shall be the limited interest known as Hindu women's estate provided, however that she shall have the same right of claiming partition as a male owner. These provisions are only subject to contrary law and according to these provisions it has been provided that the widow shall have the same interest as the deceased had in the Hindu joint family property. Thus, according to these provisions, the entire interest of the deceased, Panthoo Lal, would pass to his widow. But on account of the adoption which could relate back to the date of death of Panthoo Lal, the property could vest in Gulab Chand as karta of the Hindu undivided family. The position that the property was that of a Hindu undivided family has not been denied by the Assistant Controller of Estate Duty. Basanti Bai was only entitled to maintenance. The provisions of Section 14 of the Hindu Succession Act provides that any property possessed by a Hindu female whether acquired before or after the commencement of that Act shall be held by her as full owner thereof and not as a limited owner. Since the character of the property was considered to be joint family property, the Assistant Controller of Estate Duty was not justified in coming to the conclusion that Basanti Bai was entitled to a half share in the entire family property. The matter has already been remanded to the Appellate Controller of Estate Duty for redetermination of the question of assessability of estate duty and the value of the right of maintenance which ceased on the date of death of the deceased. In these circumstances, we are of the opinion that the Income Tax Appellate Tribunal was justified in holding that the deceased had no interest in the property of the Hindu undivided family except the right of maintenance and, therefore, no coparcenary interest came to

cease on the death of the deceased u/s 7 of the Estate Duty Act.

10 .Consequently, the reference is answered in favour of the assessee and against the Revenue. No order as to costs.