

(1967) 06 AP CK 0009

In the Andhra Pradesh High Court

Case No : Case Referred No. 53 of 1964

DWARAKA PRASAD

APPELLANT

Vs

CONTROLLER OF ESTATE DUTY, ANDHRA PRADESH.

RESPONDENT

Date of Decision : 22-06-1967

Acts Referred:

COMPANIES ACT, 1956 — Section 63, 9

Citation : (1968) 1 AnWR 396 : (1968) 67 ITR 281

Hon'ble Judges : Jaganmohan Reddy, C.J

Bench : Single Bench

Judgement

JAGANMOHAN REDDY C.J. - The only question that has been referred to us by the Central Board of Direct Taxes under 64 of the Estate Duty Act is :

"Whether, on the facts and in the circumstances of the case, an adoption by a Hindu amounts to a surrender or a voluntary transfer or gift of any part of his property to the adopted son and whether the levy on the petitioners share is legal ?"

The deceased was the sole surviving coparcener of a Hindu undivided family, and on March 25, 1954, i.e., about a month before his death, he adopted a son, who is now the person accountable. A claim was made by the accountable person that after his adoption he became a member of the estate duty only in respect of the other half share. The Assistant Controller of Estate Duty, Hyderabad, who was the assessing authority in this case, surrendered in favour of the adopted son, within two years before death, his owner and that liability to estate duty was attracted on the death in respect of the interest thus surrendered. The Assistant Controller accordingly determined the principal value of the estate of the deceased at Rs. 1,16,069 (including therein the interest acquired by the applicant on adoption in the half share of the property valued at Rs. 58,535) and the duty payable thereon at Rs. 2,444.40 nP.

On appeal to the Central Board of Revenue u/s 63 of the Act, objecting to the

inclusion in the principal value of half share of property surrendered by the deceased of the Assistant Controller and reiterated the reasons given by him.

The order of the Assistant Controller as well as that of the Board run counter to the fundamental and well-accepted notions of Hindu law. It is rather surprising that, while accepting the principle that on the adoption on March 25, 1954, the adopted son acquired the rights of a natural son and became a member of the Hindu undivided family, the estate duty authorities treated the adoption as a voluntary act of transfer of property and as amounting to a gift u/s 9 of the Act. We are at a loss to understand as to how a distinction can be drawn between the restriction of the rights in property of a sole surviving coparcener by the birth of a son on the one hand and by adoption on the other. In both these cases, a coparcener is introduced which halves the interest of the sole surviving coparcener and the joint family in turn is expanded. Their Lordships of the Privy Council in *Anant Bhikkappa Patil v. Shankar Ramachandra Patil* have expounded this principle of Hindu law by holding that the power of a Hindu widow to adopt does come to an end on the death of the sole surviving coparcener. Neither does it depend upon the vesting or divesting of the estate nor can the right to adopt be defeated by partition between the coparceners on the death of a sole surviving coparcener and a Hindu joint family cannot be finally brought to an end while it is possible in nature or now law to add a male member to it. It is further held that the family cannot be at an end while there is still a potential mother if that mother in the way of nature or in the way of law brings in a new male member.

It is also another well-accepted principle of Hindu law now given the final impress of authority by the judgments of their Lordships of the Supreme Court in *Commissioner of Income Tax v. Keshavlal Lallubhai Patel* and *Kalooram Govindram v. Commissioner of Income Tax* that the allotment of properties on partition of a joint family property does not amount to transfer. If these two principles are kept in mind, the conclusion is irresistible that the mere act of adoption does not amount to voluntary transfer of property in favour of the adopted son within the meaning of section 9 of the said Act.

Our answer to the question, therefore, is in the negative and in favour of the assessee with costs. Advocates fee Rs. 250.

Question answered in the negative.