
(1990) 01 MAD CK 0023

In the Madras High Court

Case No : Tax Case No. 439 of 1978 (Reference No. 259 of 1978)

T.R. Chidambaram

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Estate Duty Act, 1953 — Section 6

Hindu Adoptions and Maintenance Act, 1956 — Section 12

Hindu Succession Act, 1956 — Section 14, 6, 8, 9

Citation : (1992) 1 DMC 149 : (1990) 186 ITR 256 : (1990) 1 LW 615

Hon'ble Judges : V. Ratnam, J; K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : R. Janakiraman, for the Appellant; C.V. Rajan, Adv, for the Respondent

Judgement

Ratnam, J.—In this reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), at the instance of the accountable

person, the following question of law has been referred to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the deceased had full power of disposition

over the property left by him and the value of such property was includible in his estate u/s 6 of the Estate Duty Act ?

Briefly stated, the facts giving rise to this reference are as under : One Thirunavukkarasu Chettiar, at the time of his death on October 19, 1967,

was the sole coparcener of the Hindu undivided family consisting of him-self and his wife, Umayal Achi. On the death of Thirunavukkarasu Chettiar

on October 19, 1967, his widow, Umayal Achi, was his sole heir. A few months after the death of Thirunavukkarasu Chettiar, his widow, Umayal

Achi, adopted Chidambaram on May 1, 1968, and the adoption was evidenced by a deed. In the course of the proceedings relating to the chargeability to duty of the estate of the deceased Thirunavukkarasu Chettiar under the provisions of the Act, the accountable person put forward the plea that the adoption of Chidambaram by Umayal Achi related back to the date of death of the deceased Thirunavukkarasu Chettiar and that the property left behind by the deceased Thirunavukkarasu Chettiar should, therefore, be treated as belonging to the Hindu undivided family of the deceased, his widow and the adopted son. In other words, it was claimed by the accountable person, as could be gathered from the assessment proceedings, that in view of the adoption made by the widow, only half the value of the half share of the deceased in all the properties of the erstwhile Hindu undivided family and half the value of the other properties owned by him separately on the date of his death could be subjected to estate duty. The Assistant Controller of Estate Duty negatived this claim of the accountable person on the view that on the death of Thirunavukkarasu Chettiar, as the sole coparcener in the then Hindu undivided family, the estate of the deceased vested in his widow under the provisions of the Hindu Succession Act, 1956, and under proviso (c) to section 12 of the Hindu Adoptions and Maintenance Act, 1956, the adoption would not have the effect of divesting what had already vested in the widow as the heir of the deceased and, therefore, the full value of the half share of the deceased in the properties of the erstwhile Hindu undivided family as well as the full value of all the other properties owned by him separately on the date of his death have to be charged entirely to duty. On appeal by the accountable person before the Appellate Controller of Estate Duty, after referring to section 14 of the Hindu Succession Act, 1956, and section 12 of the Hindu Adoptions and Maintenance Act, 1956, and proviso (c) therein, it was held that the full ownership conferred on the widow under the provisions of the Hindu Succession Act, 1956, would not in any manner be defeated by any subsequent adoption made by the widow under the provisions of the Hindu Adoptions and Maintenance Act, 1956, and that, therefore, on the death of Thirunavukkarasu Chettiar, his widow, Umayal Achi, inherited the properties of her husband as absolute owner and the subsequent adoption cannot, in any manner, affect or alter the nature of the estate in her hands. The order of

the Assistant Controller of Estate Duty subjecting the entire property to duty was thus upheld. On further appeal by the accountable person, the

Tribunal held that from the terms of the deed of adoption dated May 1, 1968, it appeared that the adoption was made by Umayal Achi to herself

only, but that even considering the adoption as having been made to her husband, the deceased Thirunavukkarasu Chettiar, by reason of the

operation of the provisions of the Hindu succession Act, 1956, the adoption by the widow would not have the effect of divesting that which had

vested in the widow, by reason of proviso (c) to section 12 of the Hindu Adoptions and Maintenance Act, 1956. In arriving at that conclusion, the

Tribunal felt that the decisions reported in *Sawan Ram and Others Vs. Kala Wanti and Others*, , and *Punithavalli Ammal Vs. Minor Ramalingam*

and *Another*, , would govern this case and that the other decision of the Supreme Court reported in *Smt. Sitabai and Another Vs. Ramchandra*,

and strongly relied on by the accountable person was clearly distinguishable. Ultimately, the Tribunal held that the deceased had full power of

disposition over the property left behind by him and that the value of that was includible in his estate u/s 6 of the Act. That is how the question of

law referred to at the outset has arisen.

2. Learned counsel for the accountable person contended that the adoption of a son, though by the widow, should be regarded as having been

done on behalf of the deceased and his widow and on such adoption, it would relate back to the date of death of the deceased, thereby enabling

the adopted son to become a member of the coparcenary along with his adoptive father and entitled to his share as the son of the deceased and

that the authorities below were in error in holding that the adopted son cannot, under proviso (c) to section 12 of the Hindu Adoptions and

Maintenance Act, 1956, divest the estate vested in the widow, as there is no question of vesting or divesting of the property, for the introduction of

a member into the joint family by adoption, at best may have the effect of merely decreasing the share of the rest of the members of the family.

Strong reliance in this connection was placed by learned counsel upon the decisions in *Smt. Sitabai and Another Vs. Ramchandra*, , *Vasant and*

Another Vs. Dattu and Others, and *Dharma Shamrao Agalawe Vs. Pandurang Miragu Agalawe and Ors*, . On the other hand, learned counsel for

the Department submitted that on the death of the deceased, intestate, leaving behind his widow as a Class I heir under the provisions of the Hindu

Succession Act, 1956, the properties of the deceased immediately vested in her as the sole heir of the deceased and the subsequent adoption by

the widow would not have the effect of divesting the properties vested in the widow as heir of her husband under the provisions of the Hindu

succession Act, 1956, by reason of proviso (c) to section 12 of the Hindu Adoptions and Maintenance Act, 1956. Reference in this connection

was made to the decisions of the Supreme Court in *Sawan Ram and Others Vs. Kala Wanti and Others*, , *Punithavalli Ammal Vs. Minor*

Ramalingam and Another, , and *R. Rajathy Ammal Vs. Commissioner of Wealth-tax*, . Learned counsel also pointed out that the decisions in *Smt.*

Sitabai and Another Vs. Ramchandra, , *Vasant and Another Vs. Dattu and Others*, , and *Dharma Shamrao Agalawe Vs. Pandurang Miragu*

Agalawe and Ors, , are clearly distinguishable not only on the factual situation which obtained in those cases, but also with reference to the point of

time at which the adoptions in those cases were made and that, therefore, those decisions would not have any application at all to this case.

3. We may now refer to the undisputed factual position. At the time of his death, the deceased *Thirunavukkarasu Chettiar* was the sole surviving

coparcener and was survived by his widow as his only heir at the time of his death. The widow took a boy in adoption several months after the

death of her husband. Though, on a consideration of the terms of the deed of adoption, the Tribunal was inclined to take the view that the adoption

was made by the widow to herself only, it is seen from the decision of the Supreme Court in *Smt. Sitabai and Another Vs. Ramchandra*, , that the

result of adoption by either spouse is that the adoptive child becomes the child of both the spouses. We have, therefore, to proceed on the footing

that the adoption was to the deceased as well as to the widow.

4. The characteristic features of the property held by a sole surviving coparcener may now be adverted to. Such a person is entitled to dispose of

the coparcenary property, as if it was his separate property, so long as he remains the sole surviving coparcener and he may alienate or encumber

the coparcenary property, without any legal necessity or family benefit. As a sole surviving coparcener, the deceased might have also disposed of

the properties u/s 30 of the Hindu Succession Act, 1956. Therefore, considered from the point of view of the power of disposal falling within

section 6 of the Act, undoubtedly, the deceased, at the time of his death, was competent to dispose of the entire property.

Whether the adoption of a son by the widow to her deceased husband and herself would in any manner affect the nature of the property or even

the power of disposal over the property, may now be considered. In this case, the deceased had held the property at the time of his death on

October 19, 1967, as sole surviving coparcener and had left behind him his widow, as his sole heir on the date of his death. Under sections 6, 8, 9

and 14 of the Hindu Succession Act, 1956, the widow of the deceased, as his only heir, became entitled to the property and the property had also

vested in her as such heir by operation of the provisions referred to above. Such vesting was almost eo instanti on the death of the husband. The

adoption made by the widow was, on the facts of this case, long subsequent to the vesting of the properties of the deceased in the widow as heir,

under the provisions of the Hindu Succession Act, 1956. Therefore, by reason of proviso (c) to section 12 of the Hindu Adoptions and

Maintenance Act, 1956, that which had vested in the widow as heir of her husband under the provisions of the Hindu Succession Act, 1956,

cannot be divested, even though the adoption made by the widow related back to the date of death of her deceased husband. Thus, on the facts

and circumstances of this case and taking into account the operation of the provisions of the Hindu Succession Act, 1956, and the Hindu

Adoptions and Maintenance Act, 1956, the conclusion is irresistible that the adoption would not in any manner divest what had already vested in

the widow, as the only heir of her husband, on his death.

5. We may now proceed to examine whether the decisions relied on by learned counsel for the accountable person would in any manner affect this

conclusion of ours. In Smt. Sitabai and Another Vs. Ramchandra, , the adoption to a deceased brother was made by his widow during the lifetime

of the sole surviving coparcener and it was in that context that the Supreme Court laid down that the scheme of sections 11 and 12 of the Hindu

Adoptions and Maintenance Act, 1956, was that when the adoption took place, the adopted son became a coparcener with the then sole surviving

coparcener and that after the death of that person, the adopted son became the sole surviving coparcener. Inasmuch as in the present case the adoption was not made during the lifetime of Thirunavukkarasu Chettiar, as in Smt. Sitabai and Another Vs. Ramchandra, , that decision cannot have any application at all. Similarly, in Vasant and Another Vs. Dattu and Others, , the junior widow of one deceased brother and the widow of another deceased brother, respectively, made the adoptions to their deceased husbands during the continuance of the joint family consisting of the then surviving only coparcener Ramchandra and the widows of his deceased brother and other children. It is also significant that, in that case, a plea of partition was put forward, which was negatived by the Supreme Court and that meant that the joint family continued with a sole surviving coparcener and his sons as well as the sons of another deceased brother and he widows and into such a family, two more adopted sons were inducted and it was under those circumstances, the Supreme Court held that, having regard to the continuance of the joint family which held the estate, there was merely an addition of more members to it and there was no fresh vesting or divesting of the estate in or by any one. Considering the factual backdrop in which that decision was given, that principle will not have any application in this case. Again, in Dharma Shamrao Agalawe Vs. Pandurang Miragu Agalawe and Ors, , the adoption of the son, Pandurang, was made by the widow of a deceased brother during the lifetime of the other brother, Dharma, who was the sole surviving coparcener of the Hindu undivided family, as it then was, and the Supreme Court, after setting out the legal incidence of the property held by a sole surviving coparcener, applied the principles of the decision in Vasant and Another Vs. Dattu and Others, , to hold that there was no vesting of the joint family property in Dharma on the death of the other brother, Miragu, and no divesting also took place on the adoption, but that the properties continued to remain in the hands of the sole surviving coparcener Dharma as joint family property and, on the adoption of Pandurang, he became a member of the coparcenary entitled to claim a share in the properties except what had been already disposed of by the sole surviving coparcener. This decision also clearly proceeds on the factual basis of an adoption by the widow of a deceased brother during the lifetime of the other brother, who was then the sole surviving coparcener, and it was under those

circumstances, it was laid down by the Supreme Court that the property continued to be the joint family property in the hands of the then sole surviving coparcener, subject to his absolute powers of alienation and that, on the introduction of the adopted son, there is no divesting, but that the adopted son gets engrafted into the coparcenary as a member thereof and also obtains a share in the family properties excepting those properties which had been disposed of by the sole surviving coparcener in the exercise of his absolute power of disposal. There is one other significant aspect which requires to be noticed and that is, in none of the aforesaid decisions, the Supreme Court had occasion to consider the effect of the operation of the provisions of the Hindu Succession Act, 1956. Therefore, none of the decisions relied on by learned counsel for the accountable person would be of any assistance in advancing his case.

6. That leaves for consideration the decisions to which our attention was drawn by learned counsel for the Department. In *Sawan Ram and Others*

Vs. Kala Wanti and Others, , the Supreme Court had occasion to consider the combined effect of section 12 of the Hindu Adoptions and

Maintenance Act, 1956, and the Hindu Succession Act, 1956. It would, therefore, be appropriate that the facts are noticed in some detail. One

Ramji Dass owned some properties and on his death, his widow mortgaged some properties and also executed later a deed of gift in favour of her

grand-niece. The nearest reversioner of Ramji Dass instituted a suit impleading the mortgagee, the donor, as well as the donee praying for a

declaration that the alienations were not binding on him. That suit was decreed and the widow of Ramji Dass preferred an appeal and during the

pendency of the appeal, she made an adoption. The appeal was dismissed and Bhagwani, the widow of Ramji Dass, also died and thereafter the

reversioner brought a suit for recovery of possession of the properties which had been earlier mortgaged and gifted. The adoption made by

Bhagwani was also disputed and it was stated that even if that adoption was valid, the adopted son was could not succeed to the properties of

Ramji Dass. The trial court dismissed the suit holding that the adoption was valid and that the adopted son was entitled to succeed to the

properties of Ramji Dass so that the reversioner could not claim any rights therein and this view was also upheld on appeal by the High Court.

Before the Supreme Court, it was contended that under the provisions of the Hindu Adoptions and Maintenance Act, 1956, in the case of a

adoption by the widow, the adopted son becomes the son of the widow only and cannot be regarded as the son of her deceased husband. In

repelling this contention, the Supreme Court pointed out that the actual adoption, though by the female, will be not only to herself, but also to her

husband, who is dead, and on such adoption by widow, the adopted son should be deemed to be a member of the family of the deceased husband

losing all his rights in the family of his birth, which are replaced by rights created by the adoption in the adoptive family. The Supreme Court

referred to section 12 of the Hindu Adoptions and Maintenance Act, 1956, and pointed out that under the Shastraic Law, on the adoption of a

child by a widow, the adopted child was treated as a natural born child and he could divest other members of the family of rights vested in them

prior to his adoption and it was only with the limited object of avoiding any such consequence on the adoption of a child by a Hindu widow, that

the provisions of clause (c) of the proviso to section 12 and section 13 of the Act were incorporated and in that respect, the rights of the adopted

child were restricted, but such restriction would not lead to any inference that a child adopted by a widow will not be deemed to be the adopted

son of her deceased husband. The observations in the above decision with reference to the rights of the adopted son in the adoptive family and the

restrictions statutorily imposed thereon have been held in *Dharma Shamrao Agalawe Vs. Pandurang Miragu Agalawe and Ors*, , to be obiter.

However, as noticed earlier, the vesting of the properties of the properties of the deceased in the widow as heir under the provisions of the Hindu

Succession Act, 1956, immediately on the death of the husband cannot be divested by the subsequent adoption made several months after the

death, even before which the properties had become vested in her as the heir of the deceased and the restriction under the proviso (c) to section

12 of the Hindu Adoptions and Maintenance Act, 1956, is in recognition of the non-availability of rights to the adopted son in the properties which

had vested in her. Even though in *Dharma Shamrao Agalawe Vs. Pandurang Miragu Agalawe and Ors*, , certain observations in *Sawan Ram and*

Others Vs. Kala Wanti and Others, , were held to be obiter, in view of the distinction pointed out earlier regarding the decisions in *Vasant and*

Another Vs. Dattu and Others, , and Dharma Shamrao Agalawe Vs. Pandurang Miragu Agalawe and Ors, , those observations, though declared

obiter by the Supreme Court, would nevertheless have to be respected and given weight by this court. Even otherwise, we find that in Punithavalli

Ammal Vs. Minor Ramalingam and Another, , the Supreme Court had occasion to consider the effect of an adoption made by a widow after the

death of her husband on the properties inherited by the widow as the heir of her husband. One Somasundara Udayar died leaving behind his

widow and two daughters and on his death, his properties were inherited by his widow and were in her possession when the Hindu Succession

Act, 1956, came into force. After some time, she adopted a son and subsequently settled some properties on one of her daughters and the

settlement deed was challenged by the adopted son even during the lifetime of the adoptive mother. The suit was dismissed by the trial court and

that was also affirmed on appeal. But on second appeal, the High Court reversed the decision of the courts below holding that the adoption related

back to the date of the death of Somasundara Udayar and, therefore, the widow was incompetent to make the impugned alienations. In

considering the correctness of this conclusion of the High Court, the Supreme Court pointed out that the rights conferred on a Hindu female u/s

14(1) of the Hindu Succession Act, 1956, are not restricted or limited by any rule of Hindu law and that that provision makes a clear departure

from the Hindu law texts or rules and there was no justification whatever for limiting the scope of section 14 of the Hindu Succession Act, 1956,

by taking the aid of a fiction of relation back arising out of an adoption. We are of the view that the decision in Punithavalli Ammal Vs. Minor

Ramalingam and Another, , would squarely govern this case. We may also observe that in R. Rajathy Ammal Vs. Commissioner of Wealth-tax, , a

Division Bench of this court, to which one of us (Ratnam J.) was a party, had to consider an almost identical question, though in relation to the

provisions of the Wealth-tax Act. In that case, one Ramalingam Chettiar died intestate leaving behind his widow, Rajathy Ammal, as his sole heir

and after about seven years or so, Rajathy Ammal adopted a minor child. The properties had been obtained by Ramalinga Chettiar in a family

partition and Rajathy Ammal, in the course of the assessment proceedings under the Wealth-tax Act, claimed that the properties were joint family

properties in view of the adoption of the son by her. The Wealth-tax Officer, the Appellate Assistant Commissioner as well as the Tribunal held

that on the death of Ramalingam Chettiar, his widow inherited all his properties and that by virtue of section 14 of the Hindu Succession Act, 1956,

she became an absolute owner and the adoption will not have the effect of divesting the properties inherited by the widow. While considering the

question whether the subsequent adoption would divest the vesting of the properties in the widow as the heir of Ramalingam Chettiar, it was

pointed out, applying the decisions in *Sawan Ram and Others Vs. Kala Wanti and Others*, , and *Punithavalli Ammal Vs. Minor Ramalingam and*

Another, , that the adoption made by the widow would not divest the vesting of the properties in the widow as the heir of deceased husband and

further that the decision in *Smt. Sitabai and Another Vs. Ramchandra*, , had not dealt with the rights of inheritance to the deceased adoptive father,

when an adoption was made on the theory of relating back or even the consequences of adoption relating back to the properties vested in a

widow u/s 14 of the Hindu Succession Act, 1956. Ultimately, it was held that the widow inherited the properties as the heir of her husband and

that she held the properties as absolute owner and the adoption which took place subsequent to the coming into force of the Hindu Adoptions and

Maintenance Act, 1956, would not have the effect of divesting the properties inherited by the widow. Similar is the situation in the present case and

we hold that in this case, the adoption made by the widow would not have the effect of divesting the interest of the deceased Thirunavukkarasu

Chettiar, which had vested in Umayal Achi as a Class I heir under the provisions of the Hindu Succession Act, 1956. We, accordingly, answer the

question referred to us in the affirmative and against the accountable person. The Revenue will be entitled to the costs of this reference. Counsel fee

Rs. 500.