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Controller of Estate Duty Vs. Master Krishna Kumar

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Court : Karnataka

Decided On : Mar-16-1990

Reported in : [1990]186ITR644(KAR); [1990]186ITR644(Karn); 1990(3)KarLJ300

Judge : G.P. Shivaprakash and ;M. Rama Jois, JJ.

Acts : Income Tax Act, 1961 - Sections 28

Appeal No. : Tax Reference Case No. 16 of 1983

Appellant : Controller of Estate Duty

Respondent : Master Krishna Kumar

Advocate for Def. : K.M.L. Majele, Adv.

Advocate for Pet/Ap. : Deokinandan, Adv.

Judgement :

M. Rama Jois, J.

1. In this reference made under Section 64(1) of the Estate Duty Act, 1953, the questions of law referred for our opinion really :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only 50% of the estate passed on the death of the deceased

(2) Whether, on the facts and in the circumstances of the case, the act of adoption did not amount to a disposition under Section 2(15) read with Section 9 of the Estate Duty Act ?'

2. The brief facts of the case which have given rise to the above questions are these : Two persons by name Babu Rao and Venkateswara Rao together with their respective wives constituted a Hindu joint family. The two brother constituted a coparcenary. Babu Rao died in the year 1945 leaving behind him his widow, Ahalya Bai. The other brother, Venkateswara Rao, also died in the year 1947 leaving behind him his widow, kalavathi. On and after the death of Babu Rao and Venkateswara Rao, it appears that the entire property belonging to the erstwhile joint family was in the possession of Ahalya Bai. Kalavathi had instituted a suit claiming her share of the property. Ultimately, the matter ended in a compromise decree before this court on October 18, 1968. According to the compromise decree, Kalavathi received a sum of Rs. 35,000 in lieu of her share in the property. As a result, Ahalya Bai continued to be the owner of the entire property. On May 3, 1975, Ahalya Bai adopted the accountable person, Krishnakumar. Thereafter, on July 20, 1975, she died. In his return filed under the Estate Duty Act, the accountable person stated that only half the property passed on to him on the death of Ahalya Bai. He claimed that as far as the other half of the property was concerned, he had become the owner of the property even during her lifetime by virtue of the adoption. Subsequently, the accountable person claimed that actually no property passed to him consequent on the death of Ahalya Bai and that no estate duty was payable. However, the Assistant Controller of Estate Duty repelled the contention of the respondent-accountable person and levied estate duty on the entire estate. The matter was taken in appeal by the respondent before the Appellate Assistant Controller. He confirmed the order of the Assistant Controller. Thereafter, the respondent appealed to the Appellate Tribunal. The Tribunal, on the question whether Ahalya Bai had become the absolute owner of the entire property, was of the view that she did. The Tribunal also held that, in view of Section <12(c) of the Act, the adopted son could not divest any person of any estate. The Tribunal, however, took the view that, on the adoption of the accountable person, he became a coparcener in the family and, consequently, even during the lifetime of Ahalya Bai, he had acquired a right to the property and,

consequently, it can only be said that 50% of the family properties, which were in the hands of Ahalya Bai, passed to the respondent-accountable person and, accordingly, the Tribunal directed that half share of the property could be included for the purpose of computation of estate duty. Thereafter, at the instance of the Revenue, the aforesaid two questions of law have been referred for our opinion.

3. Sri Chandrakumar, learned counsel for the Revenue, contended that as Ahalya Bai had become the absolute owner of the property, particularly in view of Section 14 of the Hindu Succession Act, there was no question of the adopted son becoming owner of 50 per cent. of the property after his adoption, in the absence of any specific transfer of property by any transfer of such interest by Ahalya Bai and as no such instrument had been executed by Ahalya Bai, it was only a case of interstate succession under which the entire property of Ahalya Bai passed to the accountable person on her death.

4. Learned counsel contended that the view taken by the Tribunal that the accountable person became a coparcener in the family of Ahalya Bai and thereby divested at least 50 per cent. of the share belonging to Ahalya Bai as a consequence of adoption by Ahalya Bai was contrary to the view taken by the Tribunal itself relating to Section 12, proviso (c) of the Hindu Adoptions and Maintenance Act. The said section reads :

'12. Effects of adoption. - An adopted child shall be deemed to be the child of his or her 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 :

Provided that -

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligation, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.'

5. As can be seen from Section 12, an adopted child shall be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption. This is, however, subject to the condition as provided in proviso (c) that the adoptive son shall not divest any person of any estate which vested in him before the adoption. Even on the basis that, according to the erstwhile Hindu law, an adopted son should be deemed to have become a member of the joint family and a coparcener on the ground that he should be regarded as a son born to the late husband of the widow who has taken him in adoption, even during the lifetime of the husband of the widow, the said principle stands abrogated by the Act. As far as the property right is concerned, proviso (c) gives no room for doubt. According to the said proviso, when a man or a woman takes another person in adoption, by virtue of such adoption, the adopted child does not divest any right in any property which was vested in the adoptive mother or the father, as the case may be. In support of this contention, learned counsel relied on the judgment of the Supreme Court in the case of Dina Ji v. Daddi, . In the above case, the Supreme Court interpreted proviso (c) to Section 12 of the Act. The Supreme Court held that proviso (c) to Section 12 of the Act departs from the Hindu general law and makes it clear that the adopted child shall not divest any person of any estate which has vested in him or her before the adoption. The Supreme Court also held that, in the said case, the widow concerned who was a limited owner of the property belonging to the Hindu joint family had become absolute owner by virtue of Section 14 of the Hindu Succession Act and the child taken in adoption by her did not have the effect of divesting her of the right in the property which had already vested in her. In the said case, even though a deed had been executed by the adoptive mother relinquishing all her rights in the property in favour of the adopted son, still the Supreme Court held that, as the deed was not registered, the property continued to be that of the widow and did not become the property of the adopted son. The ration of the aforesaid decision applies on all fours to this case.

6. Sri A. G. Holla, learned counsel for the respondent, however, contended that Ahalya Bai had not become the absolute owner of the property before adoption and, therefore, the question of a child adopted by her divesting her of a portion of the property vested in Ahalya Bai did not arise. But, no such argument can be heard in this reference as the Tribunal has recorded a clear finding that Ahalya Bai had become the absolute owner of the property before adoption and no question of law as to the correctness of the said finding is referred for our opinion. Once the finding that Ahalya Bai had become the owner of the property prior to adoption stands, proviso (c) to Section 12 operates and, consequently, no portion of the property could be said to have been divested from Ahalya Bai in favour of the accountable person.

7. For the aforesaid reasons, we answer the first question referred for our pinion in the negative and in favour of the Revenue. As a consequence, the second question does not survive for consideration.

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