
(2013) 09 KAR CK 0251

In the Karnataka High Court

Case No : Regular First Appeal No. 849 of 2010

Joyce Pushapalath Karkada Alias Shiri and Geetha Hidi Shiri	APPELLANT
Vs	
Mrs. Shameela Nina, Ravindra Shiri and Naveetha Shreya	RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0251

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlamane, for the Appellant; Vyasa Rao K.S., Advocate for Respondent No. 1 and Respondent No. 2 is minor and represented by respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This is an appeal by defendants 1 and 2, in a suit for partition. Plaintiff no. 1 was the widow of one Ravindra Shiri. Plaintiff no. 2 was the minor daughter of Plaintiff no. 1. The defendants were the daughter and grand-daughter, respectively, of one Suvarthappa Karkada. The parties are Indian Christians. The suit properties belonged to Karkada. The same consisted of property bearing No. 76, at Badagubettu village, Udupi Taluk, measuring about 1.27 acres. The property comprised of a residential house, four tenanted premises and a saw mill, in the name and style of, Hindustan Saw Mill. Karkada is said to have died on 13.10.1985. His wife, Gertrude Karkada had also died on 14.6.1995. Defendant no. 1 was the only daughter of Karkada.

2. The plaintiff no. 1 claimed that her husband, Ravindra Shiri was the son of defendant no. 1, Joyce Pushpalatha and her husband, Joseph Sudarshan Siri. It was claimed that Suvarthappa Karkada had executed a registered will dated 21.4.1984, bequeathing his properties in favour of the following:

3. Gertrude Karkada, Joyce Pushpalatha, Ravindra Shiri and defendant no. 2-Geetha Heidi, respectively. In that, 50% share of the suit properties were

bequeathed to Gertrude, the wife of Suvarthappa. 25% share therein was bequeathed to Joyce-defendant no. 1, and 12 1/2% share each, to the grandchildren, Ravindra Shiri and Geetha Heidi-defendant no. 2.

4. After the death of Suvarthappa and Gertrude Karkada, defendant no. 1 is said to have sought for grant of probate in respect of the will of Suvarthappa, as the named executrix thereof, in proceedings in P& SC 37/2000 before the Court of the District and Sessions Judge, Mangalore. Probate was granted in her favour.

5. It was the claim of the plaintiffs that they were denied their legitimate share in the property. It was claimed Plaintiff no. 1 as the widow of Ravindra Shiri and plaintiff no. 2 as his daughter were together entitled to 12 1/2% share in the suit Schedule property, namely, the share of the property bequeathed under the will of Suvarthappa and the 25% share which had devolved on Ravindra Shiri on the death of his mother Gertrude. Hence there was a joint claim for a total extent of 37 1/2% share in the suit properties, including the income and profits arising out of the properties and business.

6. The defendants contested the suit. It was admitted that the suit properties belonged to late Suvarthappa. But it was denied that Ravindra Shiri was the son born to defendant no. 1. It was claimed that he was in fact the child of one Ponnamma, who was a maid servant in their house, but was brought up as their own, by defendant no. 1 and her husband. The defendants denied the contents of the will relied upon by the plaintiffs and contended that the late Suvarthappa who had lost his son Roland, who had committed suicide, was not in a sound state of mind at the relevant point of time and hence it was asserted that the will was not genuine.

7. It was also alleged by the defendants that they were not aware of the probate proceedings and that Ravindra Shiri was managing the business of the defendants and had misappropriated huge amounts of money and had acquired a car, a motor cycle and other valuable movables, apart from taking away cash and jewels belonging to Gertrude, immediately on her death. It was however conceded that Ravindra Shiri held a 30% share in the saw mill business as a partner. And it was denied that the plaintiffs had any share in the suit properties.

8. On the basis of the above pleadings the court below framed the following issues:

1. Whether plaintiffs prove that first plaintiff husband Ravindra Shiri is the son of first defendant?

2. Whether plaintiffs prove that Suvarthappa Karkada executed a registered will dated 21.4.1984 in favour of Ravindra Shiri and Geetha Heidi and plaintiff and first defendant were the trustee executors and guardians of the properties of the said grant children?

3. Whether the plaintiffs further prove that after death of Gertrude Karkada, her 50% share has devolved on the Grand children of Late Ravindra Shiri and Geetha

Heidi?

4. Whether plaintiffs further prove that they are the sole legal heirs of the estate of Ravindra Shiri to the extent of 37 1/2% in the total estate left by Suvarthappa Karkada?

5. Whether plaintiff proves Hindustan Saw Mill business is a family business?

6. Whether plaintiffs prove the income of plaint "A" schedule properties?

7. Whether plaintiffs prove that they are entitled for 37 1/2 share together?

8. Whether plaintiffs are entitled for the share of income?

9. Whether defendants prove that the will relied by plaintiff is forged, fabricated and manipulated document?

10. Whether defendants prove that husband of first plaintiff had purchased Maruthi Zen, Yamaha Bike and TV and other appliances out of income from business and they were purchased for family needs and plaintiffs have taken away them?

11. Whether defendant prove that husband of first plaintiff and was having 30% share in Hindustan Saw Mill as a partner?

12. Whether defendants prove that this court has no jurisdiction to try the suit?

13. Whether defendants prove that the suit is barred by limitation ?

14. Whether defendants prove that the suit is not properly valued and court fee paid is incorrect?

15. To what order or decree?

9. The trial court after considering the respective case of the parties, held Issues nos. 1 to 5 and 7, in the affirmative and kept open Issue nos. 6 and 8, while holding all other issues in the negative. The plaintiffs were held entitled to 37 1/2% share in the suit properties.

10. It is the above judgment which is under challenge in the present appeal.

11. The learned counsel for the defendants contends as follows:-

12. There was no basis for the court below to arrive at a finding that Ravindra Shiri, the husband of Plaintiff no. 1 was the adopted son of Defendant no. 1 and her husband. There was no material evidence produced as regards his adoption.

13. It is further contended that if there could be a claim by virtue of such adoption, there was no need to set up a will in claiming a share in the property.

14. It is contended that notwithstanding the fact that the appellants not having tendered evidence at the trial, the court below could not have accepted the self serving evidence on behalf of the plaintiffs without unimpeachable and

independent evidence of adoption, a concept which is not statutorily sanctioned amongst Christians.

15. It is contended that the appellants having denied the factum of any probate proceedings being initiated by them, without the production of the will of late Suvarthappa, the case of the plaintiffs could not have been accepted.

16. The learned counsel for the appellants places reliance on several authorities in support of his case.

17. The learned counsel for the respondents seeks to justify the judgment of the court below and contends that the appeal be dismissed. It is also brought to the attention of this court that pursuant to the preliminary decree, the respondents had filed Final Decree Proceedings in FDP 3/2010 and that a final decree has been passed on 12.7.2012. And that the respondents have now filed an execution petition for delivery of their share.

18. On a consideration of the rival contentions and the record, it is seen that the findings on facts, by the court below, are based on the following circumstances.

19. There was no dispute that Suvarthappa Karkada was the owner of the suit properties and that he was married to Gertrude, who was of Swiss origin. It was also not in dispute that defendant no. 1 was the daughter of Suvarthappa and that defendant no. 2 was the daughter of defendant no. 1. Suvarthappa had a son by the name of Roland, but he had pre-deceased Suvarthappa, as he had committed suicide.

20. The disputed question was whether late Ravindra Shiri, the husband of Plaintiff no. 1 and the father of Plaintiff no. 2 was the adopted son of Defendant no. 1 and her husband, Sudarshan Shiri.

21. It is again not in dispute that late Ravindra Shiri was born to one Ponnamma, a maid servant of the family. It was also not in dispute that Ravindra Shiri was brought up by Defendant no. 1 and her husband as their own child.

22. The plaintiffs had placed reliance on the certified copy of the last will and testament of Suvarthappa, dated 21.4.1984, said to have been produced by Defendant no. 1 herself, in the probate proceedings instituted by her in P & SC 37/2000. In the said will Suvarthappa had named his wife, Gertrude and defendant no. 1 as the executrix. He had also named them as trustees and guardians of the property of his grand children. He had specifically referred to Ravindra Kumar Shiri, born on 25.8.1974, as his grand son, having been adopted by Joseph Shiri, the husband of defendant no. 1. The will was held proved and probate had been granted in favour of Defendant no. 1.

23. The plaintiffs had also produced the marriage certificate of Ravindra Shiri with plaintiff no. 1, (Ex. P-8) and also the marriage invitation card (Ex. P-30) and the Certificate of Baptism of Ravindra Shiri (Ex. P-29). In all these documents, Defendant no. 1 and her husband were shown as the parents of Ravindra Shiri.

24. These documents were not disputed by DW-1, the husband of Defendant no. 1.

25. It was also not in serious dispute that Ravindra Shiri was assisting the late Suvarthappa in running the saw mill that he owned.

26. Insofar as the contention that there was no concept of adoption known among Christians and that the parties being Christians, the adoption set up as not being tenable, has been answered by the court below with reference a decision of this court in the case of Vasanti, Sheela and Kiran Vs. Pharez John Abraham, Arul Jothi Sivasubramanian K., Sriranjani and Gurudev, It is held therein that a Christian couple can adopt and the adopted child gets all rights of a naturally born child and is entitled to inherit the assets of the adoptive parents. And that there is no prohibition in this regard. And that the adoption is based on both temporal and spiritual values.

27. The attempt on the part of defendant no. 1 to disown the probate proceedings has been shown to be untenable by the court below.

28. The court below has then addressed the claim of the plaintiffs, in terms of the will of late Suvarthappa and the circumstance that Gertrude his wife had later died intestate and hence the court below has accepted the claim of the plaintiffs.

29. The learned counsel for the appellant has relied on two decisions to support a proposition that is well settled and which may not be relevant in the present case on hand, namely, that the Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the testator had a sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court, (See: Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others,

30. There is no specific statute enabling or regulating adoption among Christians in India. In practice persons who wished to adopt a minor child usually resorted to the provisions of the Guardians and Wards Act, 1890 (Hereinafter referred to as the "GW Act", for brevity), to obtain an order of guardianship of the minor child But, however, the said Act does not apply once the child attains majority. The child would not get the benefits of an adopted son or daughter.

31. There was a move to introduce the Adoption of Children Bill, 1972, but it was met with opposition. As this was not acceptable on account of certain communal sentiments and religious susceptibilities. Then came the Adoption of Children Bill 1980, which was specifically not made applicable to Muslims. But even this was not enacted.

32. Again in the year 1990, the Christian Adoption and Maintenance Bill, 1990 was mooted, but was never enacted.

33. There is in force The Juvenile Justice (Care and Protection of Children) Act, 2000 (Hereinafter referred to as the "CPC Act", for brevity), with effect from 22.8.2006. This legislation relates to juveniles in conflict with law and children in need of care and protection, and is directed towards providing proper care, protection and their ultimate rehabilitation. The said Act defines "adoption" as the process through which the adopted child is permanently separated from the biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.

34. Under Chapter IV of the said Act, adoption of children for the purposes rehabilitation is contemplated and the procedure as regards such adoption is prescribed. In other words, adoption contemplated is of children who are orphaned, abandoned or surrendered.

35. Therefore, in the absence of a law of adoption for Christians in India, the personal and customary law has been recognized by Indian Courts. The earliest decision appears to be AIR 1929 230 (Lahore) In that case, a Punjabi converted to Christianity was held entitled to prove the customary right of adoption applicable to him as a member of his original community.

36. In the case of Ajit Datt Vs. Mrs. Ethel Walters (Decd.) through L.Rs. and others, the two learned judges comprising a Division Bench have taken divergent views thus. While Justice Mathur has held:-

a person who ceases to be a Hindu in religion and becomes a Christian cannot elect to be bound by the Hindu law in the matter of succession after the passing of the Indian Succession Act and a Hindu convert to Christianity is governed solely by the said Act. Thus, adoption by Indian Christian of Hindu origin who was destitute of son would not be governed by the custom prevailing in the family, namely, the principles of Hindu Law on adoption where under, an adopted son inherits the property of his adoptive father.

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Where a son was adopted by Indian Christians, who were of Hindu origin, the adopted son cannot claim as a matter of right to inherit the property of his adoptive parents in absence of any statutory provision. In order to obviate the problem being faced by childless couple or by abandoned, orphaned or destitute children whom persons are willing to adopt a comprehensive legislation should be made.

37. Justice S.R. Singh has held:

Custom as a source of right of adoption:

58. Uncodified Hindu Law both as to adoption and succession was, to some extent, based on customs having the force of law and civil Courts to which Bengal, Agra and Assam Civil Courts Act, 1887, was applicable, were obliged to decide any question regarding succession, inheritance, marriage or caste or any

religious usage or institution on the basis of such law if the parties to the suit or proceeding were Hindus and on the basis of Mohammadan Law if the parties happen to be Mohammadans and in other cases on the basis of justice, equity and good conscience. Adoption of children is a practice of greatest antiquity, which was recognised by civil law from its earliest date and obtains among the continental nations of Europe whose jurisprudence forms the civil law. Though adoption was unknown to the common law of England, it was very well known among the Hindus, the Assyrians, the Egyptians, the ancient Jews, Greeks and Romans.

59. In *Morrison v. Sessionans*, 14 Am. St. Rep 500, as quoted in the Law Lexicon by Ramanatha Aiyar, it was held as under:

Adoption appears to have been a necessary concomitant of the type of archaic society when the family constituted the unit of the community, and was an important factor in developing society into the broader community called the State. Mr. Maine, in his work on Ancient Law, says, we must look on the family as constantly enlarged by the absorption of strangers within its circle, and we must try to regard the fiction of adoption as so closely simulating the reality of kinship that neither law nor opinion makes the slightest difference between the real and adoptive connection.

Adoption has been aptly described as the process by which the legal relationship between a child and his or her birth parents is severed and an analogous relationship between the child and adoptive parents is established, Bromley's Family Law, Eighth Edn. Chapter XIII Pages 408-409, Adoption, it is further articulated in the authority referred to above, is considered to be the only means by which parental responsibilities can be entirely transferred to another person during the parents' life-time and as the term is understood in Hindu Law, it involves conferral of certain rights and privileges and imposition of certain obligations in the adopted child as if he is born in the lawful wed-lock of the adoptive parents. An adopted child under the law applicable to Hindus is entitled to succeed to the estate of the deceased adoptive father or mother, as the case may be, dying intestate. In English law, however, adoption does not necessarily involve conferral of right to succeed to the estate of the adopter in case of any intestacy and can be effected only through a Court process and the jurisdiction is entirely statutory because at common law parents' rights and duties are held to be inalienable.

60. True it is, as submitted by learned counsel appearing for the plaintiff-respondent, that the rights, liabilities and duties of parents, at the common of Law of England, are inalienable, and adoption in the sense of transfer of parental rights and duties in respect of a child to another person and their assumption by him was unknown in the common law but now the nature and the concept of adoption under English Law have undergone a sea change as, a result of legislative enactments and declarations made at various International Conventions. The Adoption Act, 1976, enacted in conformity with the provisions

of European Convention on the Adoption of Children contains provisions relating to the recognition of adoption and conferral of certain status on the adopted child and provides for devolution of property with peerage, etc. Rules and principles of common law of England wherein adoption was unknown, to the extent of inconsistency with the statutory enactments, are no longer invocable after statutory recognition came to be accorded to adoption by virtue of Legislative enactments and declarations made at the International level. As a matter of fact "legal adoption" as distinguished from "de-facto adoption" or fostering" of children in England as also elsewhere in the world is being insisted upon bearing in mind the welfare of the child and consequent upon conceptual changes as to socio-religious and social-political ethos and philosophy of life. Adoption, therefore, is no longer foreign or unknown to English Law. The argument of Sri V.K.S. Chaudhary that adoption is unknown to the world of Christianity and is not recognised by legislation does not commend for countenance.

61. In the matters of adoption and such other matters with which Christianity has no concern. Indian Christians shall, in my view, be governed by the law of the land and not by any rule of English Law as distinguished from tenets of Christianity. It cannot, therefore, be laid down as rule of general applicability that a custom which has acquired the force of law by reason of its antiquity, continuity, certainty and reasonableness and which has not been repealed or modified by legislation would cease to govern a Hindu after his conversion to Christianity. Customary law comes within the purview of "Law" as defined in Art. 13 and is saved by Art. 372 of the Constitution, The convert may, if he thinks fit, abide by the old usages and customs, which do not interdict any philosophy and ethics or tenets of Christianity he has embraced. The convert and thereafter his progeny may show by their conduct that they continue to be governed by the old customs and usages. It is a matter of pleading and proof. Adoption by a Hindu converted to Christianity as a matter of fact, is not opposed to the philosophy and ethics of Christianity the essence of which lies in the principles of non-violence, love, compassion, sacrifice, service to suffering humanity, truth, goodness and beauty which have endured the Christianity as a religion for long, and not the rituals prescribed for entering into the order of Christianity nor even the rules governing civil life of the Christian community. In case the convert has chosen to abide by the customary law of adoption, then the validity of adoption would be tested on the anvil of requisites of adoption as prescribed by the custom and in case, there exists no such custom, a childless Hindu converted to Christianity may in exercise of his fundamental right to life, adopt a child and in the case the only formality in order to constitute valid adoption would be a physical act of giving and taking "a ceremony Imperative in all adoptions" and this requisite is satisfied in its essence only by actual delivery and acceptance of boy and since an adopted child seeks to displace the natural succession of property by alleging adoption, he must discharge the burden that lies upon him by proof of the factum of adoption and its validity. The evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and

probable as to give no occasion as to doubting the truth *Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others*, I am, therefore, of the view that customary law applicable to Indian Christians before their conversion to Christianity, will continue to govern them in matters not specifically covered by any principle or tenet of Christianity being professed by the individual concerned provided that such customs and usages remained in vogue even after conversion. It may be pertinent to refer to the introductory passages of the Hindu Adoption and Maintenance Bill in which it has been stated thus: "Indian Majority Act, 1875, exempted adoption from the purview of its provisions while Indian Succession Act, 1925, specifically recognised the Hindu usage of adoption". Reference may be had to Schedule III of the Act.

Adoption and Article 21 as a source or right of adoption:

62. Motive of adoption under Hindu Law is both religious as well as secular. But for Christians professing any form of Christianity, adoption is purely a secular concept and phenomenal event. The desire for deliberation of one's name; for perpetuation of one's lineage, for providing security in the old age; and for dying in satisfaction of leaving behind as heir to succeed to one's estate constitute secular motive of adoption and such motive would be sufficient and valid ground to give legal recognition to adoption among Indian Christians of Hindu origin professing any form of Christianity. Secular motive of adoption, as explained above is in fact a facet of the right to life guaranteed by Article 21 of the Constitution of India, and not being opposed to the spirit, philosophy and ethics of Christianity—namely, love, joy, peace, temperance, compassion, nonviolence and charity to all men—must be recognised by the Courts. It may be observed that if "popular hatred and misunderstanding are laid aside, and philosophical Interpretation finds the hidden core and essence of the rival faiths", there will be an end to "rancorous animosity very often displayed" in the name of religion and rituals thereof.

63. All men and women are endowed by their Creator with certain "inherent and unalienable rights".

Among these is the most valuable right to life that the man is endowed by birth. The right to life is a multifaceted concept and has indeed, been guaranteed as a fundamental right under Art. 21 of our Constitution. Life, in every dimension, is paradoxical. The rules governing human life, are, therefore, bound to be paradoxical depending on the "milieu and ethos of a given time and place. Though notions of happiness may differ from individual to individual depending on sociopolitical, socio-economic and socio-religious ethos of a given time and place and above all one's own attitude towards life, desire of happiness is inherent in every human being and is, therefore, bound to have its reflection in human activity. In fact, pursuit of happiness is but a facet of right to life guaranteed by Article 21 of the Constitution. A sonless person may envisage fulfillment of his happiness in a substitute of a son and, therefore, even in the absence of statutory or customary rights of adoption, a sonless person, may

adopt a child in exercise of his personal right to life as a means of fulfillment of his happiness and as such, adoption must be recognised by Courts if it is not interdicted by any legislation, established custom, or personal law. For a Hindu destitute of a son, adoption has now been given legislative recognition though earlier it was recognised under Hindu law for the sake of funeral cake, water and solemn rights and for the celebrity of one's name but for a non-Hindu, say for example an Indian Christian who is destitute of a son adoption may be a means of fulfilment of his desire of the celebrity of his name and continuity of his heredity and in that sense, adoption of a child by an issueless couple, if viewed from the secular eye, may be regarded as natural and inherent in the right to life and can be freely exercised unless it is forbidden or taken away, expressly or by necessary implication, by law including any tenet of the religion one is professing. In my opinion, it will be a lawful act for a person destitute of a son to adopt a child irrespective of his race and domicile save where he is forbidden to do so by law or any tenets of his religion. Such right being inherent in man cannot be taken away except by authority of law.

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Unlike Islam, Christianity does not forbid adoption. It does not provide for adoption too, parties in the instant case are said to be Protestants as they are governed by the Rules of the Church of North India, which provide for Baptism of children and marriage, etc. but is conspicuously silent about adoption. Rules and by laws of the Church of North India, which are applicable to the parties, are reticent on adoption but that does not imply that the Church of North India forbids adoption of Children. Even in Islam what is interdicted is conferral of the status of a, real son on the adopted son and not the adoption itself and it is due to this reason that an adopted son of a Mohammadan is not deemed to be son within the meaning of Section 3(57) of the General Clauses Act. An act is said to be forbidden by law where it violates a prohibitory enactment made by the Legislature or rules, regulations and orders made under authority derived from the Legislature or a principle of any unwritten law. No enactment by Parliament or statutory rules, regulations or orders having the force of law. Interdicting adoption of a child by an Indian Christian of Hindu origin was brought to the notice of the Court. Adoption by a Christian couple of Hindu origin is, to my mind, an act which is neither opposed to any public policy nor interdicted by any statutory law or principle and philosophy of Christianity.

It would, therefore, be deemed to be permitted by law.

Adoption under International Law:

64. Article 16(1) of the Universal Declaration of Human Rights, 1948, expressly envisages that men and women of full age without limitations due to race, nationality or religion, have "the right to marry and found a family". For a childless couple, adoption of a child will be a step towards founding a family. The "right of self determination visualised by Article 1 of the International Covenant

and Civil and Political Rights. 1966, includes the right not only to freely determine their political status but also the right to freely pursue their economical, social and cultural development. Adoption of a child by a childless man or woman, as a social phenomenon, is thus universally recognised irrespective of one's race or religion.

In re-Issue No. 3

65. Next question of seminal importance is whether the adopted son of an Indian Christian is entitled to succeed to the estate of his adoptive parents in the event of his adoptive father or mother, as the case may be dying intestate. Section 5(1) of the Act provides that succession to the immovable property in India of a person deceased shall be regulated by the law of India, wherever such person may have had his domicile at the time of his death. Part V of the Act contains "the Law of India" which governs succession to the immovable property in all cases of intestacy. Section 29 which occurs in Part V of the Act visualises that except in relation to property of any Hindu. Muhammadan. Buddhist, Sikh or Jain A.W.C. 207 and save as provided by "any other law for the time being in force", the provision of Chapter V shall constitute "the Law of India" in all cases of intestacy, Section 37 of the Act provides that where the intestate has left surviving him a child or children but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one or shall be equally divided among all his surviving children. Question that arises for consideration is whether adopted son of an Indian Christian of Hindu origin is entitled to succeed to the estate of his adoptive father or adoptive mother, as the case may be, dying intestate. For the appellant, it has been contended that the word "son" occurring in expression "lineal consanguinity" as defined in Section 25 of the Act includes "adopted son". For the plaintiff-respondent, it has been vehemently contended that adopted son does not come within the purview of "lineal consanguinity" as the term is defined in Section 25 of the Act. I have given my anxious consideration to the submission made across the Bar. The words "kindred" and "consanguinity" used in Section 24 of the Act mean "the connection of relation of persons descended from the same stock or common ancestor". The word "son" in the case of any one whose "personal law" permits adoption, shall include an "adopted son" as provided in Section 3(57) of the General Clauses Act. 1904. The definition of word "son" as given in Section 3(57) of the General Clauses Act. 1904, will hold good "unless there is anything repugnant to the subject or context". The words "personal law" occurring in Section 3(57) of the General Clauses Act, 1904. In my opinion, mean, the "personal law" applicable to the parties at the time of adoption and it may be any personal law applicable to the family including customary law, if any, permitting adoption of children. It may be the law by religion as well. The religion to which the parties belong is, admittedly, Christianity. As discussed above, no tenet of Christianity interdicting adoption by an Indian Christian of Hindu origin was brought to our notice and on the contrary, various legislative enactments world over as also declarations made at various International

Conventions give legal recognition to adoption. An adopted child of a Christian couple of Hindu origin shall be treated in law as if he has been born in the wedlock of his or her, as the case may be adoptive parents and for all purposes an adopted child shall be treated as if he/she was not the child of any other person other than the adopters or adopter. There is nothing in the philosophy and ethics of Christianity which might be construed as prohibiting adoption and what is not expressly or impliedly prohibited by Legislature or any tenet of Christianity shall be deemed to be permitted by law and must be accorded recognition by Courts. The life style of Indian Christians is bound to be a blend of the old and the new: the old cannot be completely erased and obliterated so as to effect a complete severance of the old from the new. The cultural milieu and ethics which dominated the ancestors of the parties must be borne in mind while appraising the evidence on a question as to whether the parties are governed by the old customary law on a subject not specifically covered by legislation. In case, therefore, adoption is proved and found to be valid, the adopted child will come within the purview of "lineal consanguinity" in relation to the deceased. The learned single Judge, in my opinion, was not right in his view that the "lineal consanguinity" contemplated by Section 29 of the Act is the real consanguinity and not the notional or fictional consanguinity and that the adopted continues to be the descendent in the direct line of his natural father. In any case adoption being a facet of right to life, if established, will make the adopted child as a child born in the wedlock of adoptive parents. In my opinion, therefore, adopted son of an Indian Christian of Hindu origin will come within the purview of "lineal descendant" or "lineal consanguinity" and shall be entitled, u/s 37 of the Indian Succession Act, 1925 to inherit the properties of his adoptive parents dying intestate.

38. In the case of *Ranbir Karam Singh Vs. Jogindra Chandra Bhattacharji and Others*, a bench of the Allahabad High Court had held that the argument that succession to an estate of an Indian Christian can be governed by the rules applied to the community to which he belonged before his conversion to Christianity was held not to be sound. Justice Singh while not subscribing to the view has held thus in *Ajit Datt, supra*,

In *Ranbir Karam Singh Vs. Jogindra Chandra Bhattacharji and Others*, the view that bringing up a child even with an intention of giving one's property to that child and loosely describing as having adopted child do not constitute adoption in the technical legal sense as understood in Hindu law and that succession is governed by the Succession Act and not by Rules of Hindu Law applicable to community to which he belonged before conversion is not in consonance with the law laid down by the Privy Council holding that though the profession of Christianity releases the convert from the trammels of the Hindu law, but it does not of necessity involve any change of rights or relations of the convert in the matters with which Christianity has no concern, such as his rights and interests, in and his powers over property which finds its approval in *Anthony Swamy Vs. M.R. Chinnaswamy Koundan by Lrs. and Others*, wherefrom the principle

deducible is that if it had been intended by a Hindu converted to Christianity to be governed by the law he was governed before and such law had in fact been followed in continuity conversion he would continue to be governed by such law even after embracing Christianity on matters not specifically covered by any Statutory law or tenet or rule of Christianity one is professing. The decision in Ranbir Karan Singh (supra), therefore, is not a good law. The learned single Judge, in my opinion, was not right in taking a contrary view on the Issue. Nabu Jan and Anthony Swamy were, perhaps, not perceived and appreciated in correct perspective. The Privy Council decision in AIR 1922 14 (Privy Council) is unavailing for the reason that, the effect of the exclusionary clause any other law for the time being in force occurring in Section 2 of the Indian Succession Act, 1865 was not examined. Exclusionary clause in Section 29(2) is clear and unambiguous. It can not be ignored merely because "in each case an enquiry might have to be entered upon as to whether a deceased subject of the Crown wished or by his acts compelled that the law of the land should not apply to his case. This reasoning in Kamawati is fallacious Section 29(2) which excludes the applicability of the Act if otherwise is provided "by any law for the time being in force" is as much integral to the Act as any other Section in Part V of the Act. Where the, language of the Statute is clear, the results of construction do not matter "even if they may be strange or surprising, unreasonable or unjust or oppressive". Principle of Statutory Interpolation by G.P. Singh 6th Edition P. 33.

39. In the case of Philips Alfred Malvin Vs. Gonsalvis, a learned single judge of the Kerala High Court as held thus:-

...Christian Law also does not recognise adoption. But it is an admitted fact that the Christian Law does not prohibit adoption. The Hindu Adoptions and Maintenance Act provides for adoption of children by Hindu parents. The main purpose of law of adoption is to provide consolation and relief to childless person. An adopted child is transplanted in the adoptive family creating all rights and relationships as if the child was a biological child. On the other hand, all his rights and relationships cease in the natural family. So far as Hindus are concerned, adoption is to preserve the continuation of ones lineage. Apart from the religious motives, secular motives were also important such as man's desire for celebration of his name for the perpetuation of his lineage, for providing security in the old age and for [dying in satisfaction that one has left a heir to one's property It is essentially a transfer of dominion over the child from the natural parents to the adoptive parents and therefore some essential formalities were prescribed to effectuate the transfer on dominion. The position of an adopted child in respect of inheritance and maintenance is the same as that of a natural born child.- Nowadays inter-country adoption is promoted for which the Apex Court has given some guidelines in Lakshmi Kant Pandey Vs. Union of India (UOI),

XXX

8. The Canon Law does not prohibit adoption. The Code of Canon Law,

commissioned by the Canon Law Society of America, goes to show that Canon 110 relates to adoption, which reads as follows:

Children who have been adopted according to the norm of civil law are considered as being the children of the person or persons who have adopted them. Adopted children are usually not at all, or occasionally not wholly, related to the parents adopting them.....Church law adopts the civil law pertinent to the area and states that adopted children are held to be the equivalent of natural children of an adopting couple in those instances in which adoption has been duly formalized according to the Civil Law.

Canon 111 provides, that:-

A child of parents who belong to the Latin Church is ascribed to it by reception of baptism, or, if one or the other parent does not belong to the Latin Church and both parents agree in choosing that the child be baptized in the Latin Church, the child is ascribed to it by reception of baptism but, if the agreement is lacking, the child is ascribed to the Ritual Church to which the father belongs.

From the above Canon Laws, it can be seen that the Church has adopted civil law pertaining to the area. Therefore, adoption made by Correa couple cannot be said to be invalid.

9. Mohammedan Law also recognise adoption if there is custom prevailing among Mohammedan communities. The custom is accepted to have the force of law, as is held in AIR 1936 465 (Lahore) Section 29 of the Oudh Estates Act, 1869 permits a Mohammedan Talukdar to adopt a son. In the State of Jammu & Kashmir, the existence of local custom regarding adoption has been recognised by virtue of Sri Pratap Jammu & Kashmir Laws Consolidation Act, 1977. The right of the couple to adopt a son is a constitutional right guaranteed under Article 21, The right to life includes those things which make life meaningful. Correa couple might have thought of making their life more meaningful by adopting a son.

10. Thus, the Hindu Law, Mohammedan Law and Canon Law recognize adoption....

40. A learned single judge of this court has, in the case of Vasanti, Sheela and Kiran Vs. Pharez John Abraham, Arul Jothi Sivasubramanian K., Sriranjani and Gurudev, has while referring to the above decisions, has held as follows:

14. The question whether the adopted children have right of inheritance under the Indian Succession Act is no more res-integra. In the enlightening Division Bench judgment of Allahabad High court in the case of Ajit Datt Vs. Mrs. Ethel Walters (Decd.) through L.Rs. and others, on the proposition of right of inheritance of adopted child of an Indian Christian, divergent views are expressed by Sri G.P. Mathur J. and S.R. Singh J., My Lord G.P. Mathur takes the view that "Although there is no rule or law which permits adoption. In Christianity there is no prohibition against adoption. The right to inheritance by an adopted child in the estate of adopted father, is a statutory right. Where as in

U.K. and USA and other European Countries, the State has made a law giving right of inheritance to the adopted child. Since there is no such adoption procedures in India the adoptive child does not have a right to claim the property in accordance with the Christian Canons. My Lord S.R. Singh J., on the other hand while interpreting the provisions of Section 3(57) of the General Clauses Act, 1904 declares that an adopted son is also a son and the adoption is not prohibited in Christianity. Therefore, holds that adopted child has right of inheritance in view of the definition of the "son" in the General Clauses Act.

15. The Kerala High Court in the case of Philips Alfred Malvin v. Y.J. Gonsalvis and Ors. has held that the Christian couple can adopt and the adopted child gets all rights of a naturally born child and entitled to inherit assets of the adoptive parents. I am in full agreement with the view of the Kerala High Court and with the view of my Lord S.R. Singh J., that an adopted child of a Christian parents shall have right of inheritance. Unlike in Hindu Law, there is no law prohibiting the Christian, couple to adopt male or a female child although they may have natural born male and a female child as the case may be. The adoption according to Christians is based on both temporal and spiritual values. Therefore, I am of the view that the 3rd defendant and the defendants 4 and 5 are entitled to a share notwithstanding that the third defendant and late Maccabeaus are the adopted children.

41. The above view expressed in Vasanti's case is fully endorsed by this judgment, on the point of law. This is especially so in the light of the view expressed by Justice Singh in Ajit Datt.

42. The findings of the court below, on facts, are also affirmed. In so far as the formalities necessary for a valid adoption and the circumstances of the adoption in the present case on hand has not received much attention before the trial court. This, however, is not relevant now, having regard to the admitted circumstances, of the adoptee having been treated as their child, from the time of his Baptism till his death, by Defendant no. 1 and her husband. Hence, the appeal is dismissed.