

(1999) 01 KL CK 0064
In the High Court Of Kerala
Case No : Second Appeal No. 375 of 1992

Philips Alfred Malvin

APPELLANT

Vs

Gonsalvis

RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : AIR 1999 Ker 187 : (1999) 3 CivCC 444 : (1999) 1 KLJ 247 : (1999) 2 RCR(Civil) 235

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : Sibymathew, Mr. Wilson Urmese, Mr. A. A. Mohammed Nazir, Mr. Pauly Mathew Muricken, Mr. Shylaja Varghese and Mr. A. Chitra, for the Appellant; V. Giri, for the Respondent

Final Decision : Allowed

Judgement

D. Sreedevi, J.—This appeal is directed against the decree and judgment in A:S. No.92 of 1989 of the Sub Court, Thalassery, which was filed against the decree and judgment in OS No.458 of 1987 of the Munsiffs Court, Kannur. The plaintiff before the trial Court is the appellant.

2. The case of the appellant is that the plaint schedule property originally belonged to deceased George Correa and his wife Jane Correa, as per document No.912/1955. Jane Correa pre-deceased her husband George Correa. She died on 2.11.1970. George Correa died on 18.12.1976. His legal representatives are the plaintiff and defendants 1 and 2 and another son Malvin, who is no more. The legal representatives of Malvin Correa are defendants 3 to 8. The plaintiff claiming to be the adopted son of George Correa sued for partition of the plaint schedule property.

3. The defendants contended that the suit is not maintainable, that the plaintiff is not the adopted son of deceased George Correa, that George Correa never adopted him as his son, that Christian Law has never recognised adoption and

hence the plaintiff has no right over the plaintiff schedule property.

4. The trial Court passed a preliminary decree for partition. Aggrieved by the said decree and judgment, the defendants filed A.S.No.92 of 1989 before the Sub Court. Thalassery. The learned Sub Judge allowed the appeal setting aside the decree and judgment of the trial Court and dismissed the suit. Aggrieved by the said decree and judgment of the Sub Court, the plaintiff has preferred this appeal.

5. The only question that arises for consideration in this appeal is whether George Correa had adopted the plaintiff as his son and if so is he entitled to any share over the plaintiff schedule property.

6. Considering the importance of the question involved in this case, at the instance of the Counsel for the appellant, Mr. V. Gin. Advocate, was appointed as amicus curiae to assist the Court. He has brought to my notice the scope of adoption, the various provisions of law and custom prevailing among the various communities in India. The learned Counsel for the appellant submitted that Christian Law does not recognise adoption and as such the plaintiff cannot claim any share over the plaintiff schedule property, as the adopted son of George Correa. The defendants also deny the status of the plaintiff as the adopted son of Correa couple.

7. The plaintiff claims to be the adopted son of George Correa and Jane Correa. According to him, he was adopted by Correa couple on 8.6.1946 at Kannur Holy Trinity Church. The first defendant does not challenge the status of the plaintiff as the adopted son of Correa couple. The second defendant admits that the plaintiff was living with her parents and that he had been given all sorts of facilities and encouragements as that of a member of the family. In paragraph 6 of the written statement the second defendant admits as follows:

The plaintiff is seeking to put forward a case that he is the adopted son of George Correa merely on the basis of the close relationship that existed between him and the family of George Correa. He was treated by this defendant as well as the other children of the George Correa "as a relation of theirs and he was also allowed to partake of their hospitality and he was given a lot of encouragement and help by them. This close association cannot take the place of a legal adoption of the plaintiff by George Correa. Adoption is a positive legal act. It is not a situation that arises in consequence of the relationship between the parties or the acceptance of a relationship very close to each other. In fact, the plaintiff is grossly misusing the kindness and love that has been shown to him by this defendant, her husband and the George Correa.

From the above statements, a clear picture of a son living along with Correa couple can be seen. Till the date of death of George Correa the plaintiff was living with him and thereafter he was residing with the second defendant, enjoying all the facilities of a brother. Thus, from the admissions of the second defendant, it is clear that the plaintiff was treated as a member of the family by Correa

couple and subsequently by the defendant. The other defendants, except the second defendant, have no objection regarding the status of the plaintiff. The second defendant would contend that Correa couple have not adopted the plaintiff as their son. Christian Law also does not recognise adoption. But it is an admitted fact that the Christian Law does not prohibit adoption. The Hindu Adoption 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. Now-a-days inter-country adoption is promoted for which the Apex Court has given some guidelines in *Lakshmi Kant Pandey Vs. Union of India (UOI)*, .

8. Let us see whether the plaintiff was adopted by the Correa couple. In order to prove adoption, the plaintiff has produced Ext. A-2 extracted from the Register of Baptism kept in the Holy Trinity Church, Kannur. where the alleged adoption took place. Ext. A-2 reads as follows:

Illegitimate child of Anna, adopted by the god parents mother gave her consent for the adoption and Catholic education, to the god parents. Both Anna and John were Marthomites from Travancore as per the entry in the Baptism Register.

Even though the second defendant's Counsel objected to the admissibility of Ext. A-2, the Court below did not find any reason to reject the evidence of Ext. A-2. The plaintiff has summoned the baptism register and the parish priest, who is in custody of Ext. A-2. He was examined as PW-2. PW-2 proved the baptism register and the contents of Ext. A-2. Thus, the plaintiff has proved that on 8.6.1946 the plaintiff was baptised as the son of Correa couple and that he was adopted by them at the Holy Trinity Church, Kannur.

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 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 formed 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 parents 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 their is custom prevailing among Mohammedan communities. The custom is accepted to have the force of law, as is held in AIR 1936 465 (Lahore) . Second 29 of the Oudh Estates Act, 1869 permits a Mohammedan talukdaro 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 thing 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 recognise adoption. Therefore, simply because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid. Since the adopted son gets all the rights of natural born child, he is entitled to inherit the assets of George Correa couple. The learned Subordinate Judge went wrong in holding that unless adoption is recognised either by personal law, custom or by canon law, the first respondent cannot claim right over the plaint schedule property, as the adoption itself is invalid in the eye of law. Therefore, the decree and judgment appealed against are liable to be set aside.

In the result, the appeal is allowed and the decree and judgment in AS No.92 of 1989 are set aside and the decree and judgment of the trial Court are restored. No costs.

I place on record my appreciation to Mr. V. Giri, Advocate, for the services rendered by him.