

(2006) 11 KAR CK 0013

In the Karnataka High Court

Case No : Regular First Appeal No. 940, 546 and 940 of 2004

Vasanti, Sheela and Kiran

APPELLANT

Vs

Pharez John Abraham, Arul Jothi Sivasubramanian K.,
Sriranjani and Gurudev
 Arul Jothi Sivasubramanian K.,
Sriranjani and Gurudev Vs Pharez John Abraham, Vasanti,
Sheela and Kiran

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

General Clauses Act, 1897 — Section 3 (57)
Succession Act, 1925 — Section 219 (c), 33, 48

Citation : AIR 2007 Kar 121 : (2007) ILR (Kar) 2375 : (2007) 5 KarLJ 194 :
(2007) 4 KCCR 221 SN : (2007) 5 RCR(Civil) 685

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Esskay, Associates in R.F.A. No. 940/2004 and AKS Law, Associates in R.F.A. No. 546/2004, for the Appellant; N. Vasudevan, for R-1 and AKS Law Associates for R-2 to 4 in R.F.A. No. 940/2004, N. Vasudevan, for R-1 and Esskay, Associates for R-2 to 4 in R.F.A. No. 546/2004, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—Both the appeals arise out of Judgment and Decree in O.S.No. 591/1987. The plaintiffs have filed RFA No. 546/2004. The D-3 and L.Rs of D-4 have filed RFA No. 940/2004.

2. One John D. Abraham is the propositus. 1st defendant is the wife. The defendant 2, 3 one Triza Kalyani John (wife of 1st plaintiff) and one late Maccabeaus are the children of the propositus. The suit schedule house is the estate of the propositus. The first defendant died intestate during pendency of the suit.

3. After demise of the propositus, his daughter Triza Kalyani John fell in love with the 1st plaintiff, a Hindu., she got converted to Hinduism and her name is

changed to A.S. Meenkshi and married 1st plaintiff. The plaintiffs 2 and 3 are the children born out of the wed lock. A.S. Meenakshi @ Tirza Kalyani John died in the year 1986. The husband and children have filed the suit seeking share of A.S. Meenakshi @ Tirza Kalyani John.

4. The defendants 1 and 2 filed joint written statement contending that apart from Meenakshi @ Tirza Kalyani John there is one more; daughter (3rd defendant) and one son late Maccabeaus. The defendants 4 and 5 are the wife and children of late Maccabeaus. The defendants 3, 4 and 5 also claim share in the property.

5. The 2nd defendant contends that just before the marriage of Tirza Kalyani John, in a family settlement, she has been given her share like gold jewelry, cash and a motor car in consideration Tirza Kalyani John relinquished her rights in the suit property. The defendants No. 1 and 2 say that they have invested lot of money for construction of a suit house.

6. The trial Court dismissed the suit of the plaintiffs on the ground that the propositus John D. Abraham died in the year 1964 and suit for partition is belatedly filed in the year 1987. The trial Court holds that in the family settlement Tirza Kalyani John has relinquished her share. The trial Court rejected the claim of the defendants 3 and 4.

7. The plaintiffs are Hindus, The plaintiffs seek share of Tirza Kalyani John. The plaintiffs 2 and 3 also seek share in the estate of the 1st defendant who died intestate during the pendency of the suit. After the demise of John D. Abraham the property would devolve upon his widow to an extent of 1/3rd share and balance of 2/3rd share shall have to be divided amongst his children u/s 33 of the Indian Succession Act. Therefore, argued that Tirza Kalyani John is entitled to equal share along with her brothers and sisters.

8. The crux of the issue is whether the plaintiffs 2 and being Hindus are entitled to seek share in the property of the 1st defendant who is a Christian.

9. The decision of the Calcutta High Court in Benoy Kumar Mondal Vs. Panchanon Majumdar, where the following observations are made:

The appellant no doubt contends that Panchanon, though otherwise entitled to succeed to the deceased Sarojini's estate under the Indian Succession Act (Section 48) as her nearest consanguine relation, would not be so entitled because he happens to be a Hindu while Sarojini was a Christian but we do not think that this contention is well-founded.

The Succession Ad does not concern itself with the religion of the claimant for succession although the religion of the deceased certainly plays an important role -- and indeed, it is almost the determining factor, - in the matter of applicability or otherwise of the rules of succession, laid down in the Act, to a particular case. This distinction in the nature or character of the relevant estate, depending upon the religion of the deceased owner, runs throughout the Act but

stress is nowhere laid in the matter of its devolution upon the religion of the heir or the inheritor.

This latter element is undoubtedly a vital factor in the personal laws of succession, like, for example, the Hindu and the Mohammedan law, which are intimately connected with the respective religions and persons professing other faiths, save in cases coming under special protective legislations, like for example, the Caste Disabilities Removal Act, 1950 (Act 21 of 1950), are excluded from inheritance, otherwise available to them, simply on the ground of difference of religion.

Claims for succession, however, under the India Succession Act stand on an entirely different footing and the religion of the claimant as distinguished from the religion of the deceased owner is entirely irrelevant for the purpose. We would, accordingly, overrule the appellant's contention.

We are supported in our view by the decision of this Court, reported in 15 Cal WN 158 (A), to which reference has already been made. The same view was also taken in the Madras case of 9 Mad 466 (C), also cited above, and we do not find anything to the contrary in the Privy Council case of - AIR 1930 251 (Privy Council) , which dealt with succession to the estate of a Hindu convert to Mohammedanism and laid down inter alia that his Hindu relations were not eligible for such succession notwithstanding the Caste Disabilities Removal Act (also known as The Freedom of Religion Act), 1850 (Act 21 of 1850).

The reason for the decision was very clearly stated by their Lordships, namely, that the law of succession in the case of a Hindu or a Mohammedan depends upon their own personal law, that it depends upon the law of their religion, that the Mohammedan law would in itself prevent a Hindu from succeeding as heir and that Act 21 of 1850 merely protects the Hindu convert alone from losing his rights of inheritance under the Hindu Law.

The reasoning is clear, specific, explicit and self-explanatory and it has no application where succession is claimed under the Indian Succession Act for reasons we have already discussed, and, although the case cited is undoubted authority for the view that a Hindu cannot claim to inherit to a Mohammedan, save in cases falling under the Caste Disabilities Removal Act, 1850 (Act 21 of 1850) as explained in the said decision, it does not certainly support the argument that a Hindu cannot claim to inherit to a Christian.

In the above view we hold that respondent Panchanon was entitled to inherit Sarojini's estate in preference to appellant Benoy and was as such entitled to the letters of administration in the present case u/s 219(c), Succession Act, (Act 39 of 1925), the difference in religion notwithstanding between him (Panchanon) and the deceased Sarojini, and the appellant's identity of religion with the said deceased (Sarojini) would not give him any advantage in the matter. The decision of the Court below, granting the letters of administration to the respondent, was therefore, light and it must be affirmed.

10. I am in full agreement with the ratio laid down by the Calcutta High Court and hold that the Indian Succession Act does not prohibit a non-Christian who is related by blood to inherit the property of the Christian when succession opens.

11. The Counsel for the 1st respondent strenuously argued that Tirza Kalyani John before her marriage has relinquished her share by taking a valid consideration. Therefore, the plaintiffs are not entitled to seek a share for the second time. The 1st respondent (2nd defendant) makes only oral assertions of the fact of relinquishment of share by Tirza Kalyani John. There is no documentary evidence to prove the fact. It is strenuously argued that Ex.D.5 - is a notice issued by (he father of the 1st plaintiff seeking share to the benefit of plaintiff. In Ex.D.9 it is specifically stated that Tirza Kalyani John had relinquished her share after taking valid consideration. The contents of Ex.D.9 are only a self sufficient assertion. The relinquishment of share to be legally effective should be by a registered deed. Oral relinquishment cannot divest the rights of Tirza Kalyani John in the immovable property.

12. The 1st respondent in Ex.D.9 and in evidence clearly admits that Tirza Kalyani John despite her inter-caste marriage and conversion to Hinduism, was permitted to live with her husband in a portion of the suit house till her death. The suit is filed within one year after demise of Tirza Kalyani John. There is no plea of adverse possession set up by the contesting defendants. Hence the view taken by the trial Court that the suit is barred by time is untenable. So much so the finding that Tirza Kalyani John has relinquished her share is untenable.

13. In the written statement the defendants 1 and 2 categorically admit that 3rd defendant and late Maccabeaus (husband of the 4th defendant) are the children of John D. Abraham, but in the course of evidence and arguments it is stated that the third defendant and late Maccabeaus are not the natural born children and they are adopted children. In support of the said contention, the church register at Ex.D21 and D17 are produced. Pertaining to baptismation. The contents of Ex.D 21 and Ex.D 17 are vague and they do not precisely show that third defendant and late Maccabeaus are the adopted children.

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 v. Mrs. Ethel Walters and Ors. reported in Air 2001 Allahabad 109 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. reported in, AIR 1999 Ker 187 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 light 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 or 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.

16. The trial court misunderstood the propositions of law applicable to the case, hence erred in dismissing the suit and in rejecting the claim of defendants 3 to 5. The 1st defendant, died intestate during pendency of the suit. Therefore, the two daughters and two son of John D. Abraham are entitled to 1/4 share each. The plaintiffs together are entitled to 1/4 share, the 3rd defendant is entitled to 1/4th share. Defendants 4 and 5 are entitled to 1/4th share and the 2nd defendant is entitled to 1/4th share. Preliminary decree to be drawn accordingly.