

# RAJASTHAN HIGH COURT

T. Crauford

Vs.

Maary Disilva

C.F.A. Nos. 310 of 1998 and 107 of 1999  
(Jitendra Ray Goyal, J.)

30.06.2008

## ORDER

**Jitendra Ray Goyal, J.**

1. Since these two appeals filed by the appellant- defendant No. 1 Mrs. T. Crauford, one against the preliminary decree dated 9-9-1996 and another against final decree dated 19-2-1998 passed by Additional District Judge No. 8, *Jaipur City, Jaipur* in a partition suit No. 282/1996, therefore both the appeals have been heard together and are being decided by this common judgment.

2. Brief facts giving rise to these appeals are that plaintiff-respondents (hereinafter to be referred as the plaintiffs) filed a suit for partition in the Court of District Judge, *Jaipur City, Jaipur* on 4-1-1986 seeking the relief against the appellant-defendant No. 1 T. Crauford (hereinafter to be referred as the defendant No. 1) in regard to a bungalow commonly known as 'kaptan sahab ka bangla' situated at Amritpuri, Agra Road, *Jaipur* stating therein that parties of the suit are sons and daughters of Mrs. E. Disilva, one of the daughters and legal heir of Late Captain R. Alexander. The mother of the parties Smt. E. Disilva expired in the year 1940 who was entitled to h share in the property of her father. It was also stated that other three heirs of late Captain R. Alexander namely Mr. P. Alexander, Miss. Eagnes Alexander and C. Alexander died issueless, therefore all four plaintiffs and defendants each acquired h share in the properties of Late Captain R. Alexander. It was further stated that some properties of deceased R. Alexander have been acquired by the Government and some properties were involved in some another litigations, therefore, only one bungalow situated at Amritpuri, Agra Road, *Jaipur* remained for partition. It has also been averred that parties of the suit are in possession of different parts of the bungalow in dispute which

is shown in the map annexed with the plaint. Defendant No. 1 tried to take forcible possession of room No. 6, therefore it became necessary to file a suit for partition. It was also stated that house tax of the bungalow was being deposited by all the parties jointly.

3. Defendant No. 1 Mrs. T. Crauford contested the suit by filing the written statement denying all the material facts narrated in the plaint and averred that plaintiffs and the defendant No. 2 have no relations with the property of Late Captain R. Alexander who died on 19-6-1941 leaving behind him two sons namely Peter Alexander and C. Alexander and one daughter Ms. Eagnes Alexander. Another daughter Mrs. E. Disilva had expired in the lifetime of her father Captain R. Alexander leaving behind her plaintiffs and defendants. It was further stated that Peter Alexander and C. Alexander died issueless and Mrs. E. Disilva, natural mother of the parties, got married in the lifetime of deceased Captain R. Alexander and had taken sufficient dowry, therefore, Mr. Eagnes Alexander, the only surviving daughter of deceased Captain R. Alexander, became the sole owner of his property. It was also stated that defendant No. 1 T. Crauford was adopted by Mrs. Eagnes Alexander on 15-5-1993 about which entry is available in the church register and since then she was being treated as a daughter by Ms. Eagnes Alexander, therefore after the death of Ms. Eagnes Alexander in the year 1977 the defendant No. 1 T. Crauford became the sole owner of the property in dispute. It was also averred that defendant No. 1 T. Crauford permitted to the plaintiffs to live in the bungalow as a licensee, therefore, it cannot be presumed that plaintiffs are living and having possession in the suit property as legal heirs of late Captain R. Alexander.

4. Defendant No. 2 filed separate written statement supporting the case of the plaintiffs and also prayed for partition.

5. The learned trial Court after considering the pleadings of both the parties framed following issues :-

(Vernacular matter omitted.....Ed.)

6. In support of the plaint, plaintiff Marry Disilva was examined as P.W. 1. From the side of the defendant No. 1 T. Crauford, apart from herself, examined Stifen Disilva (D.W. 2) and Simon Pol (D.W. 3) as her witnesses. Defendant No. 2 also produced Girwar Singh (D.W. 4) and Revrin Father Augustin Manu (D.W. 5) from his side.

7. After hearing both the parties the learned trial Court came to the conclusion that

plaintiffs have proved issue Nos. 1, 3 and 6 in their favour and defendant No. 1 has not been able to prove issue Nos. 4, 5, 7, 8, 9 and 10 in her favour and consequently decreed the suit for partition and came to the conclusion that each of the parties is entitled to h share of the property in dispute and accordingly preliminary decree was passed on 9-9-1996. Thereafter, final decree was also passed vide impugned judgment and decree dated 19-2-1998.

8. I have heard the learned counsel appearing for the parties and carefully gone through the record as well as pleadings and the material placed on the record.

9. It was *inter alia* contended that the property in dispute originally belonged to late Captain R. Alexander who had two sons Peter Alexander and C. Alexander and two daughters E. Disilva and Miss. Eagnes Alexander and one of the daughters Mrs. E. Disilva, natural mother of the parties, got married and accepted the dowry from her father and she died on 4-5-1941 in the lifetime of her father and since both the sons of Late Captain R. Alexander died issueless, therefore the surviving daughter Eagnes Alexander became the sole owner of the property of her father Late Captain R. Alexander and as defendant No. 1 T. Crauford was baptised in the year 1933 by Eagnes Alexander, therefore after the death of Eagnes Alexander she became the owner of the disputed property being her adopted daughter. In support of the contentions reliance was placed on the judgment rendered in the case of *Philips Alfred Malvin v. Y. J. Gonsalvis, reported in <sup>1</sup>* and *Luis Caetano Viegas v. Estrelina Mariana R.M.A. Da'costs, reported <sup>2</sup> in* It was further stressed that in the Christian community, baptism is synonymous to adoption and baptized child gets all the rights in the property of his sponsors i.e. godfather and godmother.

10. Per contra, learned counsel appearing for the plaintiffs submitted that baptism is a religious ceremony in the Christianity which is necessary for every Christian which does not create any right of baptized child in the property of his/her sponsors. It was then submitted that from the statement of Revrin Father Augustin (D.W. 5) it is clear that certificate of baptism only proves that baptized child has taken entry in the catholic church but such child does not have any interest in the property of godparent. It was also submitted that prior to this litigation there were repeated admissions made by the defendant No. 1 T. Crauford before different Courts in the different litigations that plaintiffs and defendants are co-sharers in the property of deceased captain R. Alexander and the parties jointly sold and transferred the properties of their material grandfather being co-sharers and now the defendant No. 1 T. Crauford cannot be permitted to take 'u' turn in the garb of baptism certificate which in fact does not create

any right in her favor.

11. I have considered the rival submissions and perused the relevant material and evidence placed on the record.

12. It is not in controversy that disputed bungalow was in the ownership of late Captain R. Alexander who was maternal grandfather of the plaintiffs and defendants. It is also not disputed that deceased Captain R. Alexander had two sons Peter Alexander and C. Alexander and two daughters E. Disilva and Miss. Eagnes Alexander. It is also not disputed that Miss. Eagnes Alexander and C. Alexander were not married and another son Peter Alexander though married but died issueless. It is also admitted case that the plaintiffs and the defendants are the sons and daughters of Mrs. E. Disilva.

13. The plaintiffs are claiming partition being the only surviving heirs of their maternal grandfather Late Captain R. Alexander while the defendant No. 1 T. Crauford is claiming herself to be the sole owner over the disputed property being the baptised child of Eagnes Alexander.

14. The core question for consideration is whether baptism is synonymous to adoption and baptised child get any share in the property of his/her godparent?

15. Before advertng to the evidence, it would be useful to have a glance over the Christian law of adoption in India, ceremony of baptism, rights and duties of sponsors (godparent) and rights if any of the baptised child.

16. So far law of adoption in regard to Christian community is concerned, there is no specific statute enabling or regulating the adoption among Christians in India. The only resort for taking the child in adoption by Christian is in Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2002 read with the guidelines and rules issued by various State Governments. Apart from that, there are customary laws permitting them to adopt children specially in Punjab.

17. In the past, members of Christian community used to take recourse of the provisions of Guardians Wards Act, 1890 for taking custody of a minor but the order obtained under the Guardians Wards Act, would seize to have any effect and will not grant the benefit of adopted son or daughter. To overcome from these difficulties the Central Government introduced Adoption of Children Bill, 1977 in the Rajya Sabha but subsequently dropped because of opposition of some communities. After exclusion of the Muslims, another bill "The Adoption of Children, 1980" was introduced in the

Lok Sabha but that too also could not be enacted into law. Later in the year 1990 "Christian Adoption and Maintenance Bill, 1990" was mooted by various organizations but that too could not make its entry in the statute books. Therefore, in the absence of statutory law of adoption for Christians customary law of adoption have come to be recognized by the Indian Courts.

18. Now another very important aspect of the matter is to know about the baptism and the status of godparent and godchild.

19. In the Christian community traditionally baptism is a ceremony which enrolls a person in the church. This is purely a religious and spiritual ceremony. The person baptised whether child or adult becomes a member of the Christian community. It is known practice in the church that every person either child or adult should have godparent (sponsors) at the time when they enter into the faith through holy baptism.

20. Homily of His Holiness Benedict 16th in his speech made on 7th January, 2007 at the occasion of feast of the baptism of the lord described baptism as adoption and admission into god's family, into communion with the most whole trinity, into communion with the father, son and the whole spirit. In his speech he further made clear that baptism is not only a word, it is not only something spiritual but also implies matter. All the realities of the earth are involved. Baptism does not only concern the soul. Human spirituality invests the totality of the person, body and soul. God's action in Jesus Christ is an action of universal efficacy. He further stressed that 'baptism is an adoption of God, Trinitarian God".

21. It is also well known that role of sponsors is very important in the baptism ceremony. A godparent, in denomination of Christianity is someone who sponsors a child's baptism. A male godparent is a godfather, female sponsor is godmother and the child is the godchild. Traditionally the godparents were counted informally responsible for ensuring that the child's religious education was carried out and he she used to take care over the child if he or she was orphaned. In the modern times godparent is being chosen with a view who takes interest in the child's upbringing and personal development.

22. In the Christianity churches always played a very important role. The church has a long tradition of law with the regulations already found in the apostolic injunctions of the new testament. Later on an elaborate system of law gradually developed through the experience of Christian life. To regulate the Christian community and to explain their rights and duties, Pope Benedict 15th issued the first Code of Canon Law in 1917

and now again "Canon law" was codified in the year 1993 with the consent of Pope John Paul Second and was given force of law for the whole Latin Church.

23. According to Canon Law, Baptism is a basic sacrament by which one is incorporated into Christ and the church. Canon 849 defines baptism as under :-

Can. 849. Baptism, the gateway to the sacraments, is necessary for salvation, either by actual reception or at least by desire. By it people are freed from sins, are born again as children of God and, made like to Christ by an indelible character, are incorporated into the Church. It is validly conferred only by a washing in real water with the proper form of words.

24. While Canon 867 mandates and creates an obligation over the parents of infants to see that the infants are baptized within the first few weeks as soon as possible after the birth, Canon 868 describes the other requirement of the baptism. Canon 872 deals with the requirements and rule of the sponsors in the baptism ceremony and provides that in the case of an adult baptism, the sponsor's role is to assist the person in Christian initiation. In the case of an infant baptism, the role is together with the parents to present the child for baptism and to help it to live a Christian life benefiting the baptized and faithfully to fulfill the duties inherent in baptism. Canon 873 speaks that one sponsor, male or female, is sufficient, but there may be two, one of each sex. Qualification for the sponsors has been provided in Canon 874. Canon 875 to 878 speaks about proof and registration of baptism. Canon 878 casts duty on priest of the place in which the baptism was conferred to insert faithfully and carefully without any delay, record the details in the register of the baptism the names of the baptized, the minister, the parents, the sponsors and if there were such witnesses and the place and date of baptism and also the place and the date of birth of the baptized child. It further provides that in the case of an adopted child the names of adopting parents are to be registered. It further makes clear that in general every Christian who is following the catholic church is supposed to be baptized so in this regard he can take entry in the church and this is also manifestly clear that after the baptism, natural parents does not seize to be the parent of baptized child nor Godparents become like natural parent and their responsibility is only to ensure the child's religious education and also to facilitate his upbringing and personal development and virtually godparents are parents representing god or parents on god's behalf.

25. At this juncture, reference of Canon 110 would also be useful and according to it adoption of a child can be made in accordance with the civil law and only such children could be considered the children of that person or those persons who have

adopted them. Therefore, there is very clear distinction between the adoption and baptism, as such where adoption creates rights in the family and property of the adoptive parents while through the reception of baptism a child becomes a member of the church.

26. Now reverting to the facts of the present case the defendant No. 1 T. Crauford is claiming the rights over the property of her maternal grandfather on the basis of her baptism and certificate issued to that effect. Exhibit 14 is a certificate of her baptism, wherein the names of the natural guardian i.e. father, mother and name of the sponsors (godparents) and name of priest have been mentioned. In this certificate it is nowhere mentioned that she has been adopted by her godparents. D.W. 1 T. Crauford in her statement admitted that she is a Roman Catholic, she further admits that in the Christianity for the purpose of religion and security, baptism is necessary. She showed her ignorance about the fact that her godmother Egenes Alexander anywhere in the record showed her as her heir. She has admitted her signatures on many documents, which shows that she along with other plaintiffs and defendants jointly sold certain properties of their maternal grandfather and maternal uncle as joint owners and also filed suits jointly and obtained a decree from the civil Court as heirs of their maternal uncle.

27. Another witness Stiphen D'Silva (D.W. 2) in his cross-examination admitted that J. Payaj was his godfather but he did not get any share from his properties since his heirs were alive. He further stated that he got the share from the property of his natural father. Another witness Simon Paul (D.W. 3) also admits that baptism is necessary for every Christian. He further-stated that he also took one female child in adoption from civil Court who has one godfather but she will inherit his (adoptive father's) property.

28. The statement of Revrend Father Augustin (D.W. 5) is very relevant who states that by a certificate of baptism one gets the entry in the catholic church. He further stated that godfather is only for assisting the parents of the baptized child in religious education and he does not get any right in their property. He further stated that Canon Law is applicable on the Roman Catholics.

29. Therefore, even in view of the evidence adduced by the defendant No. 1 T. Crauford and other defendants it is clear that T. Crauford-defendant No. 1 was not adopted by her maternal grandfather or maternal aunt and she was only baptised and her maternal aunt was one of the sponsors i.e. godmother, as such no rights can be said to have created as an adoptive child in the property of her godfather or godmother. The

judgments relied upon by the defendant No. 1 T. Crauford does not help her in the fact situation of this case since the judgment rendered by the Hon'ble Apex Court in Luis Caetano Viegas's case ( AIR 2003 Supreme Court 60) (supra) does not speak anything about the rights of the baptised child. In Philips Alfred Malvin's case (AIR 1999 Kerala 187) (supra), learned single Bench of Kerala High Court held that though Christianity does not recognize the adoption but also does not prohibit it, therefore, if the Christian couple adopted a child, he will get all the rights of a natural born child. In the referred case the fact of adoption was mentioned in the baptism certificate itself whereas in the instant case there is only narration about the baptism.

30. Taking into consideration the above legal and factual position I have no hesitation to hold that baptism is not synonymous to adoption and the baptised child does not get any right in the property of his sponsors i.e. godparents only on account of the baptism.

31. Therefore, in my considered view, the defendant No. 1 Mrs. T. Crauford does not get any right in the property of her maternal grandfather and maternal aunt on account of baptism certificate and she will get the share in their property as a natural heir along with other plaintiffs and defendants.

32. No other argument was advanced by the either party in regard to the final decree.

33. In this view of the matter, both the appeals fail and are accordingly dismissed with cost. Record of the Court below be sent back.

Appeal dismissed.

Cases Referred.

1. AIR 1999 Ker 187
2. 2002 WLC (SC) Civil 414: (AIR 2003 SC 630)