IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 20TH DAY OF MARCH 2025 / 29TH PHALGUNA, 1946

RFA NO. 166 OF 2008(E)

AGAINST THE JUDGMENT DATED 30.11.2007 IN OS NO.73 OF 2005 OF PRINCIPAL SUB COURT, ALAPPUZHA

APPELLANTS/1ST DEFENDANT & ADDITIONAL 6TH DEFENDANT:

1 MARY JOSEPH, W/O.JOSEPH J KARUVELIL,
KARUVELIL HOUSE, THATHAMPALLY KARA, ARYAD VILLAGE,
ALAPPUZHA.

2 JOHN @ GEORGE,
ADOPTED SON OF JOSEPH J KARUVELIL, KARUVELIL HOUSE,
THATHAMPALLY KARA, ARYAD VILLAGE, ALAPPUZHA.

BY ADVS.
SRI.GEORGE JOSEPH (ITTANKULANGARA) FOR A1 & A2
JACOB CHACKO FOR A2

RESPONDENTS/PLAINTIFFS/DEFENDANTS 2 TO 5:

1 THOMAS JOSEPH, S/O.MATHEW JOSEPH,
KARUVELIL HOUSE, THATHAMPALLY KARA ALAPPUZHA.

2 THRESSIAMMA JOSEPH, D/O.MATHEW JOSEPH
KARUVELIL, W/O. LATE P.J.JOSEPH,PUTHENPURAYIL, ZILLA COURT, THATHAMPALLY KARA ALAPPUZHA.(*DIED)

3 CHINNAMMA THOMAS D/O.MATHEW JOSEPH
KARUVELIL, W/O.M.T.THOMAS, MUKKADA, KURUMBANADAM,
VAKATHANAM KARA, CHANGANCHERRY.

4 MARYKUTTY THOMAS, D/O.MATHEW JOSEPH
KARUVELIL, W/O. P.L. THOMAS, PATTARA,
SANTHI BHAVAN, MUHAMMA.

5 KUNJAMMA VARGHESE, D/O.MATHEW JOSEPH
KARUVELIL, W/O. M.K.VARGHESE, MAZHUVANCHERI HOUSE,
T.V.PURAM, VAIKOM.

6 ALLEPPEY BACK WATER RESORTS, REPRESENTED
BY ITS DIRECTOR V.J.ZACHARIA, S/O. V.E.JOHN,
VAIKATHUKARAN HOUSE, MULLACKAL WARD, ALAPPUZHA.

ADDL.7 P.J.JOSEPH@JOYCHAN
S/O LATE THRESIAMMA JOSEPH, PUTHENPURAYIL, ZILA COURT,
THATTAMPALLY KARA, ALAPPUZHA.

ADDL.8 GEORGE JOSEPH@SIBICHAN,
S/O.LATE THRESIAMMA JOSEPH, PUTHENPURAYIL, ZILLA COURT,
THATTAMPALLY KARA, ALAPPUZHA.

ADDL.9 P.J.THOMAS@TOMICHAN
S/O.LATE THRESIAMMA JOSEPH, PUTHENPURAYIL, ZILLA COURT,
THATTAMPALLY KARA, ALAPPUZHA
*(THE LEGAL HEIRS OF DECEASED 2ND RESPONDENT ARE IMPLEADED AS ADDL.R7 TO R9 VIDE ORDER DATED 29.03.2022 IN I.A.3/2020)

BY ADVS.
ROY CHACKO FOR R1, R2, R7
SETHURAM DHARMAPALAN FOR R8, R9
SRI.JOMY GEORGE FOR R6
BHANU THILAK FOR R8, R9

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2025, THE COURT ON 20.03.2025 DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 20th day of March, 2025

This Regular First Appeal is at the instance of defendant No.1 and additional 6th defendant in O.S.No.73/2005 on the files of the Principal Sub Judge, Alappuzha and they assail decree and judgment therein dated 30.11.2007.

2. Heard the learned counsel for the appellants/defendant No.1 and additional 6th defendant, the learned counsel appearing for 1st respondent/1st plaintiff, learned counsel appearing for additional respondent Nos.8 and 9, and the learned counsel appearing for 6th respondent/5th defendant. Perused the pleadings and evidence.

3. The parties in this appeal shall be referred as to their status before the trial court.

4. Plaintiffs, who are siblings of deceased Joseph J.Karuvelil, filed the suit claiming partition of plaint schedule Item Nos.1 to 6 properties belonged to Joseph J.Karuvelil after his death on 9.2.1990 in between the plaintiffs and defendant Nos.2 to 4. Since the

5th defendant purchased a portion of the plaint schedule property, he also got arrayed as a party in the suit.

5. On appearance, the 5th defendant filed written statement claiming right on the strength of sale deed No.3168/1995. Defendant Nos.2 to 4 were set ex parte.

6. The 1st defendant filed written statement and opposed the contentions in the plaint. Paragraph No.2 of the written statement reads as under:

> *The averments in para 1 of the plaint are not fully correct hence denied. The averments that Joseph.J. Karuveli, who is the brother of plaintiffs and defendant 2 to 4, died intestate and issue less is not correct hence denied. He and this defendant jointly submitted an application as OP(G & W) No: 81/1989 before the Hon'ble District Court, Kottayam for appointing First defendant's husband Joesph.J.Karuveli as the guardian of John @ George, who was under the protection of ST.Joseph's Children's Home, Kummannoor.P.O.Cherpunkal, Kottayam District. In the application in para No:8 the 1st defendant and her husband specifically stated that they are preferred to bring up the above said John @ George as their own child with full right of inheritance as a biological child. The Hon'ble District Court of Kottayam accepted the above application and passed an order appointing the above said Joseph.J.Karuveli as the guardian of the above said John @ George. It means the*

liability is casted upon to Joseph.J.Karuveli and the 1st defendant to maintain him as well as to give share over their properties as per law. The above fact is known to the plaintiffs and other defendants. The plaintiffs purposefully suppressed the above facts and filed the above suit. Now the above said John @ George became a major and he is entitled to get his share over plaint properties as per law. So he is a necessary party in this suit and the suit is bad for non joinder of necessary parties.

7. Additional 6th defendant also filed written statement denying rights of the plaintiffs and defendant Nos.2 to 4 over the plaint schedule properties and claiming him as the adopted son of Joseph J.Karuvelil and the 1st defendant.

8. Trial court raised necessary issues. Exts.A1 to A8 were marked on the side of the plaintiffs. DW1 was examined and Exts.B1 to B6 were marked on the side of the defendants. Apart from that, Exts.X1 to X4 also were marked as court exhibits.

9. On a meticulous analysis of the matter, trial court granted preliminary decree for partition after protecting the right of the 5th defendant in view of Ext.A7 title deed relied upon him.

10. The points arise for consideration are;

1. Whether Canon Law recognizes adoption?

2. What are the essentials to constitute a valid adoption?
3. Whether the trial court went wrong in holding that the adoption of 6th defendant is not proved?
4. Any interference required in the verdict impugned?
5. Reliefs and cost.

11. Point Nos.1 to 5:

While assailing the verdict of the trial court, the learned counsel for the defendant No.1 and additional defendant No.6 vehemently argued that the trial court went wrong in allowing shares ignoring the right of the adopted child. According to the learned counsel, in this matter, the evidence available, particularly, the pleadings in Ext.B1 - copy of original petition of O.P.(G&W) of the District Court, Kottayam, Ext.B2 - copy of order in O.P.(G&W) No.81/89 of the District Court, Kottayam as well as Ext.B4 - certificate of baptism issued from the St.Michael's Church, Thathampally, and the entries in Exts.X1 to X4 would show that the 6th defendant was adopted by the 1st defendant and the deceased Joseph J.Karuvelil. Therefore, his status is as that of an adopted son and is entitled to inherit the properties left by deceased Joseph J.Karuvelil. Accordingly, the learned counsel pressed for interference in the verdict impugned.

12. Per contra, it is submitted by the learned counsel for

the 1st respondent/1st plaintiff as well as the learned counsel appearing for the additional respondent Nos.8 and 9 that, in this matter, the crucial aspect is whether the 6th defendant is the adopted child of the deceased Joseph J.Karuvelil? But the said aspect is not proved and it is on the said basis, the trial court held that the 6th defendant was not entitled to get any right over the plaint schedule property.

13. Both sides placed decisions in the matter of adoption among Christians rendered by this Court as well as the Apex Court. As early in 2005, in the decision in **Maxin George** v. **Indian Oil Corporation** reported in **[2005 (3) KLT 57]**, the Division Bench of this Court had occasion to consider law regarding adoption under Christian Law and the essentials to constitute a valid adoption. In the said case, the Division Bench held as under:

> *Thus, going by any standard, although it can be held that Christian Law recognises adoption, on a reading of the Decrees, it is obvious that custom practiced is recognised as law, with only few exceptions. Therefore, if the petitioner has been able to establish that an adoption as recognised by custom has been there, it could be termed as legal, and which confers automatic right to the adopted child. It further shows that the method of adoption by ancient custom in the diocese is to carry the parties that are to be adopted before the Bishop or Prelate with certain testimonials before whom they declare that they*

take such a one for their son and that thereupon the Bishop has to pass an Olla or certificate and then adoption is perfected, but however that such adoption thereafter shall not be accepted from any that have children and that in case they have none, yet it shall be declared in the Olla that if they shall afterwards happen to have any, such Olla shall be void for all intents and purposes.

Thereafter, in the decision in **Philips Alfred Malvin** v. **Gonsalvis** reported in **[2011 (1) KLT 742]** the questions of law considered were as under:

(i) Whether Christian Law recognize adoption?

(ii) Under what law a Christian can adopt a child?

(iii) Whether the entry 'adopted child' in the baptism certificate is sufficient to confer the status of an adopted child on a person?

(iv) Whether living as a member of the adopted family from infancy would confer the status of an adopted child on a person?

In answer to the above questions, it was held as under:

(i) There is no personal law applicable to the

Christians recognizing adoption.

(ii) A valid adoption made in accordance with the Civil Law as applicable to the child adopted and to the adopted parents is alone recognized by the Canon Law.

(iii) Mere entry as "adopted" in the baptism certificate/register is not sufficient to confer the status of "adopted child" on a person.

(iv) Long association as a member of the adopted family will not confer the status of an adopted child on a person.

(v) It may now be possible for a Christian to adopt a child as per the Juvenile Justice Act, 2000, Guardians and Wards Act, 1890 and Conditions to Regulate Matter Relating to Adoption of Indian Children (1984).

(vi) Re-introduction of Adoption of Child Bill, 1988 would remedy the long felt need and necessity to have a uniform Code for adoption.

14. In the decision in **Maxin George**'s case (supra), the Division Bench considered decision of this Court in **Biju Ramesh & Anr.** v. **T.P.Vijayakumar & Ors.,** reported in **[2005 (2) KLT 960]** wherein also the ratio held in **Maxin George**'s case (supra) was found.

15. It is pointed out by the learned counsel appearing for the additional respondent Nos.8 and 9 that in **Biju Ramesh**'s case

(supra), the learned Single Judge referred the decision of the Apex Court in **Madhusudan Das** v. **Narayanibai** reported in **[(1983) 1 SCC 35],** wherein in paragraph No.16, the essentials to constitute a valid adoption has been enlisted as under:

> ***16.*** *The concept of adoption which we are concerned in the present proceedings should not be mistaken for the domestic and the inter-country adoptions which have been the subject-matter of innumerable directions by the Apex Court in public interest litigations mainly at the instance of Lakshmi Kant Pande. Those are cases where foundings, orphans or children born to unwed mothers are given to the custody of guardians through the process of Court under the provisions of the Guardians and Wards Act, 1890 for their eventual fostering by those guardians styled as adoptive parents (vide Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469; Lakshmi Kant Pandey v. Union of India, AIR 1986 SC 272; Lakshmi Kant Pandey v. Union of India, AIR 1987 SC 232, Karnataka State Council for Child Welfare v. Society of Sisters of Charity St. Gerosa Convent, AIR 1994 SC 658, Sumanlal Chhotelal Kamdar v. Miss Asha Trilokbhai Saha, AIR 1995 SC 1892; Indian Council Social Welfare v. State of A.P., (1999) 6 SCC 365: (1999 AIR SCW 4924); Lakshmi Kant Pandey v. Union of India, (2001) 9 SCC 379 and Anokha (Smt.) v. State of Rajasthan, (2004) 1 SCC 382: (AIR 2004 SC 2820). See also the illuminating decision in the matter of Manuel Theodore D'Souza, (2000) 2 DMC 292 rendered by*

Mr. Justice F.I. Rebello of the Bombay High Court). Adoption has not so far been statutorily recognised in India among the Christian and Muslim communities. The only law on adoption enacted by the Indian Parliament is the Hindu Adoptions and Maintenance Act, 1956, Paragraph 7 of the decision of the Supreme Court in Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469 indicates that all attempts thus far made to bring out a uniform law of adoption applicable to all communities including Christians, such as the Adoption of Children Bill, 1972, the Adoption of Children Bill, 1980 etc. have not been fruitful. Thus, in India there is no statute law of adoption for Christians. Paragraph 32 of (2000) 2 DMC 292 (supra) observes that in England also adoption was not part of the common law or based on equity. If so, it may not be permissible for Courts to evolve a law of adoption for certain communities or religions. Local adoption and inter-country adoption referred to earlier is really the recognition of the rights of the child whether abandoned, orphaned or destitute for being fostered to a healthy and meaningful habitat as part of the right to life carved out from International Conventions to which India is a signatory, directive principles set out under Article 39(f) of the Constitution of India and parens patriae jurisdiction etc. which have been read into Article 21 of the Constitution of India. Such is not the case of adoption with which we are concerned in these proceedings. In the case on hand the 1st defendant in her original written statement had no case that the plaintiff was given in adoption. The adoption

pleaded by the 1st defendant in her additional written statement was disputed and the finding of the Court below is also that there was no adoption as alleged so as to disinherit the plaintiff. Under these circumstances I am not called upon to consider the soundness of the decision reported in Philips Alfred Malvin v. Gonsalves, (1999) 1 Ker LT 292 (supra) where actually the factum of adoption was admitted. Even if the Christian Law recognises adoption, there must be evidence of the actual formality of the adoption by proving the physical act of giving and taking of the child. A mere expression of consent or the execution of a deed of adoption without proving the physical act of giving and accepting the boy or a girl in adoption will not be sufficient even under the principles of Hindu Law. See Madhusudan Das v. Narayanibai, (1983) 1 SCC 35: (AIR 1983 SC 114) and also paragraph 193 at pages 442 and 443 of Mayne's Hindu Law & Usage 14th Edn. In the case on hand except relying on the evidence of the 1st defendant and Ext.B1 testamentary disposition by Rajamma wherein the plaintiff is described as the adopted son of Rajamma, the 1st defendant who is the natural and biological mother of the plaintiff, did not even step into the witness box to prove the necessary physical act of adoption. So also the 4th defendant who is admittedly the daughter of Johnstone and the 1st defendant and the only sister of the plaintiff also did not mount the witness box to substantiate her contention that the plaintiff was given in adoption. The date or the month or even the year of adoption has not been pleaded or proved, much less, the other details such as the person who

gave the child in adoption (whether it was Johnstone himself or whether it was Johnstone and the 1st defendant together) and the person who received the boy in adoption (whether it was to Rajamma alone or to Rajamma and her husband Joseph together) etc. What was highlighted by the learned counsel in support of the adoption was the act of baptising the child in a church at Madras where Rajamma and Joseph alone participated as the parents of the child. The evidence on record indicates that upon getting employment as a teacher in Malaysia, Johnstone was proceeding to Malaysia along with his wife (the 1st defendant) by leaving the six month old child with his sister Rajamma who was then at Madras. There is nothing on record to evince an intention on the part of Johnstone to give the child in adoption to Rajamma. When admittedly Johnstone and the 1st defendant were not present when the child was baptised, naturally Rajamma and Joseph (in whose custody the child was) alone could have represented his parents during the baptism ceremony. That does not make them the adoptive father and mother of the plaintiff.

16. The learned counsel for defendant No.1 and additional defendant No.6 placed recent decision of the Apex Court in **Pharez John Abraham** v. **Arul Jothi Sivasubramaniam K. and Others** reported in **[(2020) 13 SCC 711]** wherein, the Apex Court held that *by virtue of adoption, a child gets transplanted into a new family whereafter he or she is deemed to be member of that family as if he or*

she were born son or daughter of the adoptive parents having same rights which natural daughter or son had. The right which the child had to succeed to the property by virtue of being son of his natural father, in the family of his birth, is thus, clearly to be replaced by similar rights in the adoptive Family, and, consequently, he would certainly obtain those rights in the capacity of a member of that family as an adopted son.

17. On reading paragraph No.11.1 of the above judgment, as pointed out by the learned counsel for the 1st plaintiff, in the said case, adoption was recognized by the Apex Court as discussed in paragraph No.11.1 on the premise that defendant Nos.1 and 2 therein in fact admitted that defendant No.3 and late Maccabeaus were the children of John D. Abraham, but in the course of evidence and arguments, it was contended that defendant No.3 and late Maccabeaus were not the natural born children, but they were adopted children. Therefore, the Apex Court held that all proceeded on the premise that defendant No.3 and late Maccabeaus were the adopted children and therefore, the Apex Court also proceeded further with the case on the assumption that defendant No.3 and late Maccabeaus were adopted children of John D. Abraham.

18. While addressing the question as to whether Christian Law permits valid adoption, in Code of Canons of the Eastern Churches, Latin-English Edition, Canon 812 says that, *those who are legally related by reason of adoption cannot validly marry each other if their relationship is in the direct line or in the second degree of the collateral line*. Similarly, Canon 689 paragraph 3 says that, *if it is a case of an adopted child, the names of the adoptive parents are recorded, and at least if it is done in the civil records of the region, the names of the natural parents, in accord with the norms of §§1 and 2 and attentive to particular law*. Similarly, Canon 110 followed by the other sect of Christians provides that, children, who have been adopted according to the norm of civil law are considered the children of the person or persons who have adopted them. Thus, there is no prohibition in Canon Law for having a valid adoption. But there is no personal law in India applicable to Christians recognizing adoption. But a valid adoption made in accordance with the civil law as applicable to the child adopted and the adopted parents is recognized by Canon Law. The essentials of a valid adoption are capacity of the adopter, capacity of the adoptee, capacity of the giver, consent and compliance with the civil law. The method of adoption by ancient custom in the diocese is to carry the

parties that are to be adopted before the Bishop or Prelate with certain testimonials before whom they declare that they take such a one for their son and that thereupon the Bishop has to pass an Olla or certificate and then adoption is perfected, but however that such adoption thereafter shall not be accepted from any that have children and that in case they have none, yet it shall be declared in the Olla that if they shall afterwards happen to have any, such Olla shall be void for all intents and purposes. In order to prove adoption, there must be evidence of the actual formality of the adoption by proving the physical act of giving and taking of the child. A mere expression of consent or the execution of a deed of adoption without proving the physical act of giving and accepting the boy or a girl in adoption will not be sufficient even under the principles of Hindu Law. See **Madhusudan Das** v. **Narayanibai**, **(1983) 1 SCC 35 : (AIR 1983 SC 114)** and also paragraph 193 at pages 442 and 443 of Mayne's Hindu Law & Usage 14th Edn.

19. Baptism certificate alone showing the name of adopted parents would not suffice the necessity of a valid adoption and long association of a member of the adopted family would not also confer status of adopted child on a person.

20. In the instant case, Ext.B1 is the copy of O.P.(G&W)

No.81/1989 filed before the District Court, Kottayam. In Ext.B1, the petitioners are Joseph J. Karuvelil and Mary Joseph and it was averred in paragraph No.8 that they were prepared to bring up child as their own with full right of inheritance as a biological child. Thus, as argued by the learned counsel for defendant No.1 and additional 6th defendant, in Ext.B1, preparedness for a valid adoption is pleaded. But when final order was passed in Ext.B1 petition on 12.7.1989, the 1st petitioner was appointed as the guardian of minor John with direction to the respondent St.Joseph's Children's Home, Kummannoor to hand over the custody of the minor John to the 1st petitioner. In fact, there is no order in the form of granting adoption to be found in Ext.B2. The learned counsel given much emphasis on Ext.B4, Certificate of Baptism issued from St.Michael's Church, Thathampally, dated 3.7.1989, where in the parents column, Joseph and Marykunju are shown as the child by name George. Ext.B5 is the certification of the Holy Communion regarding the child dated 18.4.2007. Apart from the above documents, the learned counsel has given much emphasis on Ext.X1 with reference to Entry No.83/89, the Mamodisa register to show that therein also the parents of George is shown as Joseph and Marykunju. On the last column of the said entry, it was endorsed that adopted child's parents unknown, name

given as parents are those who adopted him. In order to prove the entry in Ext.X1 and its authenticity, nobody examined. If at all, the entire evidence tendered by defendant No.1 and additional 6th defendant taken together, the evidence to prove the adoption are Certificate of Baptism and associated records. No oral evidence tendered and no documents produced to show the essentials of a valid adoption to prove the same. In fact, in order to prove a valid adoption, the actual formality of the adoption by proving the physical act of giving and taking of the child shall be established and a mere expression of consent or the execution of a deed of adoption without proving the physical act of giving and accepting the boy or a girl in adoption will not be sufficient even under the principles of Hindu Law. The ratio of the decision in **Pharez John Abraham**'s case (supra) also would not help defendant No.1 and additional 6th defendant in this matter, since in the said case the parties proceeded with the suit admitting a valid adoption without raising any objection, though at a later stage disputed adoption, after admitting the same. In that case, the Apex Court emphasised the admission. Summarising the discussion, it is held that the trial court rightly found that the essentials of a valid adoption not established by defendant No.1 and additional 6th defendant independently and therefore, it could not be

held that the additional 6th defendant is the adopted child of Joseph J.Karuvelil so as to inherit upon his properties. Therefore, the decree and judgment of the trial court are liable to be confirmed.

In the result, this appeal fails and the same is dismissed. Considering the nature of the case, both parties are directed to suffer their respective costs.

All interlocutory orders stand vacated and all interlocutory applications pending in this appeal stand dismissed.

Registry is directed to forward a copy of this judgment to the jurisdictional court, forthwith.

Sd/-

A. BADHARUDEEN
JUDGE

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