

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 7176 OF 2002

I.J. GONSALVIS

Appellant (s)

VERSUS

PHILIPS ALFRED MALVIN & ORS

Respondent(s)

(With appln(s) for urging addl. grounds and with office report)

Date: 25/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY  
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s) Mr.T.L.Viswanatha Iyer, Sr.Adv.  
Mr. T.G. Narayanan Nair,Adv.  
Mr.K.N.Madhusoodanan, Adv.

For Respondent(s) Mr. Romy Chacko,Adv.  
Ms.Jasaswini Mishra, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard learned counsel for the parties.

At the beginning of the hearing, learned counsel for the appellant submits that I.A. No.7 which was filed on 04.09.2002 was filed with the prayer to urge additional grounds, namely, ground

Nos.A and B. These grounds are as follows :-

"A. The plaintiff claims right in the plaint schedule property as an adopted son of George Correa. It is submitted that he is not a person entitled to a share in the estate of deceased George Correa, being not a lineal descendant and herein the suit has to fail on this preliminary ground itself.

B. The deceased George Correa was a Christian of Thalassery (previously Tellicherry) of Kannur District in Kerala. The property is

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situate in the Kannur District of the State of Kerala. The deceased was governed by the Indian Succession Act, 1925 (the Act). Under Section 29(2) of the Act, the provisions of part V of the Act constitute the law of India in all cases of intestacy among Christians to whom the part applied. As per the provisions of the said part only the lineal descendants of a deceased person are entitled to share in his/her estate. Lineal descendants are the natural born children, in this case defendants 1 to 3. No right of heirship is conferred on an adopted son (assuming that adoption is permissible). The plaintiff is

therefore not entitled to any share at all as claimed by him."

When the matter came up before this court on 01.11.2002, the court directed that the I.A be considered at the time of hearing of the appeal. No counter has been filed to the said I.A. by the respondents all these years. We are of the opinion that of the two questions which have been raised; question A is a question of law and we can allow the same to be raised and argued by the appellant.

So far as the second question is concerned, learned counsel modified the second question by saying that the principle of law in the second question should be allowed on the basis that the property in dispute is situated in the district of Kannur and in support of that he hands over a copy of the plaint and the schedule thereto which clearly states that the property was in Kannur District. In that view of the matter, we allow the appellant to raise the first question in the way it is framed and the second question in the modified form as suggested above.

This court heard the learned senior counsel for the appellant at considerable length on the points, which have been taken up in his I.A.No.7 of 2002. The interlocutory application is, therefore,  
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allowed. The counsel for the respondents while giving his reply wanted leave of this court to file additional counter to the said I.A. The permission sought for is granted. He may file counter affidavit within two weeks. Rejoinder, if any, be filed within two weeks thereafter.

The matter may appear for further arguments on 6th April, 2010 at 3.30 P.M.

(Satish K.Yadav)  
Court Master

(A.D.Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master