

Ajit Datt Vs. Mrs. Ethel Walters (Decd.) Through L.Rs. and Others

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Court : Allahabad

Decided On : Sep-28-2000

Reported in : 2000(4)AWC3270

Judge : G.P. Mathur and ;S.R. Singh, JJ.

Acts : [Indian Succession Act, 1925](#) - Sections 4, 15(1), 18, 24, 25, 29, 29(1) and (2), 36, 37 to 40 and 47; Indian Succession Rules, 1925 - Rules 6 and 39; Adoption of Children Act, 1926 - Sections 1(1) and 2, 3 and 5(2); Adoption of Children (Amendment) Act, 1949; Adoption Act, 1976 - Sections 39(2); [Evidence Act, 1872](#) - Sections 50, 57(1); [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 12; [Punjab Laws Act, 1872](#) - Sections 5 and 7; Oudh Estate Act, 1869; Sri Pratap Jammu and Kashmir Laws Consolidation Act, 1977; [Constitution of India](#) - Articles 13, 21 and 372; [Bengal, Agra and Assam Civil Courts Act, 1887](#); [Indian Majority Act, 1875](#); [General Clauses Act, 1904](#) - Sections 3(57); Universal Declaration of Human Rights, 1948 - Article 16(1); International

Appeal No. : Special Appeal No. 13 of 1985

Appellant : Ajit Datt

Respondent : Mrs. Ethel Walters (Decd.) Through L.Rs. and Others

Advocate for Def. : K.N. Tripathi and ;V.K.S. Chudhary, Advs.

Advocate for Pet/Ap. : Shanti Swarup Bhatnagar and ;W.H. Khan, Advs.

Judgement :

G.P. Mathur, J.

1. This special appeal has been preferred against the judgment and order dated 8.7.1985 of a learned single Judge in Testamentary Suit No. 1 of 1983 whereby the petition filed by Mrs. Ethel Walters for grant of Letters of Administration of by estate of Mrs. Maud Flora Datt (for short Maud Datt) was allowed.

2. The property in dispute consists of house No. 7 N. K. Mukherjee Road and house No. 9 (old No. 14) N.K. Mukherjee Road. Allahabad, besides a fixed deposit of Rs. 10,000 and 1,200 in Saving Bank Account in Central Bank of India, Civil Lines Branch, Allahabad and some household goods. The houses originally belonged to Eugen Eustas Datt, son of Rai Sahab Jeewan Masih Datt (for short J.M. Datt). He had three brothers and one of them was Archibald Datt whose son is the appellant Ajit Datt, Eugen Eustas Datt (for short E.E. Datt) died issueless on 28.11.1959 leaving a Will in favour of his wife. Mrs. Maud Datt whereby hebequeathed his entire estate to her, a probate of the Will was granted in her favour on 23.3.1962 in Probate Testamentary Case No. 10 of 1960 by the Allahabad High Court. The dispute has arisen after the death of Mrs. Maud Datt which took place on 5.12.1980. Her real sister Mrs. Ethel Walters filed a petition in the High Court on 13.5.1981 under Sections 218 and 278 of Indian Succession Act (hereinafter referred to as the Act) for grant of Letters of Administration of the movable and immovable properties, credits and assets of Maud Datt as she had died intestate and issueless. She claimed to have succeeded to the estate of deceased under Section 47 of the Act. The petition was contested by the appellant Ajit Datt on the ground that he was an adopted son of E.E. Datt and Maud Datt and, therefore, he was entitled to succeed to the estate of the deceased. On account of the contest the petition for grant of Letters of Administration filed under Rule 6 of Chapter XXX of the Rules of the Court was converted into a suit in accordance with the Rule 39 of the said Chapter and was registered as Suit No. 1 of 1983.

3. The case pleaded by Mrs. Ethel Walters was that Mrs. Maud Datt who was about 67 years age died intestate at Allahabad on 5.12.1980 and she left her surviving the petitioner who was her real sister besides seven others who included another real sister. Dr. Mrs. Myrtle Khan and children of other deceased brother, sister and half-sister. The appellant. Ajit Datt was also impleaded as a party for proper adjudication of the case on the ground that he was trying to intermeddle with the property though it was specifically pleaded that he was not a next of kin of the deceased. In para 11 of the petition, it was pleaded that Ajit Datt had filed a civil suit for injunction in the Court of Munsif (West), Allahabad, for house No. 9 N.K. Mukherjee Road, basing his claim on the alleged adoption made by late E.E. Datt and Maud Datt. It was also pleaded that the alleged adoption is invalid in law as there was no provision for adoption under the Christian law or the Indian Succession Act.

4. The appellant Ajit Datt filed a counter-affidavit opposing the grant of Letters of Administration to the petitioner Mrs. Ethel Walters and his case was that his ancestors were originally Hindus, resident of undivided Punjab and were governed by Mitakshara School of Hindu Law and the personal law of custom of the family recognised adoption of a male child ; that the family after conversion carried along with them their ancestral customary law in its secular aspect and the conversion to Christianity only resulted in change of worship ; that after the death of J. M. Datt, his daughters did not claim any right in his property and his four sons alone succeeded to the same ; that soon after his birth, which took place on 21.10.1947, he was adopted as a son by E.E. Datt and Maud Datt according to the custom of adoption prevailing in the family amongst Indian Christians ; that he was baptised in the year 1949 and in the baptismal certificate the names of E.E. Datt and Maud Datt were recorded as parents ; that he joined Boys High School in 1953 and in the school records the name of his father was mentioned as E.E. Datt ; that the family members always treated him as the son of E.E. Datt and Maud Datt and not as son of Archibald Datt; that he has always lived with his adoptive parents and Archibald Datt did not treat him as his son and that his adoptive mother Maud Datt performed her duty as mother at the time of his marriage. In para 20 of the counter-affidavit, it was asserted that Indian Christians have retained the custom of adopting children to themselves and the said custom was recognised by the

Court of law. In the same para, the details of some persons who are Christians and had been taken in adoption were given.

5. Mrs. Ethel Walters filed a rejoinder-affidavit in reply to the counter-affidavit filed by Ajit Datt and it was pleaded that devolution of property of late J. M. Datt was subject-matter of a probate which was granted by the Allahabad High Court in Testamentary Case No. 6 of 1946 on 3.5.1946 : that it was wrong that the ancestors of the family were residing in undivided Punjab or they were governed by Mitakshara School of Hindu Law or that there was any recognised custom of adoption of a male child : that Ajit Datt was never adopted by E.E. Datt nor there was any custom of adoption prevailing amongst the Indian Christians or in the family of E.E. Datt : that the certificate of baptism relied upon by Ajit Datt was not correct ; that in the records of Board of High School and Intermediate Education, U. P., University of Allahabad and also records of his service. Ajit Datt gave the name of his father as Archibald Datt ; that even in his marriage records he gave the same name of his father, that he never treated Maud Datt as his mother nor resided with her during his stay at Allahabad ; that she never performed any duties as mother at the time of his wedding ; that he had no love or affection for her nor did he care for her during her last stage and she was being looked after by others and that for the last about 15 years Ajit Datt had been declaring the names of his natural parents in all public records and had never claimed that he had been adopted by E.E. Datt and by the said act and conduct he had renounced his alleged adoption, even if there was any.

6. 'The parties adduced oral and documentary evidence in support of their case during the trial of the suit. The learned single Judge held that so far as the State of U. P. is concerned, intestate succession of Indian Christians is governed by the provisions contained in [Indian Succession Act, 1925](#) and any custom prevalent in the State in this regard would, for the purpose of succession be irrelevant ; that right to succeed to the property left by Maud Datt is governed not by alleged custom set up by Ajit Datt but is governed by the provisions contained in Indian Succession Act ; that under the provisions of the said Act a child adopted by a person for being brought up as a son does not inherit the property left by him : and that it is not open to Ajit Datt to claim that despite conversion to Christianity the

ancestors of E.E. Datt continued to be governed by Hindu law in a matter of adoption and succession. It was also held that the evidence on record failed to establish any custom much less a custom which had received a legal recognition whereunder a child adopted by a Christian for being brought up as son acquires the status and becomes entitled to the privileges of a natural son ; that the fact that Ajit Datt gave the name of his natural father Archibald Datt at a subsequent stage of his educational career and also at the time of entering into the Government service and also the invitation card of his marriage militates against the case set up by him that when he was adopted by E. E. Datt for being brought up as his own son, he acquired the legal status and privileges of a natural son so as to succeed to the property of Maud Datt. On these findings, it was held that Ethel Walters was entitled to the Letters of Administration and the petition filed by her was accordingly allowed.

7. In the special appeal, the findings recorded by the learned single Judge both on fact and law have been seriously challenged. Sri W.H. Khan, learned counsel for the appellant Ajit Datt, has contended that custom of adoption in the family of E.E. Datt and the factum of adoption of the appellant by him had been fully established from the evidence on record. He has further contended that being an adopted son, Ajit Datt acquired the status of a natural son and consequently he has inherited the property under Section 37 of the Act to the exclusion of the petitioner Ethel Walters or the children of her brothers or sisters, Sri V.K.S. Chaudhary, learned senior counsel for the respondents, has contended that evidence on record neither established any custom of adoption in the family of E.E. Datt nor the factum of adoption of the appellant Ajit Datt. He has further contended that in absence of any statutory provision no adoption could be recognised amongst Christians nor the appellant has got any legal right to inherit the property of Maud Datt.

8. In order to examine the factual aspect of the case, we will briefly refer to the evidence which has been adduced by the parties. However, before we enter into the realm of evidence, it has to be kept in mind that we are concerned here with the state of Maud Datt and not that of E.E. Datt and further in order to succeed, the appellant has to establish that he was adopted as a son by Maud Datt in a sense which conferred the status of a natural son upon him and also being so

related, he has got a right under the relevant law to inherit her property to the exclusion of others.

9. The petitioner examined four witnesses and in her own statement as P.W. 1, she stated that she was a post graduate in science. She herself and her other sisters and brothers used to look after Maud Datt after the death of her husband E.E. Datt and most of the time she (Maud Datt) used to stay with them outside Allahabad. Maud had a heart attack when she was staying with her elder sister Dr. Mrs. Daisy Khan at Lucknow and on receiving the said information, she reached there and incurred the expenditure in her treatment. In the later days, her own daughter Asha Sircar and her husband were residing with Maud Datt and used to look after her. Whenever she came to Allahabad, she always found Maud Datt to be all alone and she was not being looked after by Ajit Datt. She also stated that when Ajit Datt was a child, he used to stay with her sister and she treated him like her son but later on he left her alone. In her cross-examination, she categorically stated that she had never heard or known about any ceremony of adoption being made amongst Christians and that there was no adoption in law in Christians. P.W. 2 Rev. Chacko Joseph, Assistant Pastor All Saints Cathedral Church, Mahatma Gandhi Marg, Allahabad, brought the management register and proved the entry dated 4.6.1976 regarding marriage of Ajit Datt wherein his father's name has been recorded as Archibald Datt, P.W. 3 Anand Kumar Datt a first cousin of Ajit Datt. stated that it was wrong to say that his uncle E.E. Datt had adopted Ajit Datt as son. He further stated that the family does not follow any custom of Hindu religion. He also stated that in the marriage of Ajit Datt he was invited by Mrs. Noreen Datt wife of Archibald Datt (own mother of Ajit Datt) and that after the marriage his wife went to the place of Mrs. Noreen Datt. He further stated that his great grand father had shifted to U. P. from Bengal and not from Punjab, P.W. 4 Satya Pal Prabhakar stated that the house of Maud Datt is at a distance of about two furlong from his own house and they used to meet each other and had cordial relations and he used to help her in some odd work as she was living alone. His son and Ajit were employed together in Jeep Factory and he had been invited in the reception of his marriage by Archibald Datt. He further stated that he never saw Ajit Datt or his wife in the house of Maud Datt ever since 1965 when he came to know her.

10. The appellant in support of his case examined five witnesses. R. W. 1 Prem Hamlin is son of Noorish Hamlin who was brother of Maud Datt. He has stated that Ajit Datt was taken in adoption by his aunty when he (Ajit) was one or two months old and that the baptism took place on Deoria. He himself had got no right in the property and the heir of Maud Datt is Ajit Datt, R.W. 2 Dr. Mrs. Daisy M. Khan is eldest sister of Maud Datt and she stated that E.E. Datt and Maud Datt had taken Ajit Datt in adoption and the baptism was got done by them at Deoria. She also stated that the property should go to Ajit Datt. R.W. 3 Noreen Datt is own mother of the appellant and she stated that after she was discharged from the hospital Ajit was taken away by Maud and her husband to their home and thereafter they treated him as their son and brought him up. The baptism of Ajit took place at the place of Maud's elder sister Mrs. Noora Yunus, R.W. 4 Father Rev. Levi D'Souza, Parish Priest in St. Joseph Cathedral, Allahabad, stated that there is nothing under the Christian canons which prohibits adoption. He stated about three adoptions between 1942 and 1959 on the basis of baptism register of the Cathedral. He also stated that after the adoption of the child, adopting parents get the child baptised and the baptism is the only ceremony which completes the adoption. R.W. 5 A.C. Gilbert stated that he had seen Ajit Datt when he was only 8-10 days old and E.E. Datt told him that he had adopted the child of Archibald Datt. He proved the signature of Rev. D.W. Tiwari Pastor of Katra Church, on the certificate of baptism which is Exhibit R. 14, R.W. 6 George McDonald. White, Assistant-cum-Typist in Boys High School, Allahabad, proved the certificate prepared on the basis of scholar register wherein E.E. Datt is shown as father of Ajit Datt. It is necessary to record here that Ajit Datt did not examine himself as witness.

11. In order to examine the case set up by the appellant that there was a custom in the family of E.E. Datt to adopt a male child, it is necessary to notice the law regarding pleading and proof of custom as laid down by decisions of Privy Council and thereafter by the Apex Court. In *Abdul Hussain Khan v. Mst. Bibi Sana Dero*, AIR 1917 PC 181, it was held as under:

'It is of the essence of special usage modifying the ordinary law of succession that they should be ancient and invariable ; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of

such evidence that the Courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends.'

This principle was approved in *Ujagar Singh v. Mst. Jeo* : AIR 1959 SC 1041 . The law relating to pleadings in a case where some custom is set-up was considered in *Kochan Kani Kunjuran v. Mathevan* : AIR 1971 SC 1398 , and was expressed in the following words in paragraph 6 of the reports : ... It is well established that in the matter of custom, a party has to plead in specific terms as to what is the custom that he is relying on and he must prove the custom pleaded by him. He cannot be permitted to prove a custom not pleaded by him.....

Anybody who puts forward a custom must prove by satisfactory evidence the existence of the custom pleaded, its continuity and the consistency with which it was observed. A party against whom a custom is pleaded must have notice as to what case he has to meet. The opposite party apart from rebutting the evidence adduced by the plaintiff may be able to prove that the custom in question was not invariably followed. He cannot get ready with that evidence without knowing the nature of the custom relied upon by the plaintiff.

.....'

12. The pleading about custom is contained in paragraphs 4, 6, 11 and 20 of the counter-affidavit of the appellant Ajit Datt. It is stated therein that the ancestors of the appellant were originally Hindus resident of undivided Punjab who were governed by Mitakshara School of Hindu Law and after conversion, the family carried along with them their ancestral customary law in its secular aspects and, consequently, succession to the property of his grandfather late J. M. Datt was done as per Hindu Law and the daughters got no share in their father's property. It is also pleaded that he had been validly adopted, as adoption is customary in Indian Christians. The petitioner Ethel Walters in her rejoinder statement completely denied the existence of any such custom. So the pleadings show that the family after conversion to Christianity carried along with them their ancestral customary law of Hindus regarding adoption and succession. The statement of the witnesses examined by the appellant himself completely belies the case set up by

him. R.W. 1 Prem Hamlin stated towards the end of his cross-examination that there is no custom of adoption amongst Christians. R.W. 2 Dr. Mrs. Daisy M. Khan stated in her cross-examination that her sister Maud Datt was a staunch Christian and so far as she knew, Maud and her husband never followed any custom prevalent amongst Hindus or Muslims. She has further stated that she had not seen any non-Christians custom or ritual being ever observed in the family of Maud or her husband, R.W. 3 Noreen Datt, own mother of the appellant, admitted in her cross-examination that no ceremony takes place when a child is born and similarly neither tenth day nor thirteenth day ceremonies are performed after the death of a person in her family. These three witnesses have not stated a single word about any custom of Hindus including that of adoption being observed by the family of E.E. Datt. R.W. 4 father Rev. R. D'Souza stated in the opening part of his examination-in-chief that he could not say whether Hindus converted into Christians carried their custom of adopting children after becoming Christians R.W. 5 A. C. Gilbert merely has given instances of a few adoptions in Christians in the last about 55 years but admitted in his cross-examination that he was personally not present at the time of any adoption and was told about them later on. He did not state a single word about any custom of Hindus including that of adoption being followed by the family of E.E. Datt. No documentary evidence has been adduced on this point. There is, thus, no evidence to show that the family of E.E. Datt followed any custom of Hindus and specifically that of taking of a child in adoption. Thus, the custom pleaded by the appellant is not at all established.

13. The entire claim of the appellant is based upon his adoption by E.E. Datt and, therefore, it will be appropriate to keep in mind the nature of burden which is cast upon him where such a claim is made. In *A. Raghavamma v. Chenchamma* : [1964]2SCR933 , the Court ruled that it is well settled that a person who seeks to displace the natural succession to property by alleged adoption must discharge the burden that lies upon him by proving the factum of adoption and its validity. This was reiterated in a later decision in *Madhusudan Das v. Naraini Bai* : [1983]1SCR851 , and another rider was imposed that evidence in proof of the adoption should be free from all suspicion or fraud and so consistent and probable as to give no occasion in doubting its truth. For adding this rider, the Court relied upon an earlier decision in *Kishan Lal v. Chalti Bai* : AIR 1959 SC504 .

14. The evidence adduced by the appellant regarding his adoption by E.E. Datt may be examined now and it is to be seen whether he has discharged the burden cast upon him to prove the said fact. The main evidence on this point has been given by R.W. 3 Noreen Datt, who is natural mother of the appellant. She has stated that when she was in family way, it was agreed by Maud Datt and her husband E.E. Datt that in case she bore a son, the said child shall be taken in adoption by them as they were issueless and had been married 5-6 years earlier. After she was discharged from hospital, Ajit was taken away by Maud and her husband to their home and the entire hospital expenses were born by them. She has further stated that no particular ceremony of adoption took place which was in fact on the understanding of the family and as soon as Ajit was born, she gave him to Maud and her husband in adoption. In her cross-examination, she has stated that Ajit was born at 7 a.m. on 21.10.1947 in Kamala Nehru Hospital and immediately after he was taken out from the labour room, her husband handed over the child wrapped in a cloth to E.E. Datt and Maud Datt. She further stated that this is what she called as adoption. She has mentioned the names of certain persons, namely, Mr. and Mrs. A.B. Datt, A.E. Datt, her sister-in-law O.E. Adams, and her husband and her eldest sister-in-law S.B. Griffing and her husband who were present at that time. But no Padri was present. The statement of this witness appears to be highly artificial and unnatural. She has stated that she was discharged from the hospital in about ten days time and this means that the child was severed from his mother within such a short period and was handed over to different couple. At that tender age, the child is totally dependent upon breast-feeding, Lactation starts in a woman after she gives birth to a child and continues for sometime, obviously Maud Datt could not have provided the child with breast milk. Exceptional cases apart where on account of death of the mother, the child may have to be provided with some alternate source of feeding on account of compelling reasons, no one would separate a child of that tender age from his natural mother which may have the effect of endangering his life. It also looks highly unnatural that immediately after taking out from the labour room, Ajit was handed over to E.E. Datt and Maud Datt. Normally a child is not adopted immediately after his birth or within a week or ten days of his birth. Adoption takes place later when he is not dependent upon his natural mother for feeding and is in

position to survive without her. It does not at all look prudent on the part of E.E. Datt and Maud Datt to carry a child of that tender age to their home away from the company of his natural mother. R.W. 1 Prem Hamlin and R.W. 2 Dr. Mrs. Daisy M. Khan have no doubt stated that Ajit was taken in adoption by E. E, Datt but both have admitted in cross-examination that the adoption did not take place in their presence. The former stated that the adoption took place when Ajit was one or two months old which contradicts the statement of R.W. 3 Noreen Datt. It is true that the both witnesses have deposed against their interest and being related to Maud Datt their statements as to the relationship of Ajit Datt to E.E. Datt as expressed by their conduct may be admissible under Section 50 of the Evidence Act but the question here is slightly different. The appellant has to prove the actual factum of adoption, i.e., the giving of the child by the natural father or parents and taking of the child by the adoptive father and also the ceremonies which took place at that time. Both the witnesses were not residing at Allahabad and have frankly admitted that they were not present at the time when the child is alleged to have been given by his natural parents to E.E. Datt. R.W. 5 A.C. Gilbert has stated that E.E. Datt and Maud Datt gave the child in his lap eight or ten days after he was born and informed him that they had adopted the child of Archibald Datt. He is also not a witness of actual giving and taking and if his statement is to be believed, it would mean that the child was separated from his natural mother even before he was ten days old. He is not a member of the family of E.E. Datt and he has not explained in what circumstances he went to his place. His statement has been recorded on 24.8.1983 which means almost 30 years after the birth of Ajit Datt. One may remember the events of a long time past if some function is held or there is some special occasion like marriage or death or birth of a child in one's own family. But for a stranger to the family to remember an insignificant fact after nearly 36 years, that a particular person gave a child in his lap. looks extremely difficult. R.W. 3 Noreen Datt, the natural mother of Ajit Datt, has mentioned the names of several persons who were present at the time of actual handing over of the child in hospital but none of them have been examined as witness. Therefore, from the oral evidence adduced by the appellant, it is not at all established that he was actually given in adoption by his natural parents to E.E. Datt and Maud Datt.

15. It is noteworthy that the oral evidence adduced by the appellant does not show that any kind of ceremony was performed at the time of his adoption. No Datta Homam was performed which was necessary under the Hindu Law which was applicable in the year 1947. If the family of the appellant, as claimed by him, continued to follow the custom of adoption as laid down in Mitakshara Hindu Law, the said ceremony ought to have been observed. The ceremonies like, 'mundan' (first tonsuring of head of a child) or yagyopavit (Sacred thread ceremony) or marriage of a Hindu cannot be performed until some 'mantras' are chanted by the priest and some 'pooja' is done. Generally they are accompanied by exchange of gifts and some feasting. If a man and woman start living together with the best of intentions but without undertaking the rituals of marriage, the law or the society will not recognise them as married couple. Similarly, mere tonsuring of head or putting on the sacred thread without necessary religious ceremonies would neither be termed as 'mundan' ceremony nor 'yagyopavit'. The marriage in Christians also requires going to Church where the Priest or the Clergyman recites verses from Holy Scripture and some other ceremonies are performed. Here no ceremony at all of any kind was done at the time of the alleged adoption. A deed in writing could have been executed by the natural and adoptive parents and could have been got registered. E.E. Datt was a man of status. He was a business man, vice-chairman of Municipal Board, Allahabad, and a special Honorary Cantonment Magistrate. Yet he did not have any celebration of any kind when adoption of a child virtually amounted to birth of a son to him.

16. The appellant has also relied upon some documentary evidence in order to show that he was adopted by E.E. Datt. The appellant examined R.W. 6 George McDonald White, Assistant-cum-Typist in Boys High School to prove a certificate issued by the Principal of the school on 8.1.1981 which certifies that 'Ajit Kumar Bahadur Datt' s/o Mr. E.E. Datt was a bona fide student of the school from January, 1953 to December, 1964 and it is Exhibit R. 15 on the record. On the basis of this certificate, it is urged by the appellant that in the school records, his father's name is mentioned as Mr. E.E. Datt. The statement of the witness shows that the certificate was typed by him from the scholar register wherein entry about the appellant is made at serial No. 641 which is as under :

Name -- Ajit Kumar Bahadur Datt

Date of

birth -- 21.10.1947.

Name and

address -- Sri E.E. Datt

of parents 23-A Albert Road.

or guardian Allahabad.

17. It is apparent that the name of E.E. Datt is shown against the column-name and address of parents or guardian. Therefore, the certificate does not correctly depict the picture as recorded in scholar register and E. E. Datt could as well be guardian of Ajit Datt. In fact, in his cross-examination, the witness clearly admitted that after perusing the entry, he could not say whether E.E. Datt was the parent or guardian of the boy. The appellant's natural mother R.W. 3 Mrs. Noreen Datt has admitted in cross-examination that her husband had bought agricultural land in Khatima, district Nainital and the family lived in Allahabad till 1952. Khatima is in Terai belt of the State where after partition, a large number of refugees were settled after cutting of forests though now it is the granary of U. P. But at that time, the area was densely covered with forest and highly inhospitable, Allahabad, was considered as a seat of education in that period and the Boys High School, where the appellant studied, was one of the best English Medium Convent School. Boys and girls from far off places used to come to Allahabad and used to stay with their relations for the purpose of education E.E. Datt was none else but the own real uncle of the appellant and in such a situation, his staying with him for the purpose of studies in a very good school was quite natural. In such circumstances, the name of E. E. Datt was bound to be recorded as guardian in the school records. Therefore, the certificate of the school Exhibit R. 15 does not advance the case of the appellant in any manner.

18. The next document on which reliance is placed by the appellant is the Will which was executed by E. E.Datt in favour of his wife Maud Datt on 27.11.1959. In the said Will, there is recital- 'it is my wish that my wife Maud Flora Datt will look after and care for Ajit my adopted son and will pay his educational expenses out of the above property.' It has been urged that the aforesaid recital establishes the factum of adoption. We are unable to accept the submission made. Ordinarily, a person executing a Will in favour of his wife will never mention that she will look after and pay educational expense of his son. A mother is generally more attached to her children than the father and she is always prepared to sacrifice everything for their welfare and upbringing. The converse is possible. viz., that a man executing a Will in favour of his son may express a wish that he should look after and care for his mother as instances of even well-to-do people not caring for their aged parents are not uncommon. The language used 'my adopted son' and not 'our adopted son' and then again 'will pay his educational expenses' look little odd. If Ajit was the adopted son of the couple there was no occasion at all for E.E. Datt to write any such thing and Maud Datt would not only have paid the educational expenses but his entire expenses. It is likely that while Ajit Datt was staying with his uncle for the purpose of education, he treated him virtually like a son and paid his educational expenses. But Maud Datt never accepted Ajit as her son and, therefore, E.E. Datt expressed a wish that she would look after him and pay his educational expenses. The fact that she never accepted Ajit as her son, is also established from other circumstances which we will refer to later. It will not be out of place to refer here to an authority of the Apex Court rendered in Banwari Lal v. Trilok Chand : [1980]1SCR998 , where a similar recital in the Will was considered and the Court ruled as follows :

'The statement made by testator in the Will about defendant 1 as his adopted son is certainly a piece of admissible evidence but there is no rule or law of prudence laying down the principle that such a statement must be regarded as conclusive, and the burden of proving his adoption lies heavily on him.'

Therefore the recital in the will can at best be taken as a piece of evidence which is not conclusive and it cannot displace the burden of proof of factum of adoption which lies upon the appellant.

19. Great stress has been laid by the learned counsel for the appellant upon the certificate of baptism of the appellant Ajit Datt dated 27.10.1949, wherein, the name of his father and mother are mentioned as Eugin Eustas Datt and Maud Flora Datt respectively and it is urged on its basis that the names of his real parents having not been mentioned, it clearly shows that he had been adopted by the aforesaid persons. The certificate of baptism has been proved by R.W. 5 A.C. Gilbert, who has stated that he is familiar with the handwriting and signature of Rev. D. N. Tewari and all the columns in the said certificate had been filled by him. The document is Exhibit R. 14 on the record and the relevant entries in the same are as under :

The United Church of

Northern India

Katra, Allahabad

Baptismal Name.

Ajit Kumar Bahadur

Surname.

Dillon Datt

Father.

Eugene Eustus Datt

Mother.

Maud Flora

20. The respondents have challenged the genuineness of the Certificate of Baptism on several grounds. The certificate shows that the baptism was done in the United Church of Northern India, Katra, Allahabad. Katra is a locality in Allahabad city where the aforesaid Church is situate. However, both R.W. 1 Prem Hamlin and R.W. 2 Dr. Mrs. Daisy M. Khan have stated that the baptism took

place at Deoria in the house of Dr. Mrs. N.J. Yunus. Similar statement has been given by appellant's mother R.W. 3 Noreen Datt. Deoria is a different district, which is about 350 kilometres from Allahabad. None of these witnesses have stated that Rev. D.N. Tewari had gone to Deoria to perform the baptism ceremony in the house of Dr. Mrs. N.J. Yunus. The certificate has perforations on the left-hand side, which shows that it had been given from a book having counter-foils like a cheque-book. The book containing counter-foils has not been produced, it is admitted to the parties that record of baptism is kept in the Church R.W. 5 A.C. Gilbert has stated in cross-examination that all the records of Katra Church had been kept at the residence of the priest, who lived in the same compound but the ceiling of the said building fell down due to heavy rains and the records were destroyed. However, R.W. 3 Noreen Datt stated that the baptism was performed in 1953-54 which totally contradicts the date mentioned in the certificate. She has further stated that there was fire in vestry and the records were burnt. The explanation regarding non-production of original records is contradictory. The surname mentioned in the certificate is 'Dillon Dutt. How the surname was written as Dillon Dutt has also not been explained. These features cast serious doubt about the genuineness of the Baptism Certificate.

21. The appellant examined R.W. 4 Father Rev. Levi D'Souza, Parish Priest working in St. Joseph Cathedral, Allahabad, who filed copies of baptism certificates of three other persons by way of exemplar and stated that the practice followed is that after adoption of a child, the adoptive parents get the child baptised and so far as he knew, baptism is the only ceremony which completes adoption. On the basis of this statement, it is urged that since Eugen Eustas Datt and Maud Flora Datt took the appellant in adoption and their name is recorded as father and mother respectively in the Certificate of Baptism, this conclusively establishes the fact of adoption of Ajit Datt by Eugen Eustas Datt.

22. In order to test this argument it is necessary to consider what is baptism and what is its effect and whether a Certificate of Baptism can be treated as proof of adoption. In Christian law, the persons who take a child for baptism are called 'sponsors' and they are also commonly called as 'God Parents'. It will, therefore, be useful to refer to some standard texts in this connection. Baptism has been

explained as under :

BAPTISM

The New Encyclopaedia Britannica, Micropaedia Vol. 1 Page 877:

'Baptism, a sacrament that admits a person to membership in the Christian Church. The forms and rituals of the various churches vary, but Baptism almost invariably involves the use of water and the Trinitarian invocation, 'I baptise you : In the name of the Father, and of the Son, and of the Holy Spirit,' (Some Eastern Churches use the formula : This servant of Christ is baptized in the name of the Father, and of the Son, and of the Holy Spirit.) The candidate may be wholly or partly immersed in water, the water may be poured over the head, or a few drops sprinkled or placed upon it

Encyclopaedia Americana Vol. 3 Page 208 :

'Baptism, is the application of water to a person as a sacrament or religious rite, Sacraments, as a rule derive their outward form from common social acts but give to them a new spiritual significance.'

The Pastor's Handbook for the Church of North India Chapter I :

'Baptism is a sign of cleansing from sin, of engrafting into Christ, of entrance into the covenant of grace, of fellowship with Christ in His Death and Resurrection and of rising to newness of life.'

Who is God Parent has been explained as under :

The New Encyclopaedia 'Britannica, Micropaedia, Vol. V Page 326:

'....one who stands surety for another in the rite of Christian Baptism. In the modern Baptism of an infant or child the god parent or god parents make profession of faith for the person being baptized (the god child) and assume an obligation to serve as proxies for the parents if the parents either are unable or neglect to provide for the religious training of the child, in fulfilment of baptismal promises.'

'Godparents, the sponsors at a Christian baptism who accept the responsibility of being spiritual parents to the child who is being baptized. They present the infant for baptism and in the infant's behalf make promises of fidelity to God and rejection of Satan. Along with the parents, godfathers and godmothers assume the duty of seeing to the spiritual welfare of the child. If the parents fall in this duty, the godparents assume the sole responsibility.....

Roman Catholic law forbids parents to be sponsors, although the practice was allowed in earlier times. The Anglican communion permits parents to be sponsors.'.....

The Pastor's Handbook for the Church of North India Chapter I :

'13. Each child shall be sponsored for baptism by at least one person, but preferably more than one, who must be a baptised and communicant member in good standing in the Church of North India or of another Church in communion with the Church of North India (see Chapter XIII). Such a sponsor may be one of the parents or guardians of the child. Baptised and communicant members in good standing of the other Churches which are not in communion with the Church of North India may also be sponsors, provided that at least one of the sponsors, whether a parent or not, is a baptised and communicant member in good standing of the Church of North India or of a Church in communion with it.'

23. These authoritative texts show that baptism is a purely religious ceremony. It is a sign of cleansing from sin, and is a sacrament that admits a person to membership in the Christian Church. It occupies a place of great importance in the Christian community. Every person to be a Christian has to be baptised and without baptism, no one can be a true Christian. The baptism of a child which is absolutely essential in a Christian family can have no bearing of any kind with the factum of adoption and can never mean that he has been adopted by his sponsor. In Sections 4 and 18 of Chapter 1 of the Pastor's Handbook, the responsibilities of sponsors and time and place of baptism have been given which are as under :

'4. In the case of those who practise infant Baptism the child shall be presented by its parents or other sponsors, who undertake to bring up the child in the nurture and love of God. The order of the baptismal service shall make clear that the parents or other sponsors, together with the whole Church, promise that the child shall be taught the Christian faith and that he shall be surrounded with a Christian atmosphere of prayer and love that he may be disposed to make the act of personal faith and trust in his saviour as soon as he is capable of doing so.'

'18 The parents and the child shall be accompanied to the service, if possible, by other members of the family so that the baptism of the child is related to the whole life of the family. The baptism should normally take place in the course of public worship on a Sunday or a festival in the presence of the congregation ; because it is the responsibility of the congregation, as well as of the parents to see that the child is surrounded with a Christian atmosphere of prayer and love and taught the Christian faith. The congregation has its definite part to play in the service. . . .'

24. The views expressed in Encyclopaedia Americana show that Roman Catholic Law forbids parents to be sponsors though in the 1969 revision of the Roman Catholic baptismal rite, the parents join the sponsors in presenting a candidate. The authoritative text quoted above shows that a sponsor can be the parents or guardian or anyone else and in fact amongst the Roman Catholics, the parents cannot be the sponsors. The baptism should normally take place in the course of public worship on Sunday in the presence of congregation so that the Child is surrounded by a Christian atmosphere of prayer and love and taught the Christian faith. Anyone can act as a sponsor in the baptism ceremony and whosoever does, it is commonly known as Godfather or Godmother E.E. Datt being the elder uncle of the appellant. It is possible that he took him for the purpose of baptism and it is in this connection that his and his wife's name may have been recorded as father and mother respectively. The entries made in the Certificate of Baptism Exhibit R. 4, therefore, cannot lead to an inference that Ajit Datt was adopted by E.E. Datt.

25. Sri W.H. Khan has referred to Can. 877 of the Code of Canon Law and has urged on its basis that the name of E.E. Datt mentioned in the Certificate of

Baptism is proof of the fact that he had adopted Ajit Datt, (Can. 872 to 874) of the said book deals with sponsors.

SPONSORS

Can. 872--In so far as possible, a person being baptised is to be assigned a sponsor. 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 befitting the baptised and faithfully to fulfil the duties inherent in baptism.

Clauses 1 and 3 of Can. 877 reads as follows :

Can. 877 (1) The Parish priest of the place in which the baptism was conferred must carefully and without delay record in the register of baptism the names of the baptised, the minister, the parents, the sponsors and, if there were such, the witnesses, and the place and date of baptism. He must also enter the date and place of birth.

(3) In the case of a adopted child, the names of the adopting parents are to be registered and, at least if this is done in the local civil registration, the names of the natural parents in accordance with clauses 1 and 2, subject however to the rulings of the Episcopal Conference.

26. The certificate Exhibit R. 4 does not appear to have been prepared in accordance with Can. 877. It does not separately mention the names of the parents, adoptive parents or sponsors. According to the appellant, baptism took place at Deoria but the said fact has also not been mentioned anywhere. If the name of E.E. Datt and his wife were being recorded in the capacity of adoptive parents, the said fact should also be mentioned. We, therefore, do not find any substance in the submission made by Sri Khan.

27. The position seems to have undergone a complete change after the death of E.E. Datt, which took place on 28.11.1959. He had executed a Will in favour of his wife Maud Datt and she presented a petition in Allahabad High Court for grant of probate on 16.9.1960, which was registered as Testamentary Case No. 10 of

1960, Para 6 of the petition is important and it is being reproduced below :

'Para 6--That the said deceased left surviving him the following relatives as his only next of kin according to law.'

Then there is a list containing names of 7 persons, which included the name of Mrs. Maud Flora Datt at serial No. 1 and thereafter his three brothers and three sisters. The appellant Ajit Datt was not shown to be the next of kin of the deceased E. E. Datt and is conspicuous by his absence. If the appellant had really been adopted by E.E. Datt and Maud Flora Datt, there is no reason at all why his name would not have been mentioned while mentioning the names of the next of kin of E.E. Datt. No reason is forthcoming at all from the side of the appellant to explain why his name was not included in the next of kin of E.E. Datt by Maud Flora Datt when she presented the petition for grant of probate. Parents do not disown their son except in a very very rare case where on account of extremely bad behaviour or conduct, a bad name is brought to the family or there is grave danger to the property of the family. There was no occasion for such a contingency here as at that time Ajit Datt was a small boy of just 13 years of age. In our opinion, this document is of great importance in deciding the controversy and it clearly shows that at least Maud Flora Datt never accepted or recognised Ajit Datt as the adopted son of E.E. Datt.

28. After passing intermediate examination in 1966, the appellant took admission in B.Sc. Part I in Allahabad University and a copy of the relevant entry from the Register of Enrolment of the University has been filed as Exhibit P. 1 by the petitioner. In this document, the name of father of Ajit Datt has been mentioned as Archibald Datt, i.e., his natural father. The form for enrolment in University is normally filled in by the student himself. The appellant was 19 years of age and was mature enough to understand the meaning and effect of the relevant column, which had to be filled in. The appellant did not file the copy of his High School Certificate which always contains the name of the father. It is the case of the petitioner (respondent in the appeal) that in the records of Board of High School and Intermediate Education and also in the record of his service (I.P.S.) maintained by the Government, the name of the father of the appellant is

mentioned as 'Archibald Datt'. This fact was admitted by the counsel for Ajit Datt and the same was recorded in the order sheet of the suit on 6.9.1984. The appellant is an educated I.P.S. officer holding a responsible position. If he had really been adopted by E.E. Datt, he would have mentioned E.E. Datt's name in his service record and not that of his natural father Archibald Datt.

29. P.W. 2 Rev. Chacko Joseph, Assistant Pastor of All Saints Cathedral. Allahabad, brought the management register of the Church and proved the relevant entry regarding marriage of Ajit Datt on 4.6.1976 and an extract of the same has been filed as Exhibit P. 3. In the register, the name of the father of the appellant has been mentioned as Archibald Datt. In the invitation card of the marriage, which is Exhibit P. 4, the appellant is described as 'Ajit son of Mr. and Mrs. A. Datt of Allahabad'. No one is likely to commit a mistake in writing the father's name of the bridegroom in an important thing like invitation card of wedding. The documentary evidence discussed above shows that after the death of E.E. Datt in November, 1959, the appellant nowhere described him as his father but everywhere he mentioned the name of his natural father Archibald Datt.

30. As mentioned earlier, the appellant did not examine himself as a witness though he was the best person to depose about many facts which are relevant for deciding the controversy in issue. The petitioner was thereby deprived of the opportunity to cross-examine the appellant and elicit relevant facts. There is no evidence on record as to how he treated his alleged adoptive mother Maud Datt after she became a widow and also after he was selected in Indian Police Service in 1973. The petitioner in her statement has said that she and her brothers and sisters were looking after Maud Datt and she was also treated at Lucknow when she got a heart attack and that her daughter Asha Sircar had looked after her at Allahabad. The fact that she was heart patient is also admitted by the appellant's own mother R.W. 3 Noreen Datt, P.W. 4 Satya Pal Prabhakar, a neighbour of Maud Datt since 1965 has stated that he never saw Ajit Datt staying with Maud Datt. After selection in I.P.S. he was posted in Bihar in 1976, Maud Datt was 67 years of age when she died on 5.12.1980. There is no evidence to show that she ever visited or stayed with Ajit Datt. People in India pray for a son so that he may look after them during their old age. Unlike a Hindu, who may adopt a son for

performing certain religious duties, a Christian will do so with the object of upbringing a child who may give pleasure in home when he is young and later on look-after and care for him during his old age. An old ailing widow was living all alone but the appellant does not seem to have taken any interest in bringing her to his own house and keeping her with him. As an I.P.S. officer, he must be having a reasonable standard of living and amenities which otherwise are not available to a common man in India. However, there is no evidence on record to show that Maud Datt ever went and stayed with the appellant where her life would have been more secure and comfortable. If the appellant had readily been adopted and Maud Datt had treated him as her son, she would have also written some letters to him after he left Allahabad in 1974 for the purpose of training and thereafter to his place of posting. The appellant could have produced some letters which would have strengthened his case. There is no evidence either that he or his wife ever came and stayed with her as the grown up sons normally do in this country. These features completely negative the case set up by the appellant.

31. Learned counsel for the appellant has urged that Archibald Datt had purchased agricultural land in Khatima in the name of his wife and three sons but the name of the appellant was completely omitted and this corroborated the appellant's case that he was no longer being treated as son by Archibald Datt. In our opinion, this circumstance by itself cannot have any bearing on the factum of adoption. When a person is purchasing property in the names of his wife or children, it is not necessary that he should mention names of all the children. The testimony of P.W. 3 Anand Kumar Dutt, who is first cousin of the appellant and who deposed in favour of the petitioner and against the appellant, refuting the suggestion regarding adoption, has been criticised on the ground that his daughter had taken a loan of Rs. 25.000 from the Bank of India where A.S.K. Sircar (husband of Asha Sircar daughter of petitioner Ethel Walters) was working as Manager and, therefore, he had deposed under his influence. We do not think that the grant of loan of that amount by a bank is such a difficult proposition on account of which he felt so much obliged to A.S.K. Sircar that he went to the extent of denying the factum of adoption of his first cousin. Learned counsel for the appellant has also submitted that it was Asha Sircar and her husband who wanted to grab the property and Maud Datt did not die a natural death. He has submitted

that Ajit Datt came to Allahabad after coming to know about her death and then the body was exhumed for medical examination and some police inquiry was held, P.W. 4 Satya Pal Prabhakar had admitted that body was exhumed. But there is no evidence on record to show that on inquiry, the death of Maud Datt was not found to be natural or any criminal case was registered or investigation was done. No such evidence has been adduced by the appellant who being a police officer himself was fully capable of doing so. Therefore, it is not possible to draw any adverse inference against the petitioner.

32. A careful analysis of the oral and documentary evidence on record and the circumstance of the case show that the appellant Ajit Datt was never adopted by E.E. Datt in the technical and legal sense, so as to become his natural son for all purposes. After Archibald Datt left for Khatima in 1953, the appellant was placed under the guardianship of his elder uncle E.E. Datt for the purpose of education in a good school, which was available at Allahabad. E.E. Datt being childless and Ajit being his real nephew, he may have developed great love and affection for him. He was a man of substance being a businessman. and in such circumstances would have met the entire expenses of the appellant. It was for this reason that he expressed a wish in the Will executed by him that his wife Maud Datt will meet the educational expenses of the appellant. Maud Datt does not appear to have that kind of love and affection for him and never treated him as her adopted son, Archibald Datt came back to Allahabad in 1964 and, thereafter, the appellant started living with his own parents and that is why while seeking admission in the University and in the certificate of High School and Intermediate Classes, and also in his service record, he gave the name of Archibald Datt as his father. Thus, on facts, the case set up by the appellant that he was adopted by E.E. Datt in the technical and legal sense as understood in Hindu Law is not at all established and, consequently, he is not entitled to get any share in the estate of Maud Datt.

33. The special appeal is liable to be dismissed on the finding recorded above but as the learned counsel for the parties have raised some legal submissions, they may also be considered. Learned counsel has submitted that as Ajit Datt was the adopted son of Maud Datt, he was entitled to succeed to her estate in accordance with custom of the family of E.E. Datt, which continued to follow some principles of

Mitakshara Law. In support of this submission, reliance is placed on sub-section (2) of Section 29 of Indian Succession Act, which enjoins that save as provided in sub-section (1) or by any other law for the time being in force, the provision of this part shall constitute the law of India in all cases of intestacy. It is urged that the expression any other law for the time being in force used in sub-section (2) would include within its ambit statutory law and also customary law applicable to the concerned parties. According to learned counsel, succession in the family of E.E. Datt would be governed by the custom prevailing in the family, namely, the principles of Hindu Law on adoption whereunder, an adopted son inherits the property of his adoptive father. In support of his submission, learned counsel has placed reliance on *Anthony Swamy v. M.R. Chinnai Swamy* AIR 1970 SC 230. In our opinion, the contention raised has no substance. In *Kamawati v. Digvijai Singh*, AIR 1922 PC 214, it has been held that a person who ceases to be a Hindu in religion and becomes a Christian cannot elect to be bound by the Hindu Law in the matter of succession after the passing of the Indian Succession Act and a Hindu convert to Christianity is governed solely by the said Act. A similar contention was repelled by a Division Bench of this Court in *Ranbir Karan Singh v. Jogendra Chandra Bhattacharji* : AIR 1940 All 134, and the Court held that the argument that succession to an estate of an Indian Christian can be governed by the rules applied to the community to which he belonged before his conversion to Christianity is not sound. In *Anthony Swamy* (supra), it was the admitted case that Vanniya Tamil Christians of Chittur Taluk, Kerala, are governed by the Mitakshara School of Hindu Law in regard to inheritance and succession and the son of a member of such community gets by birth interest in ancestral property owned by the father. It was on this ground that the doctrine of pious obligation was held to be applicable. Therefore, this authority can be of no help to the appellant.

34. Sri W.H. Khan has next contended that the appellant is entitled to succeed to the estate of Maud Datt under Section 37 of Indian Succession Act. This section finds place in Chapter II of Part V of the Act under the heading 'Distribution where there are lineal descendants'. Section 24 defines Kindred or consanguinity and it means the connection or relation of persons descendants from the same stock or common ancestor. Section 25 provides that lineal consanguinity is that which subsists between two persons one of whom is descendant in a direct line from the

other as between a man and his father, grandfather and great grandfather and so upwards in a direct ascending line or between a man and his son, grandson, great grand-son or so downward in a direct descending line. Section 36 provides that rules for distribution of intestate's property [after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in Sections 37 to 40. Section 37 provides that where the intestate has left surviving him a child or children, but no more from lineal descendants through a deceased child, the property shall belong to his surviving child, if there is only one or shall be equally divided among all his surviving children. In order to succeed under Section 37, a person must be a lineal descendant, which means that he must be connected with the deceased by way of lineal consanguinity as his descendant in the direct line. Section 29 specifically excludes the applicability of Part V of the Act to the property of a Hindu and, therefore, for interpreting the provisions contained in this part, the notions of Hindu Law cannot be imported. The language used is plain and there is no reason not to give literal meaning to the words 'lineal descendants' or 'child' which have been used in this part. Section 25, therefore, contemplates a real lineal consanguinity and not a notional one and, therefore, only such persons will come within the ambit of the section who are descendant in the direct line. An adopted son is the lineal descendant or child of his natural father and not of the adoptive father, and consequently, the appellant cannot succeed to the estate of Maud Datt under Section 37 of the Act, These contentions have been considered in detail by the learned single Judge and I am in agreement with the view taken by him that the appellant is not entitled to succeed to the estate of the deceased under the aforesaid provisions.

35. Since the case of the appellant is that his ancestors were Hindus who converted to Christianity and continued to follow certain customs of Hindus as provided in the Mitakshara Law including that of adoption, it is necessary to consider what is the concept of adoption in the Shastric Hindu Law. In 'A Treatise on Hindu Law' by Gopalchandra Sarkar Shastri (Published by Eastern Law House in 1897 - Quotation here is from 1927 edition), the saying of pristine Hindu seers and law-givers in Sanskrit language in original have been reproduced and thereafter their translation is given in English, Chapter IV deals with adoption and para 1 thereof is being reproduced below :

1. A Brahmana on being born becomes a debtor in three obligations : to the Rishis (who are propounders of the sacred books) for Studentship (to peruse the same) : to the Gods, for Sacrifices : to the Paternal Ancestors, for Progeny : he is free from the debts, who has son. who has performed sacrifices, and who has studied the Vedas. --Revelation.'

Para 5 contains the words of Saint Atri and it is as under :

'5. By a sonless person only, should always a substitute of a son be anxiously made, for the sake of funeral oblations, libations of water and obsequial rite. If the father sees the face of a living son after birth, he transfers the debts to him, and attains immortality. As soon as a son is born, the father becomes absolved from the debts to paternal ancestors : on that day he acquires purity, since the son saves from the infernal regions, . .

Dattaka-Mimansa by Nanda Pandita and Dattaka-Chandrika by Devendra-Bhatta are original treatises on adoption written by great scholars of earlier times in Sanskrit language. Their English translation by J.C.C. Sutherland was published by Higgin Botham and Company, Madras in 1897. Notes 3, and 56 of Section 1 of Dattaka Mimansa are being reproduced below :

'3. On this subject Atri says, 'By a man destitute of a son only, must a substitute for the same always be adopted : with some one resource. (Ya mat tasmat prayainatas) for the sake of the funeral cake, water, and solemn rites.

16. Accordingly, Manu says 'Sages declare these to be substitutes ; for the obsequies would fail (kriyalopai)". Here, this part. 'for. the obsequies would fall' is a reason, subjoined on a negative hypothesis : 'The meaning is because, if there were no substitute for a son, the obsequies would fail'.

Note 3 of Section 1 of Dattaka-Chandrika reads as follows :

'3. On this subject Manu says : 'A son of any description must be anxiously adopted, by a man destitute of male issue, for the sake of the funeral cake, water and solemn rites ; and for the celebrity of his name.' Atri--'By a man destitute of male issue only, must the substitute for son of some one description, always be

anxiously adopted : for the sake of the funeral cake, water and solemn rites.'

This view was adopted by the Privy Council in one of its earliest decision in Sri Raghu Natha v. SriBrozo Kishore, (1876) 3 IA 154, and the principle was stated in following words :

'It may be the duty of a Court of Justice administering the Hindu law to consider the religious duty of adopting a son, as the essential foundation of the law of adoption, and the effect of an adoption upon the devolution of property as a mere legal consequence.'

36. In Chandra Sekhra v. Kulandai Velu : [1963]2SCR440 , Subba Rao. J., quoted with approval the following observation of judicial committee in Amrendra Man Singh v. Sanatan Singh :

'. It is clear that the foundation of Brahminical Doctrine of Adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnisation of the necessary rites.'

'It can, they think hardly be doubted that in this doctrine the devolution of property, though recognised as the inherent right of son, is altogether a secondary consideration.'

and held that the validity of adoption has to be judged by spiritual rather than temporal consideration and that devolution of property is only of secondary importance. Thus, there cannot be slightest doubt that adoption takes place in Hindus for entirely different consideration and not for inheritance of property which only follows as the adopted son has the same rights and has to perform the same duties as that of a natural son. There cannot be any such spiritual consideration in Christians and adoption as it is understood in Hindus can have no place in followers of that religion. It follows as a corollary that even if a Hindu convert to Christianity continued to follow some customs of Hindus, there is no question of following any custom of adoption after change of faith.

37. Learned counsel for the appellant has also submitted that adoption has two facets, one spiritual and the other secular which is for the purpose of giving joy

and happiness to a childless couple, to perpetuate the name of the family, to have a person to inherit the property and to look after the adopter in old age. Another secular object can be of upbringing a child, giving him education and to maintain him. Learned counsel has urged that in many countries whose countrymen are mostly Christians like, U.K. and U.S.A. and other European countries, adoptions take place which are recognised in law and the adopted child inherits the property. Learned counsel has stressed that there is no reason why such a principle should not be accepted in India with regard to those who are non-Hindus. In order to judge the contentions raised, the legal position in some countries where the predominant population is follower of Christian religion may be examined.

38. I will first consider the state of law as it stands in U.K. as India was being ruled by the said country over two centuries and in many matters, the laws and judicial pronouncements of the said country have influenced the legal system of our country as well. In Volume 24-Halsbury's Laws of England (Fourth Edition), the law has been stated as follows in para 624 :

'624. Common law and equity--At common law the rights, liabilities and duties of parents are inalienable, an adoption, in the sense of the transfer of parental rights and duties in respect of a child to another person and their assumption by him is unknown. In equity, however, it is possible for a relative or stranger to put himself in loco parentis towards a child, by undertaking the office and duty of a father to make provision for the child so as to assume fiduciary position in respect of his relation with the child. What regard will be had in English courts to foreign adoptions is discussed elsewhere.'

In Black's Law Dictionary (1990 Edition) while dealing with the topic of adoption, it has been stated that the procedure is entirely statutory and has no historical basis in common law. In Bromley's Family Law (written by two professors of law in Universities in U.K. and published by English Language Book Society/ Butterworth-1987 Ed.), the authors have stated the position as under in the Chapter dealing with adoption (page 379) :

'Adoption can only be effected through a Court process and the jurisdiction is entirely statutory. This is because at common law parental rights and duties were

held to be inalienable. Hence, no change of status comparable to the adoption or abrogation of Roman law could be recognised. The absence of such a mechanism generated considerable dissatisfaction both from spouses who were probably childless and anxious to bring up another's child as their own but who hesitated to do so because of the lack of safeguards and from those who had effected a de facto adoption but who felt vulnerable to the very real risk of the parents later turning up and taking the child back.

Although there were a variety of factors that contributed to the increased pressures for reform, the main catalyst was the substantial increase in the number of orphans following the First World War which in turn led to a large increase in de facto adoptions. The resulting demand for reform led eventually to the passing of the Adoption of Children Act, 1926.'

39. The Adoption of Children Act, 1926, was the first statute which was enacted for this purpose and it came into force on August 4, 1926. I will only refer to sub-section (1) of Section 1 and sub-section (2) of Section 5, which are relevant.

'1. (1) Upon an application in the prescribed manner by any person desirous of being authorised to adopt an infant who has never been married, the Court may, subject to the provisions of this Act make an order (in this Act referred to as 'an adoption order') authorising the applicant to adopt that infant.'

'5. (2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter, and the expressions 'child', 'children' and 'issue' were used in any disposition whether made before or after the making of an adoption order, shall not, unless the contrary intention appears. Include an adopted child or children or the issue of an adopted child'.

The provisions of the Act show that an order for adoption had to be made by a Court on the application made by a person desirous of being authorised to adopt an infant. Section 2 places some restrictions regarding age, etc. and Section 3

enjoined a duty on the Court to be satisfied regarding certain matters before making an order of adoption. The adoptive child continued to remain the child of his natural parents for the purpose of devolution of property and to inherit from that family where he was born and did not inherit from his adoptive parents. There was no restriction upon his marrying a person of the family of his adoptive parents and an adoptive son could even marry the daughter of his adoptive parents.

40. This position was altered by the Adoption of Children Act, 1949, with respect to disposition made after 1949 or, in the case of intestacy, where the intestate died after 1949. The statute was again amended in 1958. Lastly Adoption Act, 1976, was enacted and Section 39 (2) thereof provides that an adopted child shall be treated in law as if he were not the child of any person other than the adopters or adopter.

41. The order for adoption is passed by Court and the position is as under : (Bromley's Page 408).

'An adoption order or an order freeing the child for adoption may be made by the High Court, county court or a Magistrates' Court. In practice most orders are made by county courts.'

Regarding marriage the position has been explained as under :(Bromley's Page 416)

'One or two other matters are expressly dealt with by the Act. So far as marriage is concerned, an adopted child and his adoptive parent are deemed to come within the prohibited degrees of consanguinity, so that they may not inter-marry. Adoption, however, does not prevent a marriage between the child and its adoptive sister (or brother) or with any other adoptive relative. Conversely, as the modern law bears some relation to genetics, the child may not marry any person who would have come within the prohibited degrees if no adoption had been made.'

It is, therefore, clear that the matter relating to manner and method of adoption and the rights and obligations of the adoptive parents and that of the adopted child

are all governed by statute made by the Parliament and so is the provision for inheriting the property of the adoptive parents. Some restrictions on marriage by an adoptive child in the family of his adoptive parents also came in the 1976 Act. However, the provisions of Adoption Act, 1976, were to come into force on the appointed date and the same had not come into force when the Fourth Edition of Halsbury was published (see Para 625). Bromley's (1987 Ed.) also records at page 380 that all the provisions of the 1976 Act had not been enforced till then. We could not get any material to know whether the whole Act has been enforced by now or not.

42. So far as the U.S.A. is concerned. I will refer to two well-known authorities on law of the said country. In 2 Corpus Juris Secundum in the Chapter dealing with Adoption Of Persons, the law on the subject has been stated as under :

Para 3. 'Adoption, although a very ancient practice, was not known at common law and exists in this country only by virtue of statutory enactment. It is a statutory status rather than a contractual relation'.

Para 4. 'The status of the adopted infant toward the parent. as well as the latter toward the child, is necessarily governed by the statute of the state creating the right of adoption, and the validity of the adoption should be determined by the statute in effect at the time of rendition of the judgment of adoption.'

Para 146. a. 'The adopted child inherits from the adoptive parent in the same capacity as does a natural child where a statute in force at the time of succession confers upon an adopted child the rights of a natural child.

Although under the civil law an adopted child has the right of inheritance from the adopting parent, as adoption was unknown to the common law, no such right exists in the absence of statutory provision therefor, and, as the right of inheritance is not a necessary incident to the relationship of adoption, an adopted child has only such rights to inherit the property of his adopting parent as the statute under which he is adopted gives him. In other words, an adopted child inherits from his adopting parent only by reason of the statute and not as a descendant of such parent.....'

Para 149. 'An adopted child cannot usually inherit from relatives of the adoptive parent unless there is an express statute to that effect.'

43. Similar view is expressed in Volume 2 American jurisprudence 2nd Edn. and relevant paragraphs of Chapter on Adoption are being reproduced below :

Para 2. 'In this country the right or the power to create, by a legal proceeding, the relationship of parent and child between persons not so related by nature exists only by virtue of a statutory provision prescribing the conditions and the procedure by which adoption may be made effective. Not only the right of adoption but the legal consequences of adoption are of statutory origin.'

Para 103. 'Consanguinity is fundamental in statutes of descent and distribution, and the right of a child to inherit from his natural parents or to share in the intestate personality of their estates is affected by the legal adoption of the child by another only to the extent that such rights are taken away or limited by the terms of the applicable statutes of adoption and descent and distribution, or by necessary implication therefrom. To state the rule another way, an adopted child is, in a legal sense, the child both of its natural and of its adopting parents, and is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides

Para 105. 'The rights of an adopted child to inherit property of an adoptive parent who dies intestate is dependent upon whether the adoption statutes or statutes of descent and distribution give adopted children such rights of succession either by express provisions or by necessary implication ; unless a statutory authority is found, adopted children do not inherit from the adopting parent. A right of inheritance from the adoptive parent is not a necessary incident of the relationship, but the power of the Legislature to confer upon the adopted child the right to inherit from its adoptive parent cannot be questioned.

Therefore, in United States also, the entire law relating to manner and method of adoption, rights and obligations of the adoptive parents and the adoptive child the right of inheritance from the natural parents after adoption and also from the adoptive parents are governed by statutory provisions.

44. So far as the Hindus are concerned, the entire law relating to adoption is now governed by the [Hindu Adoptions and Maintenance Act, 1956](#) and in view of Section 12, an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those of adoptive family. The proviso to the section imposes some restrictions on marriage in the family where the child was born and also regarding vesting and divesting of the property which had taken place prior to the date of the adoption. The statutory provision is nothing new but is merely reiterations of the principles of Shastric Hindu Law. However, so far no statute has been enacted regarding the adoption and matters connected therewith for persons who are not governed by the Hindu Adoption and Maintenance Act. 1956 and, therefore, a Christian cannot claim as a matter of right that he would succeed to the estate of his adoptive parents.

45. Learned counsel for the appellant has placed reliance on a decision of a learned single Judge of Kerala High Court in Philips Alfred Malvin v. Gonsalvis, 1999 (1) KLT 292, wherein it has been held that an adopted child of a Christian is entitled to inherit the assets of his adoptive parents. With profound respect, I am unable to agree with the view taken in the aforesaid case. Certain aspects of the problem which I have dealt with here were not considered in the said case. The learned Judge placed reliance on a decision of Lahore High Court in Nur Mohd. v. Bhawan Shah, AIR 1936 Lah 465. The facts of the case show that there was a custom in the area which was noted in wazib-ul-arz (record of customs which are recognised by Courts) of 1958 that an adopted son is like a real son and he was to become owner of the estate under all circumstances. Section 5 of Punjab Laws Act. 1872 (Act No. IV of 1872) laid down that in question relating to succession, marriage, adoption etc., the rule of decision shall be any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience and which had not been altered or abolished by any enactment. Similarly Section 7 provided that all local customs and mercantile usages shall be regarded as valid unless they are contrary to justice, equity or good conscience or had been declared to be void by any competent authority before the passing of the Act. In view of this statutory provision, in the matter of adoption and succession, the case

had to be decided on the basis of local custom. Therefore, the Lahore decision can be of no assistance for resolving the controversy in hand. The learned Judge has also referred to Oudh Estate Act, 1869 and Sri Pratap Jammu and Kashmir Laws Consolidation Act, 1977, but they are statutory provisions specifically dealing with the subject. My attention has also been drawn to a decision by a learned single Judge of Bombay High Court. In the matter of Appointment of Guardian of Person of Female minor Doreen Theresa, 2000(1) All MR 39, wherein it has been held that an abandoned, orphaned, destitute or similarly situated child has a right to be adopted as part of his fundamental right to life. It has also been held that legal consequence of an order of adoption will be that personal law of the adoptive parents would be applicable to the child whose right of inheritance will be the same as that of a natural born child. The learned Judge laid down a complete procedure regarding manner and method for adoption of children. The right of orphaned, abandoned and destitute child to be adopted by a willing parent may be a part of his fundamental right guaranteed under Article 21 of the Constitution but I fail to see how the right to succeed and inherit the estate of the adoptive parents can also be culled out from Article 21. After the adoptive parents have brought up and educated the child whom they had taken in adoption and after he has grown and has become capable enough to stand on his own legs and maintain himself can it be said that right to life guaranteed under Article 21 of the Constitution also includes a legal right to inherit the property of his adoptive parents. In my opinion, a distinction has to be made in the right of a childless couple to adopt a child or the right of an abandoned, orphaned or destitute child to be adopted by willing parents and to be maintained and educated from that of the right of such a child to also inherit the property of his adoptive parents. Right to life guaranteed under Article 21 includes right to inherit which means getting somebody else's property merely on the ground of relationship without any effort or labour can never be treated as right to life so as to come within the sweep of Article 21.

46. The Constitution came into force on January 26, 1950, but the right to inherit properly and the rules of succession were provided in the Hindu Law as well as in the Muslim Law many centuries ago. The Indian Succession Act whose provisions deal with succession to property of persons other than Hindus. Mohammadans, Buddhists. Sikhs or Jains was also enacted long before the Constitution was

drafted or adopted. Who will succeed and what share he will get varies with the religious faith to which the deceased belonged. In the case in hand, the property which originally belonged to E.E. Datt has gone to the brother and sisters of Maud Datt after her death. However if E.E. Datt had been a Hindu the property would have gone to his own brothers and sisters after the death of Maud Datt in view of Section 15(1)(b) of Hindu Succession Act and not to her brothers and sisters. In case he had been a Muhammadan, different consequences would have ensued. A son has no inherent or constitutional right to inherit the property of his father. He does so only on account of a provision to that effect in the relevant law by which his father was governed. In certain communities in Meghalaya a daughter inherits the entire property to the exclusion of a son. Therefore, the contention that the right of an adopted son to inherit the property flows from Article 21 of the Constitution or is a facet of the said Article is wholly fallacious.

47. United Kingdom is very old democracy whose citizens enjoy many rights. So is the case of United States of America and the rights guaranteed to its citizens under the Constitution are no less than that of an Indian citizen. The framers of our Constitution have relied heavily upon the Constitution of U.S.A. on many matters including those relating to fundamental rights guaranteed by Part III of the Constitution. The Fourteenth Amendment of American Constitution, which came into force on July 28, 1868, provides that State shall not deprive any person of life, liberty or property without due process of law nor deny to any person the equal protection of laws. The rights guaranteed by Articles 14 and 21 of our Constitution are more or less the same except in matters relating to deprivation of property. But the manner of adoption, the duties and obligations of the adoptive parents and also the rights and duties of the adopted child including that of inheritance in U.K. and U.S.A. are strictly governed and circumscribed by statutes made by appropriate Legislatures and no other rights have been culled out from any Constitutional provision. If a statute is enacted providing for adoption and all matters connected therewith including inheritance it will certainly be constitutionally valid. But so long as there is no statutory provision, a right to inherit property cannot be inferred, I am, therefore, clearly of the opinion that an adopted child cannot claim, as a matter of right, to inherit the property of his adoptive parents in absence of any statutory provision.

48. I feel that in order to obviate the problem being faced by childless couple or by abandoned, orphaned or destitute children whom persons are willing to adopt, a comprehensive legislation should be made. However, till such time the legislation is enacted, the problem regarding succession to the property is not insurmountable. A decision to adopt the child is not taken on impulse or in hurry but after cool thinking and deliberations. The selection of a child to be adopted also takes time. Those who want to give their property to the adoptive child can open a bank account or acquire property in his name or make him a nominee in deposits or securities or execute a gift deed or leave a will in his favour. They can take recourse to any mode permissible in law to ensure that the property passes to the adopted child. Assuming that the appellant had been taken in adoption by E.E. Datt, he could have easily made a provision for him in the will which he had executed in favour of his wife Maud Flora Datt but he chose not to do so.

49. For the reasons discussed above, I find no merit in this special appeal which is hereby dismissed.

S.R. Singh, J.

50. Questions of primal importance that fall for determination in this Special Appeal arising out of the judgment and order dated 8.7.1985 of the learned single Judge in Testamentary Suit No. 1 of 1983 are three-fold : Firstly, whether the appellant is the adopted son of Mr. E.E. Datta and his wife Mrs. Maud Datt ; secondly, whether adoption by Indian Christians of Hindu origin who are destitute of a son is sanctified by law-constitutional. Statutory or customary ; thirdly, whether an adopted son comes within the purview of 'lineal descendant' or 'lineal consanguinity' and is entitled to inherit, under Section 37 of the [Indian Succession Act, 1925](#) (in short the Act), the property of his adoptive parents dying intestate.

51. I have glanced through the draft judgment prepared by my esteemed brother G.P. Mathur, J. and I express myself in concurrence with the well reasoned and logically arrived at conclusion that the appellant failed to establish the adoption pleaded by him and, therefore, the appeal is liable to be dismissed on this ground alone but I could not bring myself round to agree with my learned brother that the

adopted child of an Indian Christian of Hindu origin does not come within the purview of 'lineal descendant' or lineal consanguinity' so as to inherit the property of his adoptive parents under Section 37 of the Act, I would, therefore, like to record my opinion on second and third issues aforesated.

In re-second issue :

52. The question is whether adoption among Indian Christians of Hindu origin is sanctified by law? There is no statutory law covering the field of adoption by Indian Christians. Source of right of adoption of a child in the instant case is sought to be traced to the Constitution as well as customary law recognised by the Mitakshara School of Hindu Law to which the appellants' ancestors belonged before conversion to Christianity. It has been contended by Sri W.H. Khan appearing for the appellant that adoption is a natural right inherent in the right to life protected by Article 21 of the Constitution and a Hindu who embraces Christianity does not lose his natural rights and rather carries with him the natural rights including right to adoption that the ancestors of the parties before conversion to Christianity were governed by Mitakshara School of Hindu Law which recognised adoption of a male child ; that they continued to be governed by such law even after conversion to Christianity and, therefore. In the matter of adoption, proceeds the submission, the parties would be governed by the Mitakshara School of Hindu Law as also the customs in vogue in the family immediately before conversion to Christianity inasmuch as, it is submitted, adoption is not opposed to any tenets of Christianity. Sri V.K.S. Chaudhary, learned senior counsel appearing for the plaintiff-respondent urged that adoption is unknown to the world of Christianity and it has not been recognised by legislation ; that the word 'adoption' used in the world of Christianity has a meaning different from that which is understood by Hindus ; and that personal law of the parents regulating adoption and succession before conversion ceased to have any application after conversion. Intestate succession proceeds to the estate of an Indian Christian, the submission of the learned counsel, will be governed by the Act.

Custom as a source of right of adoption :

53. Uncodified Hindu Law both as to adoption and succession was, to some extent, based on customs having the force of law and civil Courts to which [Bengal, Agra and Assam Civil Courts Act, 1887](#), was applicable, were obliged to decide any question regarding succession, inheritance, marriage or caste or any religious usage or institution on the basis of such law if the parties to the suit or proceeding were Hindus and on the basis of Mohammadan Law if the parties happen to be Mohammadans and in other cases on the basis of justice, equity and good conscience. Adoption of children is a practice of greatest antiquity, which was recognised by civil law from its earliest date and obtains among the continental nations of Europe whose jurisprudence forms the civil law. Though adoption was unknown to the common law of England, it was very well known among the Hindus, the Assyrians, the Egyptians, the ancient Jews, Greeks and Romans.

54. In *Morrison v. Sessionans*, 14 Am. St. Rep 500, as quoted in the Law Lexicon by Ramanatha Aiyar, it was held as under :

'Adoption appears to have been a necessary concomitant of the type of archaic society when the family constituted the unit of the community, and was an important factor in developing society into the broader community called the State. Mr. Maine, in his work on Ancient Law, says, we must look on the family as constantly enlarged by the absorption of strangers within its circle, and we must try to regard the fiction of adoption as so closely simulating the reality of kinship that neither law nor opinion makes the slightest difference between the real and adoptive connection.'

Adoption has been aptly described as the process by which the legal relationship between a child and his or her birth parents is severed and an analogous relationship between the child and adoptive parents is established, Bromley's Family Law, Eighth Edn. Chapter XIII Pages 408-409, Adoption, it is further articulated in the authority referred to above, is considered to be the only means by which parental responsibilities can be entirely transferred to another person during the parents' life-time and as the term is understood in Hindu Law, it involves conferral of certain rights and privileges and imposition of certain obligations in the adopted child as if he is born in the lawful wed-lock of the adoptive parents. An

adopted child under the law applicable to Hindus is entitled to succeed to the estate of the deceased adoptive father or mother, as the case may be, dying intestate. In English law, however, adoption does not necessarily involve conferral of right to succeed to the estate of the adopter in case of any intestacy and can be effected only through a Court process and the jurisdiction is entirely statutory because at common law parents' rights and duties are held to be inalienable.

55. True it is, as submitted by learned counsel appearing for the plaintiff-respondent, that the rights, liabilities and duties of parents, at the common of Law of England, are inalienable, and adoption in the sense of transfer of parental rights and duties in respect of a child to another person and their assumption by him was unknown in the common law but now the nature and the concept of adoption under English Law have undergone a sea change as a result of legislative enactments and declarations made at various International Conventions. The Adoption Act, 1976, enacted in conformity with the provisions of European Convention on the Adoption of Children contains provisions relating to the recognition of adoption and conferral of certain status on the adopted child and provides for devolution of property with peerage, etc. Rules and principles of common law of England wherein adoption was unknown, to the extent of inconsistency with the statutory enactments, are no longer invocable after statutory recognition came to be accorded to adoption by virtue of Legislative enactments and declarations made at the International level. As a matter of fact 'legal adoption' as distinguished from 'de-facto adoption' or 'fostering' of children in England as also elsewhere in the world is being insisted upon bearing in mind the welfare of the child and consequent upon conceptual changes as to socio-religious and social-political ethos and philosophy of life. Adoption, therefore, is no longer foreign or unknown to English Law. The argument of Sri V.K.S. Chaudhary that adoption is unknown to the world of Christianity and is not recognised by legislation does not commend for countenance.

56. In the matters of adoption and such other matters with which Christianity has no concern. Indian Christians shall, in my view, be governed by the law of the land and not by any rule of English Law as distinguished from tenets of Christianity. It cannot, therefore, be laid down as rule of general applicability that a custom which

has acquired the force of law by reason of its antiquity, continuity, certainty and reasonableness and which has not been repealed or modified by legislation would cease to govern a Hindu after his conversion to Christianity. Customary law comes within the purview of 'Law' as defined in Art. 13 and is saved by Art. 372 of the Constitution. The convert may, if he thinks fit, abide by the old usages and customs, which do not interdict any philosophy and ethics or tenets of Christianity he has embraced. The convert and thereafter his progeny may show by their conduct that they continue to be governed by the old customs and usages. It is a matter of pleading and proof. Adoption by a Hindu converted to Christianity as a matter of fact, is not opposed to the philosophy and ethics of Christianity. the essence of which lies in the principles of non-violence, love, compassion, sacrifice, service to suffering humanity, truth, goodness and beauty which have endured the Christianity as a religion for long, and not the rituals prescribed for entering into the order of Christianity nor even the rules governing civil life of the Christian community. In case the convert has chosen to abide by the customary law of adoption, then the validity of adoption would be tested on the anvil of requisites of adoption as prescribed by the custom and in case, there exists no such custom, a childless Hindu converted to Christianity may in exercise of his fundamental right to life, adopt a child and in the case the only formality in order to constitute valid adoption would be a physical act of giving and taking 'a ceremony Imperative in all adoptions' and this requisite is satisfied in its essence only by actual delivery and acceptance of boy and since an adopted child seeks to displace the natural succession of property by alleging adoption, he must discharge the burden that lies upon him by proof of the factum of adoption and its validity. The evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion as to doubting the truth *Madhusudan Das v. Narayani Bai* : [1983]1SCR851 . I am, therefore, of the view that customary law applicable to Indian Christians before their conversion to Christianity, will continue to govern them in matters not specifically covered by any principle or tenet of Christianity being professed by the individual concerned provided that such customs and usages remained in vogue even after conversion. It may be pertinent to refer to the introductory passages of the Hindu Adoption and Maintenance Bill in which it has been stated thus : 'Indian Majority Act. 1875, exempted adoption from

the purview of its provisions while Indian Succession Act, 1925, specifically recognised the Hindu usage of adoption'. Reference may be had to Schedule III of the Act.

Adoption and Article 21 as a source or right of adoption :

57. Motive of adoption under Hindu Law is both religious as well as secular. But for Christians professing any form of Christianity, adoption is purely a secular concept and phenomenal event. The desire for celebration of one's name ; for perpetuation of one's lineage, for providing security in the old age ; and for dying in satisfaction of leaving behind an heir to succeed to one's estate constitute secular motive of adoption and such motive would be sufficient and valid ground to give legal recognition to adoption among Indian Christians of Hindu origin professing any form of Christianity. Secular motive of adoption, as explained above. Is in fact a facet of the right to life guaranteed by Article 21 of the [Constitution of India](#), Philips Alfred Malvin v. Gonsalvis, (1999) 1 KLT 292, and not being opposed to the spirit, philosophy and ethics of Christianity-namely, love, joy, peace, temperance, compassion, nonviolence and charity to all men-must be recognised by the Courts. It may be observed that if 'popular hatred and misunderstanding are laid aside. and philosophical Interpretation finds the hidden core and essence of the rival faiths', there will be an end to 'rancorous animosity very often displayed' in the name of religion and rituals thereof.

58. All men and women are endowed by their Creator with certain 'inherent and unalienable rights'. Among these is the most valuable right to life that the man is endowed by birth. The right to life is a multifaceted concept and has indeed, been guaranteed as a fundamental right under Art. 21 of our Constitution. Life, in every dimension. Is paradoxical. The rules governing human life, are, therefore, bound to be paradoxical depending on the 'milieu and ethos of a given time and place. Though notions of happiness may differ from individual to individual depending on sociopolitical, socio-economic and socio-religious ethos of a given time and place and above all one's own attitude towards life, desire of happiness is inherent in every human being and is, therefore, bound to have its reflection in human activity. In fact, pursuit of happiness is but a facet of right to life guaranteed by Article 21 of

the Constitution. A sonless person may envisage fulfilment of his happiness in a substitute of a son and, therefore, even in the absence of statutory or customary rights of adoption, a sonless person, may adopt a child in exercise of his personal right to life as a means of fulfilment of his happiness and as such, adoption must be recognised by Courts if it is not interdicted by any legislation, established custom, or personal law. For a Hindu destitute of a son, adoption has now been given legislative recognition though earlier it was recognised under Hindu law for the sake of funeral cake, water and solemn rights and for the celebrity of one's name but for a non-Hindu, say for example an Indian Christian who is destitute of a son. adoption may be a means of fulfilment of his desire of the celebrity of his name and continuity of his heredity and in that sense, adoption of a child by an issueless couple, if viewed from the secular eye. may be regarded as natural and inherent in the right to life and can be freely exercised unless it is forbidden or taken away, expressly or by necessary implication, by law including any tenet of the religion one is professing. In my opinion, it will be a lawful act for a person destitute of a son to adopt a child irrespective of his race and domicile save where he is forbidden to do so by law or any tenets of his religion. Such right being inherent in man cannot be taken away except by authority of law. In Islam, adoption is in no delphic terms, forbidden. In Surah 33 'The Clans'. Aayats 4 and 5 are germane to the point, the transliteration of which is excerpted below :

'Allah has never put two hearts within one man's body. He does not regard the wives whom you divorce as your mothers, nor your adopted sons as your own sons. These are mere words, which you utter with your mouths, but Allah declares the truth and guides to the right path.

x x x x x x x

Name your adopted sons after their father, that is more just in the sight of Allah. If you do not know their fathers, regard them as your brothers in the faith and as your wards. Your unintentional mistakes shall be forgiven but not your deliberate errors. Allah is forgiving and merciful.'

Unlike Islam. Christianity does not forbid adoption. It does not provide for adoption too. Parties in the instant case are said to be Protestants as they are governed by

the Rules of the Church of North India, which provide for Baptism of children and marriage, etc. but is conspicuously silent about adoption. Rules and by laws of the Church of North India, which are applicable to the parties, are reticent on adoption but that does not imply that the Church of North India forbids adoption of Children. Even in Islam what is interdicted is conferral of the status of a real son on the adopted son and not the adoption itself and it is due to this reason that an adopted son of a Mohammadan is not deemed to be son within the meaning of Section 3(57) of the General Clauses Act. An act is said to be forbidden by law where it violates a prohibitory enactment made by the Legislature or rules, regulations and orders made under authority derived from the Legislature or a principle of any unwritten law. No enactment by Parliament or statutory rules, regulations or orders having the force of law. Interdicting adoption of a child by an Indian Christian of Hindu origin was brought to the notice of the Court. Adoption by a Christian couple of Hindu origin is, to my mind, an act which is neither opposed to any public policy nor interdicted by any statutory law or principle and philosophy of Christianity. It would, therefore, be deemed to be permitted by law.

Adoption under International Law :

59. Article 16(1) of the Universal Declaration of Human Rights, 1948, expressly envisages that men and women of full age without limitations due to race, nationality or religion, have 'the right to marry and found a family'. For a childless couple, adoption of a child will be a step towards founding a family. The 'right of self determination visualised by Article 1 of the International Covenant and Civil and Political Rights. 1966, includes the right not only to freely determine their political status but also the right to freely pursue their economical, social and cultural development. Adoption of a child by a childless man or woman, as a social phenomenon, is thus universally recognised irrespective of one's race or religion.

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60. Next question of seminal importance is whether the adopted son of an Indian Christian is entitled to succeed to the estate of his adoptive parents in the event of his adoptive father or mother, as the case may be dying intestate. Section 5(1) of the Act provides that succession to the immovable property in India of a person

deceased shall be regulated by the law of India, wherever such person may have had his domicile at the time of his death. Part V of the Act contains 'the Law of India' which governs succession to the immovable property in all cases of intestacy. Section 29 which occurs in Part V of the Act visualises that except in relation to property of any Hindu. Muhammadan. Buddhist, Sikh or Jain A.W.C. 207 and save as provided by 'any other law for the time being in force', the provision of Chapter V shall constitute 'the Law of India' in all cases of intestacy, Section 37 of the Act provides that where the intestate has left surviving him a child or children but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one. or shall be equally divided among all his surviving children. Question that arises for consideration is whether adopted son of an Indian Christian of Hindu origin is entitled to succeed to the estate of his adoptive father or adoptive mother, as the case may be, dying intestate. For the appellant, it has been contended that the word 'son' occurring in expression 'lineal consanguinity' as defined in Section 25 of the Act includes 'adopted son'. For the plaintiff-respondent, it has been vehemently contended that adopted son does not come within the purview of 'lineal consanguinity' as the term is defined in Section 25 of the Act. I have given my anxious consideration to the submission made across the Bar. The words 'kindred' and 'consanguinity' used in Section 24 of the Act mean 'the connection of relation of persons descended from the same stock or common ancestor'. The word 'son' in the case of any one whose 'personal law' permits adoption, shall include an 'adopted son' as provided in Section 3(57) of the General Clauses Act. 1904. The definition of word 'son' as given in Section 3(57) of the General Clauses Act. 1904, will hold good 'unless there is anything repugnant to the subject or context'. The words 'personal law' occurring in Section 3(57) of the [General Clauses Act, 1904](#). In my opinion, mean, the 'personal law' applicable to the parties at the time of adoption and it may be any personal law applicable to the family including customary law. If any. permitting adoption of children. It may be the law by religion as well. The religion to which the parties belong is. admittedly. Christianity. As discussed above, no tenet of Christianity interdicting adoption by an Indian Christian of Hindu origin was brought to our notice and on the contrary, various legislative enactments world over as also declarations made at various

International Conventions give legal recognition to adoption. An adopted child of a Christian couple of Hindu . origin shall be treated in law as if he has been born in the wedlock of his or her, as the case may be. adoptive parents and for all purposes an adopted child shall be treated as if he/she was not the child of any other person other than the adopters or adopter. There is nothing in the philosophy and ethics of Christianity which might be construed as prohibiting adoption and what is not expressly or impliedly prohibited by Legislature or any tenet of Christianity shall be deemed to be permitted by law and must be accorded recognition by Courts. The life style of Indian Christians is bound to be a blend of the old and the new : the old cannot be completely erased and obliterated so as to effect a complete severance of the old from the new. The cultural milieu and ethics which dominated the ancestors of the parties must be borne in mind while appraising the evidence on a question as to whether the parties are governed by the old customary law on a subject not specifically covered by legislation. In case, therefore, adoption is proved and found to be valid, the adopted child wilt come within the purview of 'lineal consanguinity' in relation to the deceased. The learned single Judge, in my opinion, was not right in his view that the 'lineal consanguinity' contemplated by Section 29 of the Act is the real consanguinity and not the notional or fictional consanguinity and that the adopted continues to be the descendent in the direct line of his natural father. In any case adoption being a facet of right to life, if established, will make the adopted child as a child born in the wedlock of adoptive parents. In my opinion, therefore, adopted son of an Indian Christian of Hindu origin will come within the purview of 'lineal descendant' or lineal consanguinity' and shall be entitled, under Section 37 of the [Indian Succession Act, 1925](#). to inherit the properties of his adoptive parents dying intestate. Case law on the point :

61. In Valsamma Paul (Mrs.) v. Cochin University and others : [1996]1SCR128 , it has been held that institutions of marriage and adoption are two important social institutions through which secularism would find its fruitful and solid base for an egalitarian social order under the Constitution and accordingly, its recognition must be upheld as valid for social mobility and integration. In Nabu Jan v. Paushimoni, 12 ILR 36 : (1948) 54 OWN 2 DR 14, it was held that if custom is 'shown to be of ancient establishment' and its other requisites are also established, it will in itself

be treated as being of the force of law and 'then it would follow on the plain English of the section that the words that 'any other law for the time being in force' of Section 29 of the Indian Succession Act should be read as saving of a customary law for the Garos'. Accordingly. It was held that prohibited degrees mentioned in Section 19 of the Indian Divorce Act. 1869, did not necessarily mean the degrees prohibited by Law of England. In *Charlotte Abraham v. Franchis Abraham*, 1863 (4) 9 Moores Ind. Appeals 194, it has been held, inter alia, that upon conversion of Hindu to Christianity. Hindu Law ceases to have any obligatory force of law upon convert and he may renounce his old law as he has renounced his old religion or if he thinks fit he may abide by old law ; that the profession of Christianity releases the convert from the trammels of the Hindu law. but it does not of necessity involve any change of rights or relations of the convert in the matters with which Christianity has no concern, such as his rights and interests in, and his powers over, property ; that the convert, though not bound as to such matters, either by the Hindu law or by any other positive law, may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters : and that he may have done so either by attaching himself to a class which as to these matters has adopted and acted upon some particular law or by having himself observed some family usage or custom and nothing can surely be more just than that the rights and interest in his property and his powers over it should be governed by the law which he has adopted, or the rules which he has observed.

62. In *Anthony Swamy v. M. R. Chinaswamy* : [1970]2SCR648 . a question arose for consideration before the Supreme Court as to whether Mitakshara school of Hindu law, after conversion to Christianity, will be governed as to inheritance and succession by the law of community. The Supreme Court has held that son of a member of such community gets by birth an interest in ancestral property owned by the father and, therefore, the Doctrine of Pious Obligation was held applicable and the son was held to be bound to discharge his father's debts not tainted by illegality or immorality. Doctrine of pious obligation, according to Supreme Court, being in consonance with Justice, equity and good conscience and being not opposed to any principle of Christianity would continue to govern the parties therein. The Vanniva Tamil Christians of Chittur Taluk, it was held would continue

to be governed as a matter of custom by Mitakshara School of Hindu Law. This decision, in my opinion, supports the view that rights inherent in man by birth are not lost on his conversion to another religion. The Privy Council decision in *Charlotte Abraham v. Francis Abraham*, 1863 (4) 9 MIA 194. referred to above was quoted with approval by the Apex Court. In *Kaifash Sonkar v. Smt. Maya Devi* : [1984]2SCR176 . question arose as to whether old caste of a person or his progeny who belongs to Scheduled caste or tribe but had left Hinduism and embraced Christianity or Islam or any other religion would revive on his progeny's recognition to Hinduism. The Supreme Court held that it would depend upon the genuine intention of re-convert to abjure his new religion and completely disassociate himself from it. It is, however, a matter of pleading and proof as to whether it had been intended by the convert to follow even after conversion, the personal law and customs applicable to him at the time of conversion. If, on the basis of proper pleading and proof. It is established in a given case that the convert had so intended and had been practising his personal law, customs and usages even after conversion, he and his progeny would continue to be governed by the same provided that these are not inconsistent with any rule or tenet of the form of Christianity he has embraced or any statutory enactment.

63. In *Ranbair Karan Singh v. Jogindra Chandra Bhattacharji*. : AIR1940 All134 . the view that bringing up a child even with an intention of giving one's property to that child and loosely describing as having adopted child do not constitute adoption in the technical legal sense as understood in Hindu law and that succession is governed by the Succession Act and not by Rules of Hindu Law applicable to community to which he belonged before conversion is not in consonance with the law laid down by the Privy Council holding that though the profession of Christianity releases the convert from the trammels of the Hindu law, but it does not of necessity involve any change of rights or relations of the convert in the matters with which Christianity has no concern, such as his rights and interests, in, and his powers over. property which finds its approval in *Anthony Swamy v. M. R. Chinaswamy* : [1970]2SCR648 . wherefrom the principle deducible is that if it had been intended by a Hindu converted to Christianity to be governed by the law he was governed before and such law had in fact been followed in continuity conversion he would continue to be governed by such law

even after embracing Christianity on matters not specifically covered by any Statutory law or tenet or rule of Christianity one is professing. The decision in Ranbir Karan Singh (supra), therefore, is not a good law. The learned single Judge, in my opinion, was not right in taking a contrary view on the Issue. Nabu Janand Anthonyswamy were, perhaps, not perceived and appreciated in correct perspective. The Privy Council decision in Kamawati's case, AIR 1922 PC 214, is unavailing for the reason that, the effect of the exclusionary clause any other law for the time being in force occurring in Section 2 of the Indian Succession Act. 1865. was not examined. Exclusionary clause in Section 29(2) is clear and unambiguous. It can not be ignored merely because 'in each case an enquiry might have to be entered upon as to whether a deceased subject of the Crown wished or by his acts compelled that the law of the land should not apply to his case'. This reasoning in Kamawati is fallacious. Section 29(2) which excludes the applicability of the Act if otherwise is provided 'by any law for the time being in force' is as much integral to the Act as any other Section in Part V of the Act. Where the, language of the Statute is clear, the results of construction do not matter 'even if they may be strange or surprising, unreasonable or unjust or oppressive'. Principle of Statutory Interpolation by G. P. Singh 6th Edition P. 33.

64. In the present case, it has been alleged that the family of the appellant's grand father-late Rai Sahib Jeevan Maseeh Datt had a custom whereby the succession was in accordance with Hindu Law and daughters got no shares in their father's property : that ancestors of the appellant were originally Hindus resident of undivided Punjab and were governed by Mitakshara School of Hindu law and the law and custom both recognised adoption of male child ; that family after conversion carried along with them their ancestral customary law in its secular aspects and conversion to Christianity only resulted in change of the mode of worship and : that the Indian Christians of Hindu origin have retained the custom of adopting children to themselves. It has been alleged that even in the family of the plaintiff-respondent, adoption had taken place of George. A Simeon by Dr. (Mrs.) Dora Simeon. Several other instance of adoption have been cited in the counter-affidavit, which was treated to be the written statement. The mother of birth of the appellant was herself an adopted child. In her statement on oath, the plain tiff-Mrs. Ethel Walters stated that 'I heard about adoption from my family

members. Some Christian ladies were having vermilion marks on the forehead after marriage. I do not know. My daughter Asha is present in Court. My daughter has got a bindi on her forehead. Some Christian ladies were having sindoor on the parting of the head but I do not know.I cannot say whether they carry on the custom or not'. From the statement of P.W.1 Mrs. Walter read with the statements of appellants witnesses Prem Hemlin, Dr. Mrs. Desy M. Khan. Smt. Meera Datt (Natural mother of the appellant) who herself was an adopted child, father Rev. Levl D'Souza and Sri A. C. Gilbert, it would be evident that adoption in the family of the appellant, had been prevalent. I am disposed to the view that custom of adoption known to the Hindu Law by which the family was governed before its conversion to Christianity, continued to be followed even after conversion. As a matter of fact, antiquity and certainty of the practice of adoption amongst Hindus governed by Mitakshara Schools of Hindu law is a fact of which the Court can take judicial notice and need not be proved in view of Section 57(1) of the Evidence Act. UJagar Singh v. Mat Jes, AIR 1959 SC 139. What was required to be proved in the instant case was firstly, that such practice was followed in the family even after conversion to Christianity and secondly, that essential ceremonies of adoption as prescribed under the Mitakshara School of Hindu Law were observed. In my opinion, although the family continued to be governed, on matter relating to adoption, by a law applicable to, it at the time of conversion to Christianity, validity and the factum of adoption pleaded by the appellant could not be proved in its true technical legal sense known to the Hindu Law. In other words, albeit, adoption in the family of the appellant was legally permissible but as a matter of fact, the adoption pleaded by the appellant could not be proved beyond all doubts and suspicions. The appellant, therefore, cannot succeed in the absence of specific pleading and proof that in the matter of succession too. the family continued to be governed by the Mitakshara School of Hindu Law. Conversion in the instant case had taken place before the enforcement of the Hindu Succession Act. 1956 and. therefore, the plea that the family continued to be governed by the law of succession known to Mitakshara School of Hindu Law was open to the appellant but he failed to take a specific plea in this regard and lead evidence to establish the same.

65. Accordingly, in view of the finding that the appellant failed to prove beyond doubt and suspicion, the adoption pleaded by him. I agree with the view of brother Mathur, J. and accordingly order, that the appeal be dismissed with costs on the parties.

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