

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 17th April, 2025

FOR HEARING :

74. TP/4274/2024
[Original]
(ECHCBM02147262024)
with
WILL/1700/2024

P. C. : Shri. Kaustub Javle Ld. Advocate for the Petitioner

1. Ld. advocate for the petitioner, moved a praecipe dated 10.03.2025 along with the copy of the direction, given by the Hon'ble Court vide an order dated 04.03.2025, in the above said petition.
2. Ld. advocate for the petitioner is relied upon following decisions, namely -

(1) The decision of Hon'ble Court in case of **Manuel Theodore D'Souza petitioners in Guardian Petition No. 74 of 1999 along with Indian Guardianship Petition No. 75 of 1999 (1999 SCC OnLine Bom 690=(2000) 2 Bom CR 244);**

(2) The decision of the Hon'ble Supreme Court in case of **Pharez John Abraham (dead) by Legal Representatiaves v/s Arul Jothi Sivasubramaniam K. Anad Others {(2020) 13 Supreme Court Cases 711};**

(3) The decision of Hon'ble Keral High Court in case of **Philips Alfred Malvin V/s Y.J. Gonasalvis and Others (1999 SCC Online Ker 5 = AIR 1999 Ker 187)**

3. Learned advocate for the petitioner is relied upon the decision of Hon'ble Bombay High Court in case of **Manuel Theodore D'Souza(Cited supra) the**

Hon'ble Court has issued guidelines vide paragraph No. 116. Vide sub-paragraph No.1 of Said Paragraph No. 116, the Hon'ble High Court has concluded that the fundamental Right to life of an orphaned, abandoned , destitute or similarly situated a child includes the right to be adopted by willing parent/parents and to have a home, a name and a nationality. The right to be adopted, therefore is an enforceable civil right which is justifiable in the Civil Court.

4. Ld advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in case of **Pharez John Abraham(Cited Supra)**. In the said Judgment it is laid down that the Christian Couple can adopt the Child, even if they already have natural Born male or female Child. In paragraph No. 11.1 and 11.2, it is observed as under, -

“11.1 It is required to be noted that initially defendant nos. 3 to 5 were not joined as parties to the suit. However, on the objection being taken by defendant nos. 1 & 2 that defendant no.3 and late Maccabeaus are also the heirs of deceased John D. Abraham and therefore the suit is bad for nonjoinder of proper parties, the plaintiffs amended the suit and joined defendant nos. 3 to 5 as parties in the suit. In the written statement, defendant nos. 1 & 2, in fact, admitted that defendant no.3 and late Maccabeaus were the children of John D. Abraham. But in the course of evidence and arguments, it was stated that defendant no.3 and late Maccabeaus were not the natural born children but they were adopted children. Therefore, all proceeded on the premise that

defendant no. 3 and late Maccabeaus were the adopted children. Therefore, we may also proceed further with the case on the assumption that defendant no.3 and late Maccabeaus were the adopted children of John D. Abraham. It is required to be noted that in the Christian Law, there is no prohibition against adoption. Nothing has been pointed out that unlike in Hindu law, there is any law prohibiting the Christian couple to adopt male or female child, although they may have natural born male or female child, as the case may be. Once, it is observed and held that original defendant no. 3 and late Maccabeaus were the adopted children of John D. Abraham, both of them were entitled to the share in the property of John D. Abraham – adoptive father.

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

5. In case of the Philip Malvin(cited Supra) the issue of adoption in the Christian Law was also one of the issue before the Court. In the said Case, the plaintiff had produced the extract of the Register

maintained by Holy Trinity Church, Kannur. In this regard, Code of Canon Law was considered, in which there was no prohibition to adopt the child. In paragraph No. 10 it is laid down that, -

“10. Thus, the Hindu Law, Mohammedan Law and Canon Law recognize adoption. Therefore, simply because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid.”

6. By the Hon’ble Bombay High Court in case of **Manuel Theodore D’Souza** (Cited Supra), held that the right to adopt the child is the enforceable Civil Right.

7. At this juncture, there is no resistance to the claim of the petitioner that the deceased had adopted a daughter namely Sharmine Adrien Lazars (nee Sharmine Mascarenhas) as per the adoption deed, executed in year 1987. This fact is mentioned on the oath in paragraph No. 7a of the petition.

8. Furthermore, this fact is also mentioned in the alleged Will of the deceased.

9. Under the circumstances and statement made by the petitioner on oath confirming these facts, it appears that submission of the petitioner is required to be considered on the basis of adoption deed, unless there is a challenge by persons who in absence of this daughter can inherit the property of the deceased by virtue of section 33 of the Indian Succession Act, 1925.

10. In present petition, there is no resistance from the kind persons denying the right of this child. Furthermore, this office while granting the Letters of Administration is not adjudging the rights

of the parties. Hence it will be proper to proceed further according to the rules.

11. The petitioner to comply compliance, according to the rules of Bombay High Court(O. S.) rules, 1980 and Indian succession act 1925.

12. S.O. to 30.04.2025

17.04.2025

**Officer on Special Duty,
with Testamentary Department**