

Right of A Hindu To Inherit Property After Conversion.

The Bombay High Court in its recent decision in ***Balchand Jairamdas Lalwant v. Nazneen Khalid Qureshi (Appeal from Order No. 1175 of 2014)*** dated 6th March, 2018 whilst discussing the issue on whether a Hindu who has converted to Islam is disqualified to receive property of the father who dies intestate has held that when deciding the inheritance, the religion of the person at the time of birth has to be taken into account and therefore, a Hindu convert is entitled to her father's property on the father dying intestate.

Facts: A Notice of Motion (No. 956 of 2010) in Suit (No. 3480 of 2010) was filed in the trial court by the Respondent/Plaintiff sister for an order of injunction restraining the defendants, including the Appellant/Defendant brother from creating third party rights in respect of suit premises i.e. residential flat in Matunga (West), Mumbai, being the self-acquired property of her deceased father. The Respondent / Plaintiff has five sisters and the Appellant/Defendant brother and claimed her share in the suit property. The Respondent/ Plaintiff had married a Muslim in 1979 and changed her religion to Islam. The Notice of Motion was contested by the Appellant/Defendant on the ground that the Respondent/ Plaintiff had lost her right in the suit property on changing her religion. The trial court allowed the Notice of Motion considering a *prima facie* case and the Defendants were restrained from creating third party rights. An Appeal was thereafter filed against the order of the trial court allowing the Notice of Motion.

Submissions: The Appellant submitted that the Respondent cannot claim proprietary rights in the father's property on converting to Islam as she is not covered by the Hindu Succession Act, 1956 (the "**Succession Act**") and Sections 2(1)(a) and 2(1)(b) of the Succession Act are inclusionary in nature by which Hindu, Jain, Buddhist, Sikh are covered under the Succession Act whereas Section 2(1)(c) of the Succession Act is exclusionary in nature by which

Muslims are excluded from the application of the Act.

The Respondent on the other hand, whilst supporting the order of the trial court relied on Section 26 of the Succession Act and submitted that only the descendants of converts are disqualified and not the convert herself. It was submitted that the Respondent being the sister is entitled to the property of her father and the conversion does not disqualify her to claim proprietary rights.

Judgment: The High Court discussed the provisions of Sections 2 and 26 of the Succession Act and stated that the two provisions have to be read together and not in isolation. On a reading of the two provisions, the Court was of the view that a convert himself or herself is not excluded from the application of the Succession Act. The legislature in its wisdom did not include a convert under the caption of disqualification.

While relying on the decision in *Nayanaben Firozkhan Pathan @ Nasimbanu Firozkhan Pathan v. Patel Shantaben Bhikhabhai & Ors.*, Special Civil Application No. 15825 of 2017 dated 26th September, 2017, the High Court held that Personal Law is applicable to a person who is converted to Islam, Christianity or any other religion for the purpose of marriage, guardianship, etc. However, while deciding the inheritance, the religion of the person at the time of birth has to be taken into account to eliminate the anomaly. *The Court also*

relied on the decisions in Shabana Khan v. D.B. Sulochana & Ors. 2007 DGLS(A.P.) 755; E. Ramesh & Anr. v. P. Rajini & Ors. (2002)1 MLJ 216; Asoke Naidu v. Raymond S. Mul, AIR 1976 Cal 272 in support of its view. The Court has further referred to the guaranteed right to religion as a fundamental right in our secular State where any person is free to embrace and follow any religion as his or her conscious choice.

Conclusion: The Court in its decision has recognized the fundamental right to freedom of religion of a person and established that in matters of inheritance, the religion of a person at the time of birth is to be taken into account. Accordingly, a convert is not disqualified from the application of the Succession Act to inherit his/her father's property.

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.