CASE NO.:
Appeal (civil) 3476 of 2001

PETITIONER:
LUIS CAETANO VIEGAS

Vs.

RESPONDENT:
ESTRELINA MARIANA R.M.A.DA'COSTA & ORS.

DATE OF JUDGMENT: 07/05/2002

BENCH:
S. Rajendra Babu & Ruma Pal

JUDGMENT:

RAJENDRA BABU, J. :

The brief facts giving rise to this appeal are as follows :

Rosa Fonseca had married Antonio D'Costa on 15.4.1889 and a male child Jose Philipe was born to them. The said Antonio D'Costa died in 1892, and almost seven years after his death, his wife Rosa Fonseca gave birth to a daughter in 1899. On 21.2.1903, the baby girl was baptised and named Maria Da Graca Albertina Luiza Fonseca and the date and time of her birth were recorded in the Parochial Book of Records of Baptism of the Taleigao Church. The names of the maternal grandparents were mentioned and the godfather and godmother also signed the register respectively. In 1933, the daughter Maria Fonseca married Camilo Viegas and in 1935 the appellant was born out of this wedlock. Their marriage certificate dated 4.5.1933, stated that Maria Fonseca was an illegitimate child and only mentioned the name of the mother. In 1952, Rosa Fonseca, the grandmother and in 1967 Maria Fonseca, the mother died.

In 1985, the appellant filed inventory proceedings for partition of inheritance of Rosa Fonseca and Antonio D'Costa in the Court of Civil Judge [Senior Division]. The locus standi of the appellant was challenged by the Cabeca-de-Casal [Head of family] on the ground that the appellant is not an heir of the deceased person Rosa Fonseca. The inventory proceedings were restricted to the estate of Rosa Fonseca only making her the sole inventariado in the matter.

The Trial Court decided that the said proceedings were not maintainable and an appeal against the order of the Trial Court was preferred in the High Court of Bombay at Panaji. The High Court set aside the order of the Trial Court and remanded the matter for dealing with it afresh. On remand, the Trial Court passed an order observing that Maria Fonseca had not been legitimised as per law and she had no right to the estate of Rosa Fonseca. The same issue came up in appeal before the High Court in appeal No.34/1996 wherein the High Court once again remanded the matter to the Trial Court, directing that the arguments of the appellant must be taken into account for deciding the case. After remand, on the second occasion, the Trial Court by an order dated 4.9.1999 rejected the challenge to locus standi of the appellant and observed that the appellant was entitled to participate in the

inheritance proceedings to the estate of Rosa Fonseca. Challenging this order, the respondents filed an appeal, before the Additional District Judge, North Goa, who held by an order made on 20.7.2000 that there was no proper legitimation of Maria Fonseca and hence, the appellant is not an heir.

On 30.8.2000, the appellant filed a writ petition in the High Court challenging the order of the Additional District Judge dated 20.7.2000. The High Court by an order made on 9.11.2000 dismissed the writ petition and upheld the order of the Additional District Judge. Hence this appeal by special leave has been preferred against the order of the High Court dated 9.11.2000 dismissing the writ petition.

The question that needs to be decided is whether Maria Fonseca was legitimized by her mother, Rosa Fonseca. For this purpose, the appellant produced the birth certificate of his mother Maria Fonseca issued by the Directorate of Archives, Panaji, which was based on the baptism certificate issued by the local church. The Trial Court held that Maria Fonseca was baptized on 21.2.1903 at home as she was ill and her life was at peril; that she was born on 15.4.1899 at 3.00 a.m. of an unknown father and the mother is Rosa Fonseca; that this was enough to hold that she was legally recognised; that the baptism certificate recorded the names of the mother, grandparents and godparents; but it was questioned on the ground that it did not contain mother's signature throwing doubt as to whether she had consented to the ceremony of legitimizing her daughter; that the respondents also failed to bring any evidence to counter the natural presumption of the presence of the mother Rosa Fonseca at the time of baptism. Hence the Trial Court allowed the claim of the appellant.

In appeal the learned District Judge held that in order to solemnize baptism, the names of God parents should be entered in the record and the presence of either of the God parents is absolutely necessary and should be signed by the Parochial Authority; that, the baptism certificate relied upon by the appellant does not indicate that both or either of the God parents were present in proof of which their signatures were taken; that, baptism certificate could not be relied upon; that, the birth certificate proceeds on the basis of baptism certificate, which is not valid; that, thus there is no legal recognition of legitimacy by any proper deed. On this basis, he allowed the appeal.

In the writ petition, the High Court without assigning any separate reasoning held that the District Judge took into consideration the entire material on record and on proper application of law rejected the case of the appellant and dismissed the writ petition.

What we have to see in this matter is whether the test indicated by the learned District Judge has been complied with by the parties concerned. A true translation of the birth certificate is made available and reads as follows:

"In Margin: No.78 Maria Graca Albertina daughter of Roza Maria Anna Fonseca, from Gally.

In the Text: On the twenty-first day of the month of February in the year one thousand nine hundred and three in this Parish Church of Taleigao, Taluka islands of Goa (Tiswadi), of the Archdiocese of Goa, with my permission, Fr.Floriano Jose Joaquim Joao Fernandes, resident of this locality, put the holy oils on a person of female sex as she had been duly baptised in home because she was in peril of her life by Francisco Xavier Raymando Fernandes, former Curate of this Parish, with the name Maria Graca Albertina Luisa who was born in the ward Gally of this Parish at three hours of the morning of the fifteenth day of April in

the last year (sic) one thousand eight hundred ninety-nine free legitimate daughter, second in the order of children and the only one with this name, I mean daughter of unknown father and of Roza Maria Anna Fonseca, native of Parra and resident of Taleigao, widow, landed proprietor whose income does not amount to three hundred "reis" per day, paternal (sic) grand-daughter of Paulo Antonio de Fonseca and of Maria Angelica Fernandes, both natives of Parra. Her godfather was Antonio Augusto Milares da Piedade Lobo, bachelor, Land Surveyor, resident of Santo Estevao and godmother Monica Maria Eulalia Francisco Gomes, unmarried, native of Ucassaim represented in this act by Maria Francisca Gonsalves, unmarried, from Taleigao, all of whom I acknowledge them as proper persons. And to be known I made this record in duplicate which, after it was read and checked before the godparents, I sign it along with them. Date as mentioned above, Correction follows sd/- Ant.Augt. Milagres da P.Lobo. Sd/- Maria Francisca Xavier Gonsalves. The parson sd/- Fr. Jose Lourenco de Silva."

The underlined portion stated above clearly indicates that the baptismal record was read and checked before the godparents, and the same has been signed by the Parson along with them. The learned District Judge felt that the certificate of registration of birth merely proceeds on the basis of the baptism certificate. If the birth certificate is a true reflection of the baptism record and it contains the fact that it was read and checked before the godparents, the same need not be discarded and it must be held that the same had been made in the presence of both god parents. In that view of the matter, the Trial Court was justified in the conclusion it reached and not the learned District Judge who proceeded on misreading of the record. Hence the High Court ought to have reversed the finding recorded by the learned District Judge who ignored this crucial aspect in the course of his order.

In the result, we set aside the order made by the High Court and the order of the learned District Judge while restoring the order made by the Trial Court. Appeal is accordingly allowed. No costs.

...J.
[S. RAJENDRA BABU]

...J.
[RUMA PAL]

MAY 7, 2002.