

## Conversion to Another Religion

Perhaps the most thorny question in tribal law is the effect of conversion to another religion. The question is of special importance in the context of inheritance, but could have a wider impact. The position on the subject can hardly be said to be very clear at present.

### Khasis

The position as to Khasis may be first examined. When Christianity made its beginning in the Khasi and Jaintia Hills, a convert lost his rights to inheritance from non-Christians. The observations made by a British officer in the eighties of the last century represent this view. Col. Clarks, D.C., observed in one case before him<sup>1</sup> :—

There is evidence to show that conversion to Christianity separates a man from his kith and kin. He is outcasted; he succeeds to no property from his relatives; property that he would be entitled to goes to his next of kin.

Gradually, however, there was a change in the attitude of the people and this hostility almost ceased. However, legal consequences of conversion are still obscure. It will be convenient to consider the matter separately with reference to (i) the position in general, (ii) the position as regards the rights of the *khadduh*, and (iii) the position as regards the rights of males to succeed.

### General position as to effect of conversion

The general position as to the effect of conversion on the rights of inheritance may be dealt with by stating that, by custom, Christians can now inherit from non-Christians in the tribal areas in Meghalaya.

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1. Suit No. 41 of 1883 (Synteng case), cited by Cantlie, *Notes on Khasi Law* 57 (1934).

This follows by implication from certain judicial decisions. Thus, for example, in *Ka Lyngen, Ka Niman v. Ka Meid*<sup>2</sup>, it was held that a Khasi lady of a War village has an equal right of succession with her sisters, notwithstanding that she was a Christian. She had joined in the funeral ceremonies of the parents but refused to join in the subsequent ceremonies. There is, however, no mention of the peculiar position of the *khadduh* nor is it clear from the decision whether the property in dispute was ancestral or self acquired.

### Position of *khadduh* after conversion

The case of *khadduh* stands on a different footing, on account of the special rights and obligations attached to her position. Opinion on the subject has fluctuated from time to time. In 1916 to 1918, an enquiry was made into the customs of inheritance prevailing in the Khasi and Jaintia Hills. After detailed discussion, it was recorded that if the property to be inherited is not the sole and absolute property of the holder but is subject to an obligation to perform certain acts, the heir would be bound to make the necessary provision for the due performance of such acts. It would be for the courts in each case to decide what those obligations were, and whether suitable arrangements had been made to discharge them.

It is necessary here to refer to an important case on this point which came up in 1925 in the *Durbar* of the *Lyngskor* and *Myntries* of Nongkhrem, Khyrim State, viz., *U Kyroon, U Byllem, U Babun, U Kurup Jaid Kharpran of Sohryngkhan v. Ka Thwei Jaid Kharpran of Sohryngkhan* (the Khyrim case)<sup>3</sup>. In this case, a petition was filed by the brothers against their sister, Ka Thwei, alleging that the latter had changed her religion and became a Christian, and could no longer fulfil her religious obligations. According to the brothers, she was the *ling seng ling khadduh* of the many people of the clan and also the custodian of money collected for the performance of religious ceremonies and that, since they had no other sister they, therefore, took another woman, Ka Shilot, who was their own maternal niece, as the *khadduh*. Relying on Gurdon, it was argued by the plaintiffs that when a woman belonging to the *ling khadduh* or *ling seng* deserts her own religion, "she ought to lose her position as *ling khadduh* and another rightful one should be substituted in her place and that all the ancestral wealth or properties should be in the custody of the substitute". The *Durbar* of the *Lyngskor* and *Myntries* of Nongkrem, held that Ka Thwei should lose her position as the *ling khadduh* and that the house where she lived must be possessed by the substituted woman who would perform the

2. Court of the Deputy Commissioner, Pol Case No. 1 of 1884

3. Decided by the *Durbar* on 21.11.1925.

religious ceremonies. On appeal, the *Siem* and *Durbar* of Khyrim, by its judgement dated March 10, 1926, affirmed the order. An appeal to the Deputy Commissioner<sup>4</sup> was dismissed and the earlier orders confirmed, on the ground that the property in question was ancestral to which the appellant, on becoming a Christian, could not succeed. On further appeal to the court of the Commissioner of Surma Valley and Hill Division,<sup>5</sup> the issue whether a Khasi subject of the Khyrim State, on becoming a Christian, forfeits her position as *ling khadduh* and the inheritance of ancestral property, was discussed. The main question was whether the Caste Disabilities Removal Act, 1850 (Act 21 of 1850) (or the principles of that Act), under which renunciation or exclusion from any religion shall not result in the forfeiture or impairment of rights of property or inheritance, must be followed in the courts of Khasi States. It was held that the Act had not been extended to these States and its principles could hardly be regarded as an essential part of all civilised law. Otherwise, it would not have been necessary to say in the Act that "law or usage to the contrary," shall cease to be enforced. Certainly, no British court could enforce a contrary custom and the Political Court of the Deputy Commissioner was a British court. But here it was not a case of the usage being enforced by that court, but only whether that court should set aside the decision of the final court of appeal in the Khyrim State as being contrary to public policy or to fundamental principles of justice. If it was really necessary for justice or public policy that the principles of Act 21 of 1850 should be followed in all Khasi States, it was open to the Government to apply the Act to them. Since the Act was not in force in the Khyrim State and the decision of the State courts was not opposed to public policy and justice, the Commissioner refused to interfere.

On appeal to the Governor-in-Council, he declined to interfere.<sup>6</sup>

Cantlie,<sup>7</sup> writing in 1934 after examining the case law, expressed the view that if the courts decide against the claims of a Christian *khadduh*, then the position would be as under:—

(i) If there was no distribution of the property by the mother in her life-time, the non-Christian daughter would oust the Christian as priestess and manager. The Christian daughter would have the right of cultivation of a share of the family land.

(ii) If it were a War case in which a defined portion of the land (called *ri-shieng*) were allotted to the *ka khadduh* for ceremonies to be performed

4. *Ka Thwei v. U Khyroon*, Deputy Commissioner, Civil Political Appeal Case No. 7 of 1926.

5. Civil Political Appeal No. 5 of 1926.

6. Governor-in-Council's Order dated 28.4.1927.

7. *Supra* note 1 at 62-63.

in memory of the female ancestress, the non-Christians would oust the Christian from *ri-shieng* land only.

(iii) If, as was alleged by the Christian party in the *Khyrim* case,<sup>8</sup> the mother had divided the property before her death, giving the larger share to *ka-khadduh*, who afterwards embraced Christianity, then re-distribution, as was done in the *Khyrim* case, might or might not be made. The position is uncertain.

(iv) If the mother gave a larger share in her lifetime to *ka-khadduh* who was at the time a Christian, it is submitted that no re-distribution is possible. A mother can distribute shares as she pleases, although she cannot entirely disinherit a daughter save for special reasons.

#### Effect of conversion as to enjoyment of *ri-niam* land.

The question as to how far a Khasi converted to another religion, such as Christianity, can jointly enjoy ancestral property which is called *ri-niam* (land connected with religion) came up for determination before the District Council Court, United Khasi and Jaintia Hills in 1961.<sup>9</sup> This case related to the clan lands known as Umpling and Laitwahumbah. It was not disputed that Ka Niep Myrboh was not the *khadduh* of the clan, but the dispute arose because Ka Ingie Myrboh and other members of the clan, who jointly enjoyed the above two clan lands, refused to pay any subscription or contribution towards the expense for the performance of religious acts connected with the lands. The District Council Court held that the other members of the Myrboh clan, though they had become Roman Catholic, should make contributions to the *khadduh*, for the performance of religious rites and ceremonies connected with the lands, otherwise they could not enjoy the same. The decision was upheld by the High Court, which did not find anything in the lower court's order going against the Caste Disabilities Removal Act, 1850.

In a case that arose in 1964, it was laid down by the District Council Court that a *khadduh* who embraced Christianity may still inherit if she made proper arrangements for the performance of religious rites.<sup>10</sup> In that case, the youngest daughter, *i.e.*, the *khadduh*, left her village for Shillong with her husband and embraced Christianity. The other sister filed a suit on the basis that the younger sister had, owing to conversion, lost her right as *khadduh*. The Village Court of Shangpung decided the case in favour of the plaintiff. On appeal, the Subordinate District Council Court, United Khasi and Jaintia Hills, Jowai<sup>11</sup>, decided against the plaintiff.

8. *Supra* note 3.

9. *Ka Niep Myrboh of Mawlnrei Khyrim Siemship v. Ka Ingie Myrboh and others of Mawlyngrei, Khyrim Siemship*, Title Civil Appeal No. 14 of 1961; see also Khongphai, *Principles of Khasi Law* 8-9 (1974).

10. *Ka Neri Langwar, Jowai Sub-division v. Ka Miriam Langwar*, District Council Court, Title Civil Appeal No. 30 of 1964.

11. Subordinate District Council Court, C.A. No. 5 of 1956.

On further appeal, it was held by the District Council Court that the respondent (youngest sister) did not forfeit her right as *khadduh* on becoming a Christian. She could make arrangements for the performance of religious ceremonies attached to the family, if any. In this case there was no evidence that the respondent was called upon to perform any such religious ceremony, or that there was any refusal on her part to do so.

In view of these judicial pronouncements and the prevailing practice, it would appear that a *khadduh* who embraces Christianity may inherit properties, subject to her making suitable arrangements for the performance of religious rites and duties—failing which, she is liable to be disqualified for holding, by way of inheritance, properties to which religious obligations are attached.

#### Effect of conversion on the right of a male to succeed

The question of the effect of conversion on a male's right to succession came up in 1928 before the Deputy Commissioner.<sup>12</sup> The two parties to the case were the heirs to the property in dispute which had been left by their grandmother. They were inhabitants of the War country and therefore governed by the War customs, under which males can inherit equally with females. The appellant, U Langlit, had been deprived of his share on the ground of his conversion to Christianity. It was held by the Deputy Commissioner, however, that the appellant could not be disqualified for inheritance on the ground of change of religion.

#### Garos

The position as to the effect of conversion on succession rights is equally uncertain among Garos. Because of the obscurity of the material and fluctuating views on the subject, nothing definite can be said about the legal position. In practice, the result may depend on the attitude of the family members and parents. It is well accepted as a general rule that a daughter of a *songsarak* non-convert household, on becoming a Christian, loses her inheritance rights since she can no longer fulfil the religious obligations. So also in the case of a *nokrom*, he cannot be nominated as the heir to his *songsarak* maternal uncle. But, in a village where the majority of the Garos are Christians, special considerations arise. In such cases, the parents are not normally intolerant and even if they are *songsaraks* and the *nokna* is a Christian, the succession rights are not affected, though the religious duties and functions are performed by the mother.<sup>13</sup>

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12 *U Langlit of Rangud, Cherra State v. U Sukher*, Deputy Commissioner, Civil Political Appeal No. 4 of 1928.

13. Goswami and Majumdar, *Social Institutions of the Garos of Meghalaya* 25 (1972).