

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.104 of 2011

=====

Sriman Narayan Sharan, S/O Late Gopaljee Prasad Sha, R/O Village-Dumari, P.S.-Semari, District-Bhojpur (Bihar), at present R/O Prasad Niwas, 3/40, Sukanto Palli (West), P.O.-Amarai, Durgapur, West Bengal.

.... Plaintiff/Appellant.

Versus

1. Prakash Narayan Prasad, S/O Late Mukti Narayan Prasad, R/O Village+P.O.-Katara, P.S.-Bhagwan Bazar, Distt.-Saran.
2. Deepak Kumar, S/O Late Mukti Narayan Prasad minor under The Guardianship of his mother Mostt. Kanti Kuer, R/O Bahurai Kothi Katara, P.S. Bhagwan Bazar, District Saran.
3. Anita Devi, W/O Sri Manoj Kumar & D/O Late Mukti Narayan Prasad, R/O Village-Pursar, P.S.-Jalalpur, Ditt.-Saran.
4. Sunita Narayan, W/O Sri Santosh Prasad & D/O Late Mukti Narayan Prasad, R/O Village-Karkach Madhopur, P.S.-Barauli, Distt.-Gopalganj.
5. Monita Devi, S/O Jitendra Prasad & D/O Late Mukti Narayan Prasad, R/O Village-Purani Bazar, P.S.-Gopalganj, Distt.-Gopalganj.
6. Sangeeta Devi, W/O Omprakash Gupta & D/O Late Mukti Narayan Prasad, R/O Village-Sasamusa, P.S.-Kochaikot, Distt.-Gopalganj.
7. Seema Devi, S/O Gauri Shanakr Bhagat & D/O Late Mukti Narayan Prasad, R/O Sabji Mandi Virat Nagar, P.S. Virat Nagar, Distt.-Virat Nagar, Nepal.
8. Rajani Kumari, D/O Late Mukti Narayan Prasad, R/O Bahuriya Kothi, P.S.-Bhagwan Bazar, Distt.-Saran
9. Jyoti Kumari, D/O Late Mukti Narayan Prasad, R/O Bahuriya Kothi, P.S.-Bhagwan Bazar, Distt.-Saran.
10. Reshma Kumari, D/O Late Mukti Narayan Prasad through own brother Prakash Narayan Prasad, R/O Bahuriya Kothi, P.S.-Bhagwan Bazar, Distt.-Saran.

.... Defendant Ist set/ Respondent Ist Set.

11. Sri Niwas Prasad, S/O Late Radha Kishun Prasad, R/O Makhdumganj, Ps. Chapara Moffasil, P.O.-Telpa, Distt.- Saran.
12. Ram Niwah Prasad, S/O Late Radha Kishun Prasad, R/O Village-Makhdumganj, P.S.- Chapara Moffasil, P.O.- Telpa, District- Saran.

.... Defendant 2nd Set/ Respondent 2nd set.

=====

Appearance :

For the Appellant :	Mr. Bindhyachal Singh, Advocate.
	Mr. Ram Binod Singh, Advocate.
	Mr. Vipin Kr. Singh, Advocate.
For the Respondent nos. 1 to 10 :	Mr. Shashi Shekhar Dwevdi, Sr.Advocate.
	Mr. Rakesh Kumar Tiwary, Advocate.
	Mr. Vijay Bardhan Pandey, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

CAV JUDGMENT

Date: 24-09-2015

The plaintiff/appellant filed this appeal against the judgment/decreed dated 30.04.2011/12.05.2011 passed in Title Suit No. 38 of 2005, whereby the court of Sub-Judge-VIII, Chapra, dismissed the plaintiff's suit.

2. The plaintiff/appellant filed the aforesaid title suit for declaration of his right and title in respect to the land as detailed in the schedule of the plaint and other property in the capacity of legal heir of Rai Saheb Mahabir Prasad, Rai Saheb Raghunath Prasad and Bahuria Phulpati Kuer, for declaration that adoption deed dated 14.05.1970 executed by Bahuria Phulpati Kuer in favour of Mukti Narayan Prasad, defendant no. 1, forged, fabricated and void on the basis of which defendant no. 1 has not acquired any right, title in respect to land as detailed in schedule of plaint and to set aside the order dated 16.01.1984 dismissing the Title Suit No. 122 of 1972 in default by the Additional Sub-Judge-VI, Chapra with declaration that the said order is not legally binding upon the plaintiff or his descendents with further prayer for permanent injunction restraining the defendant no. 1 to execute any document in favour of any body and changing the status quo of the suit land.

In brief, the case of the plaintiff is that Sheo Gulam Sah was the original male person of his family. His son Rai Bahadur Mahabir Prasad, had two wives. From the first wife, he had a son, Rai Saheb Raghunath Prasad and a daughter, Jagarnath Patti. The marriage of Jagarnath Patti was performed with Badri Narayan Prasad, of village Dumri, District Sahabad and she had one daughter. Sarsati Devi. Sarsati Devi and



her husband have already died. Whereabouts of legal heirs of Sarsati Devi is not known to the plaintiff. Rai Saheb Raghunath Prasad died in the year 1925 leaving behind his widow Rani Phulpti Kuar and she was limited owner. From the second wife of Rai Bahadur Mahabir Prasad, there were two daughters, namely, Kailash Patti Devi and Ram Deoki Devi. While Ram Deoki Devi was married in Tekari but she died issueless. The marriage of Kailash Patti Devi was performed with Govind Prasad of Dumri, who had one son, Gopaljee Prasad Sah and three daughters Triveni Devi, Bindayachal Devi and Sarshwati Devi. Gopaljee Prasad Sah has one son Shriman Narayan Sharan (plaintiff) and one daughter Krishna Kishori. Krishna Kishori died on 13 November, 2004 due to Cancer. The marriage of Triveni Devi was performed with Radha Kishun Prasad and she has two sons, namely, Sri Niwas (defendant no.2) and Ram Niwas (defendant no.3). The marriage of Sarshwati Devi was performed with Shayam Sundar Prasad of village Bela, who died issueless whereas the marriage of Bindhyachal Devi was performed with Bishwanath Prasad of Basrikapur, who has died and relinquished her share in the property of Bahuria Phulpati Kuar in favour of the plaintiff. Bahuria Phulpati Kuar, executed the will deed on 09.08.1948 in favour of Gopaljee Prasad Sah, father of the plaintiff, stating therein that Gopaljee Prasad Sah is Bhagina and after her death Gopaljee Prasad will be her legal heir. After 1956, Rani Phulpati Kuar being the widow and Gopaljee Prasad being the Bhagina of Rai Saheb Raghunath Prasad become the legal heirs of property. Till residing at Chapra, Gopaljee Prasad Sah used to reside with Rani Phulpati Kuar. The plaintiff and his



sister Krishna Kishori also used to reside with Rani Phulpati Kuar. Before 46 to 47 years, Rani Phulpati Kuar suffered to paralytic attack and she become mentally weak. In same year, Gopaljee Prasad Sah also suffered from Gangrene in leg due to that reason his one leg was imputed and in 1960 he again suffered from Gangrene in other leg due to that reason he was rushed at Luckhnow where his other leg was also imputed and he died on 1972. Rani Phulpati Kuar, who was not in a position to understand her matters, executed the several sale deeds in between 1960 to 1968 but the plaintiff has no knowledge about the aforesaid sale deeds till today. In 1968, Rani Phulpati Kuar suffered from paralytic attack second time and she become unable to move and understand her gain and loss. Till that time family of the plaintiff had left Chapra. Alakh Narayan Prasad had three sons, namely, Lakshmi Narayan Prasad, Basdeo Ji and Mukti Narayan Prasad. Jagdish Prasad, younger brother of Alakh Narayan Prasad, used to provide service to Rani Phulpati Kuar being a servant, Alakh Narayan Prasad also used to reside with Rani Phulpati Kuar as servant, whose marriage was performed with Sonamati in Maharajganj but Alakh Narayan Prasad had illicit relation with maid Lalmuni Devi. When Rani Phulpati Kuar knew about illicit relation she removed to Alakh Narayan Prasad from her Kothi. Thereafter, Alakh Narayan Prasad taking the advantage of helpness of Rani Sahiba, got executed the registered adoption deed on 14.05.1970 in respect to his son Mukti Narayan Prasad in which it is detailed that Mukti Narayan Prasad was adopted by Rani Phulpati Kuar. The said adoption deed was not executed by Rani Phulpati Kuar as she was not



physically and mentally fit and she did not put her signature on the adoption deed and placed the adoption deed before the Registrar. As such, the registered adoption deed dated 14.05.1970 is forged, fabricated and has been obtained fraudulently. Further case of the plaintiff is that at the time of adoption of Mukti Narayan Prasad, his age was more than 16 years as such he was not competent to take in adoption and adoption ceremony was also not performed. There was also no consent of natural mother of Mukti Narayan Prasad at the time of adoption. Rani Phulpati Kuer died on 22.04.1972. Alakh Narayan Prasad, who was cunning got mutated the name of Mukti Narayan Prasad in Municipality and revenue records in respect to property of Rani Phulpatti Kuer on the basis of adoption deed. Thereafter, Triveni Devi and plaintiff filed the Title Suit No. 122 of 1972 against the defendant no. 1, Mukti Narayan Prasad and others for declaring the right, title and interest in respect to property of Rai Saheb Raghunath Prasad and also for declaring the adoption deed dated 14.05.1970 null and void. The plaintiff due to illness and death of his father was mentally depressed, therefore, he instructed his Bua, Triveni Devi for filing the suit. The plaintiff used to reside out side in connection with his livelihood at Mumbai, Durgapur and other places due to that reason his Bua, Triveni Devi and her husband used to do Pairvi in Title Suit No. 122 of 1972 and plaintiff used to receive information to them. Triveni Devi died during pendency of the Title Suit No. 122 of 1972 and her two sons, namely, Sri Niwas Prasad and Ram Niwash Prasad (defendant nos. 2 and 3) were substituted in her place as legal heirs. When the plaintiff came in the month of December, 2004 at



Chapra met to his cousin Sri Niwas Prasad and Ram Niwash Prasad (defendant nos. 2 and 3) and asked about the Title Suit No. 122 of 1972 then they did not give proper reply. Thereafter he inquired regarding the Title Suit No. 122 of 1972 on filing inspection application on 28.12.2004 and came to know that in the Title Suit No. 122 of 1972, defendant nos. 2 and 3 had filed the compromise application against the interest of the plaintiff and later on due to none doing Pairvy, the suit was dismissed in default on 16.01.1984. When the plaintiff went on 19.12.2004 at the Katra kothi of Rani Phulpati Kuer then saw that in the East side, adjacent to Vijay Jain, construction of Rai Bahadur Raghunath Prasad was being demolished by the defendant no.1, Mukti Narayan Prasad the bricks and iron beams of the roof were being sold by him. He also learnt that Katra Kothi of Rani Phulpati Kuer is let out by the defendant no. 1 to Animal Husbandry Department, Ambika I.I.T. Institute, National Public School and others. Rai Bahadur Mahabir Prasad, Rai Saheb Raghunath Prasad and his widow Bahuria Phulpati Kuer had other property in Mumbai (Maharashtra), Jagarnath Puri (Orissa), Kolkata (West Bengal) and other places but the plaintiff has no knowledge and after knowing about the said property the plaintiff, if necessary, will seek permission to amend the plaint and to add the some other persons as party in the suit. Further case of the plaintiff is that he also came to know that the amounts deposited by Bahuriya Phulpati Kuer in Bank and ornaments have also be taken by the defendant no. 1 and defendant no.1 has taken advance from several persons for selling the land of Katra Kothi. When the plaintiff asked the defendant no. 1 not to sale the

land, let out the premises and not to demolish the house then he become adamant to scuffle with the plaintiff.

3. Original defendant no. 1, Mukti Narayan Prasad, and defendant no. 3, Ram Niwash Prasad, filed their separate written statement.

Original defendant no. 1, Mukti Narayan Prasad, in his written statement raised defence to the effect that suit is not maintainable as it is barred by the law of limitation, hit by Section 34 of the Specific Relief and also hit by estoppel, waiver and acquiescence but admitted the genealogy as detailed in the plaint. The case of the defendant no. 1 is that plaintiff has got no right, title and interest in the property of Bahuria Phulpati Kuer. While Bahuria Phulpati Kuer executed the will deed on 09.08.1948 in favour of Gopaljee Prasad Sah, father of the plaintiff, but later she cancelled the said will deed by executing the deed dated 24.02.1955. After enforcement of the Hindu Succession Act, 1956, Bahuria Phulpati Kuer become the full owner of the property of her husband, Rai Saheb Raghunath Prasad. Bahuria Phulpati Kuer had no issue due to that reasons she expressed her desire to his nephew Alakh Narayan Prasad to take his third son, Mukti Narayan Prasad (defendant no.1) in adoption. Alakh Narayan Prasad agreed to give his son, Mukti Narayan Prasad (defendant no.1), in adoption and after observing religious ceremony, Mukti Narayan Prasad was adopted as son by Bahuria Phulpati Kuer on 14.04.1970 and adoption deed was also executed and registered on 14.05.1970. At the time of adoption, defendant no.1, was aged about 13 years, therefore, he was being taken care by Bahuria Phulpati Kuer. After death of Bahuria Phulpati

Kuer, the name of defendant no. 1 mutated in the municipal and revenue records as adopted son of Bhuria Phulpati Kuer and defendant no. 1 came in possession over the property of Bahuria Phulpati Kuer. It is not true that Bahuria Phulpati Kuer was paralytic patient since before 46 to 47 years rather she was sound and healthy mind at the time of adoption of defendant no. 1 and execution and registration of the adoption deed in year 1970. Alakh Narayan Prasad, father of defendant no. 1, was the son of Nand Kumar Prasad, brother of Bahuria Phulpati Kuer due to that reason Alakh Narayan Prasad used to reside in the Kothi of Bahuria Phulpati Kuer. While Lalmuni Devi was maid in the Kothi but it is not true that Alakh Narayan Prasad had illicit relation with Lalmuni Devi and due to that reason Bahuria Phulpati Kuer removed to Alakh Narayan Prasad from her Kothi. While Gopaljee Prasad, father of the plaintiff, had come in the Kothi of Bahuria Phulpati Kuer in ill condition but due to his misbehaviour, Bahuria Phulpati Kuer removed him to her Kothi. Thereafter Gopaljee Prasad, never returned in the Kothi of Bahuria Phulpati Kuer. The plaintiff taking into collusion to his Bua, Triveni Devi with intention to grab the property of Bahuria Phulpati Kuer inherited by the defendant no.1, filed Title Suit No. 122 of 1972 against the defendant no.1, in which, he appeared and filed his written statement. After death of Triveni Devi, her both sons Sri Niwas Prasad and Ram Niwash Prasad (defendant nos. 2 and 3) were substituted in place of Triveni Devi as plaintiffs in Title Suit No. 122 of 1972. The plaintiff had left the Pairvi in the suit knowingly but only for justification of filing the present suit the plaintiff has stated in the plaint that he was out side for his

job and business at different places till 2005 and he came to know about the dismissal of Title Suit No. 122 of 1972 when he came Chapra in the year 2005.

Defendant no. 3, Ram Niwash Prasad, in his written statement while raised usual defence but supported the case of the plaintiff with submission that defendant nos. 2 and 3, who were the plaintiffs also in Title Suit No. 122 of 1972, were not in collusion with defendant no. 1 and acted against the interest of the plaintiff in that suit.

4. On the basis of the pleadings of the parties, the trial court framed altogether ten issues, which are as under:-.

1. It the suit as framed maintainable?
2. Has the plaintiff get any valid cause of action for filing of the suit ?
3. Is the suit time barred?
4. Whether the court fee paid is sufficient?
5. Whether the suit is hit by Section 34 of the Specific Relief Act?
6. Whether the suit is barred by res-judicata, estoppel acquiescence and waiver?
7. Whether the deed of adoption dated 14.05.1970 executed by Bahuria Phulpati Kuer in favour of Mukti Narayan Prasad, defendant no. 1, is valid and genuine one or obtained by playing fraud? And same is an ab initio document?
8. Whether the plaintiff is entitled to get a decree of permanent and temporary injunction against the defendant?
9. Whether the plaintiff has got full right, title and interest over the suit land?
10. To what relief or other reliefs, if any the plaintiff

entitled?

5. In course of trial, plaintiff-appellant examined altogether seven witnesses including himself as P.W.5 and got exhibited several documents. On the other hand, defendants-respondents also examined altogether seven witnesses and got exhibited several documents.

6. After hearing the parties and perusing the evidence available on record, the learned trial court decided all the issues against the plaintiff and dismissed the Suit.

7. Learned counsel for the plaintiff-appellant submits that it would appear from order dated 16.01.1984 (Ext.C) passed in the Title Suit No. 122 of 1972 that on 16.01.1984 while the plaintiff and defendant were not present but intervenor defendant No. 4 was present, as such, order dated 16.01.1984, dismissal of the suit in absence of the plaintiff will come within the purview of Order IX Rule 8 of the Code of Civil Procedure not under Order IX Rule 3. As such, the trial court illegally accepted the argument of learned counsel for the defendants that the Title Suit No. 122 of 1972, which was filed for same cause of action, was dismissed under Order IX Rule 3 of the Code of Civil Procedure and fresh suit under Order IX Rule 4 of the Code of Civil Procedure ought to be filed subject to the law of limitation but the present suit has been filed in year 2005 beyond the limitation period as provided under Section 57 of the Limitation Act. Further submission of the learned counsel for the plaintiff is that there is specific case of the plaintiff-appellant that Bahuria Phulpati Kuer suffered from paralytic attack second time in 1968 and become unable to move,



understand her loss and gains and also not able to put her signature. She herself admitted in trust deed dated 24.05.1971 (Ext.9) that she is unable to put her signature but the adoption deed dated 14.05.1970 (Ext.D), bears the signature of Bahuria Phulpati Kuer, which clearly indicates that the adoption deed (Ext.D) was obtained by Alakh Narayan Prasad, fraudulently in the name of his son, Mukti Narayan Prasad, defendant no. 1 putting the forged signature of Bahuria Phulpati Kuer. Further submission is that there is specific case of the plaintiff-appellant that at the time of adoption of Mukti Narayan Prasad and execution of adoption deed (Ext.D), his age was more than 16 years, which also finds support from Exts. 4 and 5, entry of date of birth in the admission register of Rajpoot High School, Chapra and date of birth certificate issued by the Head Master according to school admission register in respect to defendant no.1, Mukti Narayan Prasad, but the learned trial court illegally disbelieved the same.

8. On the other hand, learned counsel appearing on behalf of the defendant-respondent nos. 1 to 10 submits that it is specific case of the plaintiff-appellant that Title Suit No. 122 of 1972 was filed by him and his Bua, Triveni Devi for declaration of right title in respect to suit land and also for declaration that the adoption deed dated 14.05.1970 (Ext.D) executed by Bahuria Phulpati Kuer regarding adoption to Mukti Narayan Prasad and the said suit dismissed in default on 16.01.1984. As such, under Order IX Rule 4 of the Code of Civil Procedure fresh suit is permissible in case of dismissal of suit under Order IX Rule 3 of the Code of Civil Procedure subject to period of limitation as provided under Article



57 of the Limitation Act within three years from the date of knowledge of adoption deed dated 14.05.1970. The plaintiff at least had knowledge in 1972 when he along with his Bua, Triveni Devi, filed the Suit No. 122 of 1972 but the plaintiff has filed the present fresh suit in the year 2005. As such, present suit is highly time barred and the learned trial court has rightly held that the suit is barred by the law of limitation. It is also pointed out that if the argument of the learned counsel for the plaintiff-appellant is accepted that Title Suit No. 122 of 1972 will be deemed to be dismissed in default under Order IX Rule 8 of the Code of Civil Procedure due to presence of intervenor defendant no.4 then the remedy to the plaintiff was only to file an application under Order IX Rule 9 of the Code of Civil Procedure for restriction of suit not to file fresh suit for same relief. As such, in that circumstance also the present suit is not maintainable and barred under Order IX Rule 9 of the Code of Civil Procedure. Further submission is that it is specific case of the plaintiff that after death of Bahuria Phulpati Kuer, Alakh Narayan Prasad, got mutated the name of defendant no.1, Mukti Narayan Prasad in respect to the property of Bahuria Phulpati Kuer in the municipal and revenue records on the basis of adoption deed dated 14.05.1970 (Ext.D). The plaintiff along with his family was out of Chapra for livelihood and when he came on 19.12.2004 then came to know that defendant no. 1 was demolishing the construction in the campus of Katra Kothi, used to sale iron beams, bricks etc and also let out the houses of Bahuria Phulpati Kuer to Animal Husbandry Department, Ambika I.I.T. Institute and National Public School and other and defendant no. 1 had



taken the ornaments and cash of Bahuria Phulpati Kuer from the Bank but the plaintiff has sought the relief only for declaration of his right, title and interest over the property in suit and for declaration that the adoption deed dated 14.05.1970 (Ext.D) forged, fabricated and void without seeking the relief of possession. As such, the suit is also hit by proviso of Section 34 of the Specific Relief Act. Further submission of the learned counsel for the defendants/respondent is that admittedly the adoption deed dated 14.05.1970 (Ext.D) is registered deed bearing the signature of Alakh Narayan Prasad who gave his son Mukti Narayan Prasad in adoption to Bahuria Phulpati Kuer and also signature of Bahuria Phulpati Kuer who took in adoption. As such, under Section 16 of the Hindu Adoption and Maintenance Act, there is presumption that adoption was in compliance of the provisions of the Act. Moreover Ext. K Voter Identity Card of Mukti Narayan Prasad, his age has been given as 46 years on 01.01.2003. Accordingly, on the date of adoption the age of Mukti Narayan Prasad was about 13 years which has also been detailed in the adoption deed (Ext.D) at page 2, which bear the signature of late Alakh Narayan Prasad and late Bahuria Phulpati Kuer.

9. To appreciate the submission of the leaned counsel for the plaintiff-appellant and defendants-respondent nos. 1 to 10, the following points arise for consideration in this appeal:-

(I) Is the suit barred by law of limitation?

(II) Is the suit barred by Section 34 of the Specific Relief Act?

(III) Is the adoption deed dated 14.05.1970 (Ext.D) is a valid and genuine or obtain by playing fraud and is void?

10. **Point no. 1-** The fact is not in dispute that the plaintiff and his Bua, Triveni Devi, had filed Title Suit No. 122 of 1972 for the declaration of the right title in respect to property of Bahuria Phulpati Kuer and for declaration that the adoption deed dated 14.05.1970 (Ext.D) executed by Bahuria Phulpati Kuer in relation to adoption of Mukti Narayan Prasad son of Alakh Narayan Prasad is forged, fabricated and void. The said suit was dismissed in default on 16.01.1984 by the court of the Additional Sub-Judge-VI, Chapra. Thereafter the plaintiff has filed the present Title Suit No. 38 of 2005 on 27.01.2005 with similar reliefs subsequently adding the relief for setting aside the order dated 16.01.1984 passed in Title Suit no. 122 of 1972 with declaration that the said order is not binding on the plaintiff or his decedents by amendment in the plaint.

If the suit is dismissed in default in absence of plaintiff and defendant under Order IX Rule 3 of the Code of Civil Procedure, the plaintiff may bring a fresh suit subject to law of limitation or may apply for an order to set aside the dismissal of the suit under Order IX Rule 4 of the Code of Civil Procedure. If the suit is fixed for hearing and only defendant appears, the court shall pass the order to dismiss the suit under Order IX Rule 8 of the Code of Civil Procedure unless defendant admits the claim of the plaintiff. On dismissal of suit under Order IX Rule 8 of the Code of Civil Procedure, the plaintiff is precluded to bring a fresh suit in respect to same cause of action but he may apply to set aside the dismissal of the suit

under Order IX rule 9 of the Code of Civil Procedure.

The Title Suit No. 122 of 1972 was dismissed in default on 16.01.1984 in absence of plaintiff and the defendant while intervenor defendant no. 4 was present as appears from order dated 16.01.1984 (Ext.6) passed in Title Suit No. 122 of 1972 but order does not disclose that the record was fixed for hearing on that date. If the submission of learned counsel for the plaintiff/appellant is accepted that when the Title Suit No. 122 of 1972 was dismissed in default on 16.01.1984, intervenor defendant no. 4 was present hence dismissal of suit will come within the purview of Order IX Rule 8 of the Code of Civil Procedure, then plaintiffs had only option to file the application under Order IX Rule 9 of the Code of Civil Procedure to set aside the order of dismissal and not to bring fresh suit.

Under Article 57 of the Limitation Act for declaration of adoption invalid or never took place period of limitation to file the suit is three years to the date of knowledge of adoption, for declaration of right title the period of limitation is three years as provided under Article 58 of the Limitation Act to the date when the right to sue first accrues. In the present case, the plaintiff had knowledge at least in the year 1972 when he alongwith Bua Triveni Devi had filed the Title Suit No.122 of 1972 about the adoption deed dated 14.05.1970(Ext.D) and mutation of the name of defendant no.1, Mukti Narayan Prasad in municipal and revenue records after death of Bahuria Phulpati Kuer in respect to her property as detailed in schedule of the plaint. As such, the present fresh Title Suit No.122 of 1972 filed on 27.01.2005 in respect to same cause of action after 33 years is

barred by the law of limitation.

11. **Point No. 2-** On perusal of the plaint it appears that the plaintiff had filed the Title Suit No. 122 of 1972 for declaration of his right and title over the property in respect to suit land and for declaration that registered adoption deed dated 14.05.1970 (Ext.D) executed by Bahuria Phulpati Kuer relating to adoption of defendant no.1, Mukti Narayan Prasad is forged, fabricated and void with prayer for setting aside the order dated 16.01.1984 passed in Title Suit No. 122 of 1972, dismissal of the suit in default declaring the order dated 16.01.1984 is not binding upon the plaintiff or his descendants. There is specific case of the plaintiff that after the death Bahuria Phulpati Kuer, Alakh Narayan Prasad, father of defendant no.1, Mukti Narayan Prasad, got mutated the name of Mukti Narayan Prasad, in municipal and revenue records regarding the property of Bahuria Phulpati Kuer on the basis of registered adoption deed dated 14.05.1970(Ext.D). The plaintiff in paragraphs 28 to 31 has stated that he along with his family had gone out side for his livelihood. When he came on 19.12.2004 at Chapra and went to Katra Koti of Bahuria Phulpati Kuer then found that defendant no. 1 was demolishing the construction in the campus of Katra Kothi and selling iron beams, bricks etc and also let out the premises of Bahuria Phulpati Kuer to Animal Husbandry Department, Ambika I.I.T. Institute and National Public School and others and also took the ornaments and cash from the Bank account of Bahuria Phulpati Kuer and he has also taken the money in advance to several persons to sale other property. The aforesaid contention of the plaintiff itself indicates that he was

not in possession of suit property on the date of filing of the present Title Suit No. 38 of 2005 but no relief is sought by the plaintiff for recovery of possession.

Section 34 of the Specific Relief Act provides that the court has discretion for declaration of right and title but its proviso makes an exception that court shall not make any such declaration of right and title where the plaintiff being able to seek further relief than mere declaration of title and omits to do so. In the present suit, the plaintiff simply has sought the relief for declaration of right and title in respect to the suit land without relief of the recovery of the possession. As such, the suit is barred by Section 34 of the Specific Relief Act.

12. **Point No. 3-** It is not in dispute that Rai Saheb Raghunath Prasad, husband of Bahuria Phulpati Kuer died in the year 1925, thereafter Bahuria Phulpati Kuer become limited owner of his property. Bahuria Phulpati Kuer executed the will deed dated 09.08.1948 in favour of Gopaljee Prasad, father of the plaintiff and she died on 22.04.1972. Further case of the plaintiff is that his father Gopaljee Prasad, being the cognate of Rai Bahadur Mahabir Prasad, father of Rai Saheb Raghunath Prasad, had right and tile over the property with Bahuria Phulpati Kuer. Bahuria Phulpati Kuer suffered paralytic attack second time in 1968 and she was unable to move, understand her matters and to put her signature. She herself admitted at the time of execution of trust deed dated 24.05.1971 (Ext.9) she is not in position to put her signature but Alakh Narayan Prasad fraudulently got executed the adoption deed dated 14.05.1970 fraudulently in respect to



his son Mukti Narayan Prasad and mutated his name after the death of Bahuria Phulpati Kuer as her adopted son in the Municipal and revenue records on the basis of adoption deed dated 14.05.1970 (Ext.D). The case of the defendants is that while Bahuria Phulpati Kuer executed the will deed dated 09.08.1948 in favour of Gopaljee Prasad, father of the plaintiff, but later on Bahuria Phulpati Kuer cancelled the aforesaid gift deed by registered deed dated 24.02.1955 (Ext.C) and later on Bahuria Phulpati Kuer took the defendant no.1 in adoption on 14.04.1970 according to rituals, she executed the adoption deed and got registered the same on 14.05.1970.

The plaintiff himself admitted in the plaint that after death of Rai Saheb Raghunath Prasad in the year 1925 his widow Bahuria Phulpati Kuer become limited owner of his property. As such, after the enforcement of the Hindu Succession Act, 1956, Bahuria Phulpati Kuer become absolute owner of the property of her husband. Bahuria Phulpati Kuer cancelled the will deed dated 09.08.1948 executed in favour of the Gopaljee Prasad, father of the plaintiff by executing the registered deed dated 24.02.1955 (Ext.C). Ext. D is the registered adoption deed dated 14.05.1970 executed by Bahuria Phulpati Kuer which bears the signature of Alakh Narayan Prasad, who gave his son Mukti Narayan Prasad in adoption to Bahuria Phulpati Kuer and also the signature of Bahuria Phulpati Kuer. In the adoption deed (Ext.D), the age of Mukti Narayan Prasad is shown as 13 years. Ext. 9 is the registered trust deed dated 24.05.1971 executed by Bahuria Phulpati Kuer in respect to the management of the Temples etc. in

which, it is detailed that since she suffers the affect of paralysis in the hand, she could not put her signature. It is also detailed in the trust deed that executant Bahuria Phulpati Kuer has taken Mukti Narayan Prasad, the third son of Alakh Narayan Prasad in adoption on 14.04.1970 and she has executed the adoption deed on 13.05.1970 which is registered in register no. 4 at serial no. 982 from page 35 to 38.

Trust deed (Ext.C.) is executed by Bahuria Phulpati Kuer on 24.05.1971 whereas adoption deed (Ext. D) is executed by her on 13.05.1970 and registered on 14.05.1970. P.W.4, Chandradeo Singh, has specifically stated in paragraph 17 that Bahuria Phulpati Kuer suffered from paralysis in the year 1971 first time and second time in 1972. This witness has also stated that he had visiting relation with Bahuria Phulpati Kuer. As such, on the date of execution of the adoption deed on 13.05.1970 and its registration on 14.05.1970, Bahuria Phulpati Kuer was not suffering from paralysis rather she received attack of paralysis for the first time in 1971.

Ext. 4 is the entry no. 497 of School admission register of Rajput High School. At serial no. 497, the name of student is detailed as Mukti Narayan Prasad, son of Alakh Narayan and the date of birth is shown as 14.02.1952 but that entry does not bear the signature of Head Master. It also appears from the register that only in two entries at serial nos. 497 and 498 the date of birth of students are shown and other entries are blank in respect to age of the students. P.W.6 Sacchida Nand Singh, who is clerk of Rajput High School, Chapra has proved the entry no. 497 of school register as Ext.4 (with objection) as entry was more than 30 years. He also proved



the Birth Certificate relating to Mukti Narayan Prasad, son of Alakh Narayan Prasad, as Ext.5 saying that certificate is in the writing of clerk Narendra Prasad on the letter pad of Principal, Shiv Kumar Sah and bears the signature of Principal Shiv Kumar Sah which is issued on the basis of school admission register (Ext.4). P.W.6 has stated that he does not know who has made the entry (Ext.4) in the school admission register. He has further stated that there is over writing in entry no. 497 in different ink. Author of entry no. 497 (Ext.4) has not been examined. As such, date of birth as detailed in Ext.4 and 5 could not be safely accepted due to discrepancy in the School Admission Register.

Ext. K is voter identity card of the defendant no. 1, Mukti Narayan Prasad, prepared in the year 2003, in which, his age has been detailed as 46 years, which corroborates the age of defendant no.1, Mukti Narayan Prasad about 13 years at the time of adoption as detailed in registered adoption deed dated 14.05.1970 (Ext.D). Section 16 of the Hindu Adoption and Maintenance Act, speaks that when any document registered, under any law for the time being enforced, is produced before the court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provision of the Act unless and until it is disproved. As such, on the basis of evidence as discussed above, I came to conclusion that Mukti Narayan Prasad was aged about 13 years at the time of his adoption by Bahuria Phulpati Kuer as detailed in adoption deed dated 14.05.1970 (Ext.D) and the adoption deed is valid.

13. In view of the facts and circumstances and discussions as made above, I find that the trial court has rightly dismissed the plaintiff-appellant’s suit. There is no infirmity in the impugned judgment and decree.

14. In the result, this appeal is dismissed but no order as to costs.

(Rajendra Kumar Mishra, J)

Bhardwaj/-
N.A.F.R.

U			
---	--	--	--