

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.105 of 2008Judgment reserved on: 3-7-2020Judgment delivered on: 22-7-2020

Shankar Lal Agrawal, aged about 43 years, S/o Late Shri Ramkrishna Agrawal (Natural Guardian Father Late Shri Vyasnarayan Agrawal), R/o Gandhi Chowk, Juna Bilaspur, Tahsil and District Bilaspur (C.G.)

(Plaintiff)

---- Appellant

Versus

1. Vishnu Kant Agrawal, aged about 53 years, S/o Late Shri Vyasnarayan Agrawal, R/o Shiv Talkies Road, Bilaspur, Tahsil and District Bilaspur (C.G.)
2. Amrit Lal Agrawal, aged about 63 years, S/o Late Shri Vyasnarayan Agrawal, R/o Budhwari Bazar, Baloda, Tahsil Janjgir, District Janjgir-Champa (C.G.)
3. Smt. Sarojani Devi Agrawal, aged about 66 years, D/o Late Dr. Ramgopal Agrawal, R/o Baloda, Tahsil Janjgir, District Janjgir-Champa (C.G.)
4. The Sub Registrar, Registration Office, Bilaspur, Tahsil and District Bilaspur (C.G.)
5. State of Chhattisgarh, Through the Collector, Bilaspur, Tahsil and District Bilaspur (C.G.)

(Defendants)

---- Respondents

For Appellant: Mr. Manoj Paranjpe, Mr. Anurag Singh and Mr. Vivek Kumar Agrawal, Advocates.

For Respondent No.1: -

Dr. N.K. Shukla, Senior Advocate with Mrs. Savita Tiwari, Advocate.

For Respondent No.2: -

None present though served.

For Respondent No.3: -

Mr. H.B. Agrawal, Senior Advocate with Mr. Amit Singhvi, Advocate.

For Respondents No.4 and 5 / State: -

Mr. Mateen Siddiqui, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Proceedings of this second appeal were taken-up for final hearing through video conferencing.
2. This second appeal preferred by the plaintiff was admitted by formulating the following substantial question of law, on 23.09.2019: -

“Whether the first appellate Court was justified in holding that the adoption deed dated 22/03/1972 executed by Shri Ramkrishna Agrawal and his wife Ramsunderi Bai in favour of the plaintiff is not proved in accordance with law, as it was not even marked as an exhibit in accordance with the provisions contained under Order 13 Rule 4 of the CPC by recording a finding which is perverse to record?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

3. Late Shri Damodar had three sons namely, Ramkrishna, Vyas Narayan and Sukhdev Prasad. Plaintiff Shankarlal Agrawal, Vishnukant Agrawal – defendant No.2 and Amritlal Agrawal – defendant No.3 are sons of Vyas Narayan. Ramkrishna Agrawal was issue-less and died as such. He and his wife namely, Ramsundari Bai are said to have adopted Shankarlal Agrawal – the plaintiff herein by registered adoption deed dated 22.03.1972 (it was relied upon by the trial Court and the first appellate Court though not exhibited as an exhibit). Thereafter, partition was held among his sons by Vyas Narayan Agrawal, natural father of the plaintiff, in which plaintiff Shankarlal Agrawal was not given share in the property on account of his having been adopted by Ramkrishna Agrawal and his wife and for the reason that his name having been entered in the revenue records on the property left by Ramkrishna Agrawal being adopted son. Since the relationship of the plaintiff and defendant No.2 – Vishnukant Agrawal

were cordial, they jointly purchased property from defendant No.3 by registered sale deed dated 20-3-1986 in which it is the case of the plaintiff that due to typographical mistake and inadvertent error, the name of the plaintiff's natural father came to be recorded as Vyas Narayan Agrawal in place of his adoptive father Ramkrishna Agrawal that led to filing of instant suit for declaration that the adoption deed dated 22-3-1972 is valid and he is legally adopted son of Ramkrishna Agrawal and consequential relief of rectification of his adoptive father's name in the registered sale deed dated 20-3-1986 was also sought stating inter alia that he has been adopted by Late Shri Ramkrishna Agrawal and his late wife Ramsundari Bai by registered adoption deed dated 22-3-1972 and thereafter, he performed the last rites of his adoptive father and mother and their property has been recorded in his name in the records and he is in possession of their property, but on account of inadvertent mistake in the sale deed dated 20-3-1986 which has crept in, the dispute has arisen between the parties necessitating the plaintiff to file suit seeking aforesaid declaration of the validity of the factum of adoption deed and for consequential relief of correction of the sale deed Ex.P-12.

4. In the above-stated suit, widow of Vyas Narayan Agrawal namely, Rampyari Bai (plaintiff's natural mother) filed her written statement admitting the fact of adoption by her and her husband giving the plaintiff on adoption to Ramkrishna Agrawal and his wife, but later on, during the pendency of suit, on 26-5-2004, she died and could not enter into the witness box and his two sons defendant No.2 Vishnukant Agrawal and defendant No.3 Amritlal Agrawal were substituted as defendants.

5. Defendant No.2 Vishnukant Agrawal (main contesting defendant) filed his

written statement before the trial Court and mainly disputed the adoption deed dated 22-3-1972 stating that the natural mother of the plaintiff has not consented for adoption and in absence of consent by the natural mother, the factum of adoption is not valid.

6. During the course of trial, the adoption deed dated 22-3-1972 was though brought on record, but could not be exhibited as a document and in cross-examination of plaintiff Shankarlal Agrawal, he has categorically stated that the original adoption deed is with defendant No.2 Vishnukant Agrawal and he did not have the possession of the original adoption deed which was not controverted by defendant No.2 in his examination before the Court stating that he also did not have the possession of the said adoption deed and the possession is with the plaintiff.
7. The trial Court after appreciating oral and documentary evidence available on record, by its judgment & decree dated 12-9-2006 decreed the suit holding that the plaintiff was validly adopted by Ramkrishna Agrawal and his wife and his name has already been recorded in the revenue records in the property left by Ramkrishna Agrawal, and the plaintiff was not given any share in the property of his natural father Vyas Narayan Agrawal and merely because the plaintiff is staying with defendant No.2 jointly, it cannot be held that he was not adopted by Ramkrishna Agrawal by valid adoption deed and there is no reason to disbelieve the adoption deed executed by Vyas Narayan Agrawal in favour of Ramkrishna Agrawal adopting the plaintiff to be his adopted son.
8. Feeling aggrieved against the judgment & decree of the trial Court, defendant No.2 Vishnukant Agrawal filed first appeal under Section 96 of the CPC before the first appellate Court. The first appellate Court by its

impugned judgment & decree reversed the judgment & decree of the trial Court principally on the ground that at the time of adoption and execution of adoption deed, the plaintiff was only 9 years old and he has not been adopted in accordance with the Hindu rites and no *datta homam* has been performed which is essential to declare the validity of adoption and consent of natural and adoptive mother is not recorded in the adoption deed dated 22-3-1972, as such, the adoption is not proved in accordance with law.

9. Questioning the legality and validity of the judgment & decree of the first appellate Court, the plaintiff has preferred this second appeal in which substantial question of law has been formulated and which has been set-out in the opening paragraph of this judgment for the sake of brevity

10. Mr. Manoj Paranjpe, learned counsel appearing for the appellant herein / plaintiff, would submit as under: -

1. Existence and execution of the adoption deed dated 22-3-1972 has not been disputed by defendant No.2 while filing written statement and only the fact of non-consent by the natural mother – Rampyari Bai has been raised in the written statement by defendant No.2 and neither the adoption deed nor other requirements of valid adoption has been disputed by defendant No.2, whereas the natural mother Rampyari Bai was defendant No.1 before the trial Court and she has filed written statement before the trial Court and categorically admitted in paragraph 2 of her written statement, the factum of adoption and therefore the admitted fact need not be proved by virtue of Section 58 of the Indian Evidence Act, 1872.

2. Under Section 16 of the Hindu Adoptions and Maintenance Act,

1956 (for short, 'the Act of 1956'), there is a statutory presumption as to registered documents relating to adoption and the Court shall presume that adoption has been made in compliance of the provisions of the Act unless and until it is disproved, as there is no legal evidence brought to rebut the presumption.

3. Since the adoption deed dated 22-3-1972 is an admitted document, therefore, non-exhibiting of the same is a procedural irregularity and it shall not go to the route of the matter and it will only be a procedural irregularity by provisions contained in Section 99 of the CPC.
4. Even the certified copy of the original adoption deed dated 22-3-1972 has been produced laying foundation that the original adoption deed is with defendant No.2 which has not been disputed by defendant No.2 and therefore the first appellate Court is absolutely unjustified in holding that the plaintiff has failed to prove that the factum of adoption in accordance with law.
11. Dr. N.K. Shukla, learned Senior Counsel appearing for respondent No.1 herein / defendant No.2, would submit that the fact of consent of the natural or adoptive mother is not recorded in the adoption deed dated 22-3-1972 which is *sine qua non* for valid adoption in view of the proviso to Section 7 and sub-section (2) of Section 9 of the Act of 1956. He would further submit that for validity of adoption, the ceremony of giving and taking is must which is absolutely lacking in the present case. He relied upon the decision of the Supreme Court in the matter of Laxman Singh v. Rup Kumar¹ and also relied upon the decision of the M.P. High Court in the matter of Bhooloram (Bhola) and others v. Ramlal and

1 AIR 1961 SC 1378

others². He would also submit that since this adoption did not incorporate the essential condition of valid adoption as mentioned in Section 11(vi) of the Act of 1956 which requires the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned, that cannot be a valid adoption. As such, the first appellate Court has rightly held that the essentials of valid adoption has not been proved in accordance with law which is neither perverse nor contrary to the record in view of the fact that the plaintiff did not take care to get the adoption deed marked as exhibit and therefore the judgment & decree of the first appellate Court is strictly in accordance with law and no interference is warranted in the impugned judgment & decree in the second appeal and the second appeal deserves to be dismissed.

12. Mr. H.B. Agrawal, learned Senior Counsel appearing for defendant No.3, would submit that she is formal party and she has admitted the fact of sale by Ex.P-12 in favour of the plaintiff and defendant No.2 jointly.
13. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
14. As noticed in the opening paragraph, the plaintiff and defendant No.2 both are real brothers being sons (natural) of late Vyas Narayan Agrawal. It is the case of the plaintiff that his natural father Vyas Narayan Agrawal and his natural mother Rampyari Bai gave him on adoption to Ramkrishna Agrawal and Ramsundari Bai vide adoption deed dated 22-3-1972. The adoption deed dated 22-3-1972, though has not been formally marked as exhibit, but is an admitted document, as defendant No.2 while filing

written statement on 31-1-2006 did not dispute seriously the fact of adoption by adoptive father and adoptive mother in paragraph 3 of his statement and only disputed the fact that his natural mother Smt. Rampyari Bai did not consent to the said adoption deed dated 22-3-1972. However, natural mother was impleaded at the time of institution of suit as defendant No.1 and she filed written statement on 31-12-2003 categorically admitting the fact of adoption by her and her husband in favour of Ramkrishna Agrawal and his wife Ramsundari Bai by adoption deed dated 22-3-1972. As such, one thing is quite established that the existence and execution of adoption by natural father Vyas Narayan Agrawal and natural mother Smt. Rampyari Bai giving their son Shankarlal Agrawal in adoption in favour of adoptive father Ramkrishna Agrawal and his wife Ramsundari Bai is not in dispute. In that view of the matter, the trial Court considered the adoption deed and returned a finding that the adoption deed dated 22-3-1972 is a valid adoption deed and is in accordance with law and the plaintiff is adopted son of Ramkrishna Agrawal and Smt. Ramsundari Bai.

15. Admittedly, certified copy of adoption deed dated 22-3-1972 was produced before the trial Court, but it was not marked as exhibit. However, the fact remains that the fact of adoption is an admitted fact and by virtue of Section 58 of the Evidence Act, admitted facts need not be proved.

16. At this stage, it would be appropriate to notice Section 58 of the Indian Evidence Act, 1872 which provides as under: -

“58. Facts admitted need not be proved.—No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the

hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

17. Thus, Section 58 of the Evidence Act postulates that things admitted need not be proved. The Supreme Court in the matter of Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and others³ has clearly held that admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.
18. In the matter of Gautam Sarup v. Leela Jetly and others⁴ it has been held by the Supreme Court that an admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him *proprio vigore*.
19. Now, the question would be, what would be the effect of non-marking the adoption deed as exhibit, as the fact of adoption is not in dispute between the parties?
20. It is settled law, where a certified copy of a document is produced, statutory presumption of its correctness must be drawn under Section 79 of the Indian Evidence Act, 1872. It is open to a person doubting its

³ AIR 1974 SC 471

⁴ 2008 AIR SCW 4113

genuineness to prove by summoning the original that the copy was incorrect or to show that the copy was not issued by the competent authority or was issued without complying with the provisions of law governing its issue, then only the Court is not bound to draw the presumption in regard to its genuineness. In the matter of Bhinka and others v. Charan Singh⁵, the Supreme Court has held that under Section 79 of the Evidence Act, a Court is bound to draw the presumption that a certified copy of a document is genuine and also that the officer signed it in the official character which he claimed in the said document provided the certified copy is substantially in the form and purported to be executed in the manner provided by law in that behalf.

21. Order 13 Rule 4 of the Code of Civil Procedure, 1908 deals with endorsements on documents admitted in evidence. Rule 4 of Order 13 of the CPC states as under: -

“4. Endorsements on documents admitted in evidence.—(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely : -

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.”

22. The Travancore-Cochin High Court in the matter of Kannu Asan v. Trav.

Forward Bank Ltd.⁶ relying upon the decision of the Privy Council in the matter of **Sadik Hussain v. Hashim**⁷ held that the documents should be admitted in evidence by complying with the provisions of Order 13, Rule 4 of the CPC. The said decisions have been followed by the Kerala High Court in the matter of **Raman Pillai Krishna Pillai and others v. Kumaran Parameswaran and others**⁸.

23. In **Sadik Hussain** (supra), their Lordships of the Privy Council strongly deprecated the failure of presiding Judge to observe the provisions of Order 13 Rule 4 of the CPC to endorse with his own hand a statement that a document proved or admitted in evidence, was proved against or admitted by the person against whom it was used and stated, and their Lordships further held that they would refuse to read or permit to be read or used any document not endorsed in the manner required.

24. In the matter of **Ratanlal v. Dauda**⁹, **Sadik Hussain** (supra) was considered by the Rajasthan High Court and it was held as under: -

“These observations of their Lordships of the Privy Council certainly show the great importance to be attached to the endorsement required by Order 13 Rule 4, because it avoids all complications at a later stage as to whether a particular document has been admitted in evidence or not.”

25. In the matter of **Mukhi Ram v. Kamta Prasad Balam Das**¹⁰, the Patna High Court has followed the principle of law laid down by the Privy Council in **Sadik Hussain** (supra).

26. In the matter of **Jadibai v. Harsingh**¹¹, the M.P. High Court followed the principle of law laid down in **Sadik Hussain** (supra) and held that when

6 1956 KLT 203

7 AIR 1916 Privy Council 27

8 AIR 2002 Kerala 133

9 AIR 1954 Rajasthan 173

10 AIR 1937 Patna 222

11 1963 J LJ 842 (CN 183)

documents are duly produced – the failure of Courts to make endorsement, documents would not be inadmissible by observing as under:-

“15. It is thus clear that their Lordships of Privy Council in deprecating non-observance of the Rule and in giving a warning of the character referred to above had in their mind the situation in which controversy had legitimately arisen whether certain documents had been properly produced and admitted in evidence or not. It is in connection with such a matter that the non-observance of the Rule should be considered fatal. But where the documents are duly produced without objection and being certified copies of public documents can be taken to be proved and where after such production the opposite party had fair opportunity to rebut that material it cannot be said that the documents should be left out of consideration on account of non-compliance with what may be called a mere formality of making an endorsement as to their admission. Evidently the plaintiffs had no control over the presiding officer and in the entire context such non-compliance should not in any way prevent this Court from referring to those documents.”

It was further held by His Lordship that the irregularity regarding non-compliance with Order 13 Rule 4 of the CPC does not affect the merits of the case; and decree cannot be reversed in appeal. It was observed as under: -

“16. The irregularity regarding non-compliance with Order 13, Rule 4 C.P.C. is one in a proceeding in the suit and section 99 C.P.C. fully justifies the view that for such irregularity which does neither affect the merits of the case or the jurisdiction of the Court the decree of the Court below need not be set aside.”

27. The Supreme Court in the matter of Vimla Devi and others v. National Insurance Company Limited and another¹² has clearly held that despite the documents having been referred by the claimants at the time of recording evidence, if the Court did not exhibit those documents, then in such an event, the claimants cannot be denied of their right to claim compensation on such ground, as non-exhibiting of documents is only a procedural lapse

and that cannot be made basis to reject the claim petition, particularly when the claimants (therein) adduced oral and documentary evidence on record to prove their case.

28. Reverting to the facts of the present case in the light of the principles of law laid down in the aforesaid judgments (supra), since the fact of adoption of the plaintiff by Ramkrishna Agrawal and his wife is an admitted fact and admitted fact need not be proved by virtue of Section 58 of the Evidence Act, 1872, therefore, non-marking of document as exhibit though produced before the trial Court remains an irregularity within the meaning of Section 99 of the CPC, it neither affects the merits of the case nor the jurisdiction of the court which has passed the decree.

29. Now the point that has to be dealt with is, only certified copy of the adoption deed was produced before the trial Court and the original adoption deed was not produced before it. In the cross-examination led by defendant No.2 to the plaintiff, the plaintiff has categorically deposed in his evidence before the trial Court that the original adoption deed is with defendant No.2 which defendant No.2 has not controverted by deposing a note that he is not in possession of the original adoption deed. Learned Senior Counsel for respondent No.1 herein / defendant No.2 has relied upon the judgment of the M.P. High Court in the matter of Smt. Rekha Rana and others v. Smt. Ratnashree Jain¹³ to submit that no foundation has been laid for leading secondary evidence of certified copy of the adoption deed.

30. The Supreme Court in the matter of Dhanpat v. Sheo Ram (deceased) through LRs. and others¹⁴ has clearly held that there is no requirement

13 AIR 2006 MP 107

14 (2020) 4 MLJ 417

that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.

31. In view of the aforesaid established legal position governing the field qua the laying of foundation for adducing secondary evidence, non-filing of application for leading secondary evidence of the plaintiff would not be fatal, as there is a clear cut foundation laid by the plaintiff during the evidence that the original adoption deed is with defendant No.2 and that has not been contradicted by leading evidence that he is not in possession of the original adoption deed as such, there is foundation laid for leading secondary evidence. It is held accordingly.

32. It has been vehemently argued on behalf of the plaintiff / appellant herein that there is a statutory presumption of adoption under Section 16 of the Act of 1956, in view of valid adoption, therefore, the judgment & decree of the first appellate Court holding that since consent of adoptive mother and natural mother is not recorded in the adoption deed, the adoption deed is bad in law.

33. In order to consider the plea, it would be appropriate to notice Sections 6, 7 and 9 of the Act of 1956. Section 6 deals with requisites of a valid adoption which reads as under: -

“6. Requisites of a valid adoption.—No adoption shall be valid unless,—

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”

Section 7 of the Act of 1956 deals with capacity of a male Hindu to take in adoption. It reads as under: -

“7. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.”

Section 9 of the Act of 1956 speaks about persons capable of giving in adoption. Sub-sections (1) and (2) of Section 9 read as follows: -

“9. Persons capable of giving in adoption.—(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the word or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

xxx xxx xxx

xxx xxx xxx”

Section 11 of the Act of 1956 deals with other conditions for a valid

adoption. It states as under: -

“11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:

(i) if any adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of *datta homam*, shall not be essential to the validity of an adoption.”

34. Thus, clause (vi) of Section 11 of the Act of 1956 lays down another essential requirement for a valid adoption. In Laxman Singh (supra), their Lordships of the Supreme Court have clearly held that there should be giving and taking the child in adoption. It is not essential that giving and taking should be in any particular form. All the same, the formality of giving and taking the child should be observed. It is not essential to have a formal ceremony. No particular form is prescribed for the ceremony, but

the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The parents after exercising their volition to give and take the boy in adoption may both or either of them delegate the physical act of handing over the boy or receiving him as the case may be to a third party.

35. Similarly, in the matter of L. Debi Prasad (dead) by L.Rs. v. Smt. Tribeni Devi and others¹⁵, their Lordships have held that the giving and receiving of boy was absolutely necessary to validate an adoption under the old Hindu law but the law does not require that there should be any particular form so far as giving and acceptance are concerned. For a valid adoption all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption and the boy shall be handed over and taken for that purpose.

36. Similarly, the M.P. High Court in the matter of Moolchand v. Amrit Bal¹⁶ has clearly held that it is sufficient if the natural parent be asked to give his or her son in adoption and the boy be handed over by him or her to the adoptive parent.

37. The Supreme Court in the matter of Kartar Singh v. Surjan Singh¹⁷ has held that the very act of giving and taking is in itself symbolic of transplanting the adopted child from the family of its birth to the adoptive family.

38. On examination of the facts of the case in the light of the principles of law laid down in the above-noticed judgments, it is quite vivid from the adoption deed that natural father of the plaintiff Vyas Narayan Agrawal

15 AIR 1970 SC 1286

16 1976 MPLJ 382

17 AIR 1974 SC 2161

gave the plaintiff in adoption to Ramkrishna Agrawal, which he took with the consent of his wife Smt. Ramsundari Bai duly recorded in the deed. The consent of natural mother is apparent from the written statement filed before the trial Court and performance of *datta homam* is not necessary as provided in the proviso to Section 11 of the Act of 1956, as such, the requirements of valid adoption in the present case are fully satisfied.

39. Now, it would be appropriate to notice Section 16 of the Act of 1956 which states as under: -

“16. Presumption as to registered documents relating to adoption.—Whenever any document registered under any law for the time being in force is produced before any 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 provisions of this Act unless and until it is disproved.”

40. A careful glance of the aforesaid provision would show that it mandates that the court shall presume of the adoption which is in parity with that of Section 4 of the Evidence Act. Section 4 of the Evidence Act defines the term “shall presume” which states as under: -

“4. “May presume”.—Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

“Shall presume”.—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.”

“Conclusive proof”.—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given the purpose of disproving it.”

41. The term “shall presume” has also been incorporated in Section 16 of the Act of 1956. Section 16 specifically requires that in the event of

production of a registered document of adoption, the party challenging the document has to disprove that the adoption has not been made in compliance with the provisions of this Act. The said imperative provision imposes heavy onus on the party challenging the registered adoption deed to disprove the claim of adoption. The words 'the court shall presume' impose obligation on the Court to presume that the adoption has been made in compliance with the provisions of the Act of 1956. If the execution of registered deed of adoption is challenged, the person, who challenges the same, has to disprove that the adoption has not been made in compliance with the provisions of this Act.

42. The Supreme Court in the matter of Laxmibai (dead) through LRs. and another v. Bhagwantbuva (dead) through LRs. and others¹⁸ with regard to presumption under Section 16 of the Act of 1956 held as under: -

“30. Furthermore, in *Deu v. Laxmi Narayan*¹⁹, the presumption of registered documents under Section 16 of the Act was discussed. It was held that in view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. It was further held, that in view of Section 16 it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings.

31. Mere technicalities therefore, cannot defeat the purpose of adoption, particularly when the respondent-defendants have not made any attempt to disprove the said document. No reference was ever made either by them, or by their witnesses, to this document i.e. registered adoption deed. Undoubtedly, the natural parents had signed along with 7 witnesses and not at the place where the executants could sign. But it is not a case where there were no witnesses except the executants. Instead of two witnesses, seven attesting witnesses put their signatures.”

18 (2013) 4 SCC 97

19 (1998) 8 SCC 701

43. The proposition of law laid down in Laxmibai (supra) has been followed with approval by the Supreme Court in the matter of Bijender and another v. Ramesh Chand and others²⁰.
44. Thus, from the aforesaid discussion, it is quite vivid that if the adoption deed is a registered document, then the statutory presumption is attached with the adoption deed and the said adoption shall be presumed to have been made in compliance of the provisions of the Act of 1956, as it has been held to be mandatory by the M.P. High Court in the matters of Naresh v. Ichrajbai²¹ and Gangabai v. Ramsingh²².
45. Reverting to the facts of the case as noticed herein-above, though in the suit, the plaintiff sought declaration that the adoption deed is a valid document, but in the written statement, defendant No.2 only questioned that the natural mother (Rampyari Bai) has not consented to adoption which the natural mother by filing her written statement clearly admitted the fact of giving her consent for adoption by her and her husband by registered adoption deed to Ramkrishna Agrawal and his wife, as such, the fact of adoption was not in dispute. Rather it was an admitted fact and admitted fact need not be proved by virtue of Section 58 of the Evidence Act. Defendant No.2 did not take any objection that the consent of adoptive mother is not recorded in the adoption deed, particularly when the adoptive mother and the natural mother both died long back which is apparent from Exs.P-6 & P-8. Ramsundari Bai – adoptive mother, died on 13-12-1996 and even the natural father and the natural mother had also died and they are not available for giving evidence.

20 (2016) 12 SCC 483

21 1979 M.P.L.J. 591

22 1960 J.L.J. SN 251

46. The Supreme Court in the matter of Voleti Venkata Ramarao v. Kesaparagada Bhaskararao and others²³ has clearly held that if adoption deed is very old and adoptive father and natural parents have died, it would be difficult to presume that the adoption deed is not a valid document and is not in accordance with law, especially when the adoption is 55 years old. It was observed by their Lordships as under: -

“4. ... Having regard to the long lapse of time and the recognition of Rajeswararao as the adopted son of Bhaskara Rao, the strongest presumption arises in favour of the validity of the adoption. The law on this point is correctly stated in Mulla’s Hindu Law, 13th Ed., art. 512 page 519:—

“But when there is a lapse of 55 years between the adoption and its being questioned, every allowance for the absence of evidence to prove such fact must be favourably entertained. It stands to reason that after a very long term of years, and a variety of transactions of open life and conduct upon the footing that the adoption was a valid act the burden must rest heavily upon him who challenges its validity.” see also Venkataseetarama Chandra Row v. Kanchu Marthi Raju, AIR 1925 PC 201, 202.

The presumption in this case is very heavy considering that all the parties to the adoption and all those who could have given evidence in favour of its validity have passed away. The appellant has not rebutted this presumption and has not shown that Seshamma did not attain the age of discretion in May 1904 and was not competent to make the adoption. The courts below rightly found in favour of the factum and validity of the adoption. There is no merit in this appeal.”

47. In L. Debi Prasad (supra), it has been held by their Lordships that in the case of a Hindu, long recognition as an adopted son, raises a strong presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family.

48. Similarly, the Division Bench of the M.P. High Court in the matter of

Ganpati Chintamani v. Damodar Bhiku Bhutt²⁴ has held that though the onus of proving an adoption is on the party who alleges it, but after a lapse of long years, when the evidence must have naturally disappeared, it is too much to expect direct testimony of witnesses of the ceremony of actual giving and taking. When a person has for nearly half a century enjoyed the status of an adopted son and it is not possible to get witnesses who were actually present at the time and could depose to the performance of the ceremony, it must be presumed that all the necessary ceremonies were duly and regularly performed.

49. The principles of law flowing from the above-cited and noticed judgments squarely apply to the facts of the present case, as natural mother Rampyari Bai and adoptive mother Ramsundari Bai died on 26-5-2004 (Ex.P-6) and 13-12-1996 (Ex.P-8), respectively, and natural father and adoptive father have also died and therefore, after 49 years from the date of execution of adoption deed dated 22-3-1972, the adoption deed cannot be disputed following the decisions of the Supreme Court in **Voleti Venkata Ramarao** (supra), particularly when defendant No.2 in his statement before the Court has clearly admitted that the plaintiff was not given share in the partition of his natural father Vyasnarayan Agrawal and further admitted that the plaintiff is the legal successor of Ramkrishna Agrawal and Ramsundari Bai being their adopted son and he is in possession of property of his adoptive father and presumption under Section 16 of the Act of 1956 about its validity shall be presumed and it is held to be a valid adoption deed.

50. It is accordingly held that the first appellate Court has committed grave

legal error in holding that the adoption deed dated 22-3-1972 is not a valid adoption deed and the factum of adoption has not been proved by the plaintiff in accordance with law.

51. In the result, the judgment & decree of the first appellate Court deserve to be and are accordingly set aside and that of the trial Court are restored. The substantial question of law is answered accordingly and the second appeal is allowed to the extent laid down herein-above. No order as to cost(s).

52. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge