



2026:AHC:184403

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. – 1210 of 1980

Budhi Ram And Others		Appellant(s)
	Versus	
Ram Kesh		Respondent(s)

Counsel for Appellant(s)	:	Ashish Kumar Singh, Jitendra Kumar Srivastava, S.K.Gaur, Sunil Kumar Gaur
Counsel for Respondent(s)	:	J.P.Pandey

Court No. - 51

HON'BLE ARUN KUMAR, J.

1. Heard Sri Ashish Kumar Singh, learned Senior Counsel, assisted by Sri Jitendra Kumar Srivastava, learned counsel for the appellants. None appears for the respondent.
2. The present second appeal under Section 100 of the Code of Civil Procedure arises from concurrent judgments rendered by the courts below whereby the suit instituted by the plaintiff-respondent for cancellation of the sale deed has been decreed, by the judgment and decree of the Trial Court dated 16.08.1979, as upheld by the judgment and decree of the Lower Appellate Court dated 02.02.1980.
3. The dispute relates to certain agricultural plots which, according to the plaintiff, were bhumidhari holdings of one Badlu. Badlu was stated to be an adherent of the principles of the Arya Samaj.

The plaintiff, Ram Kesh, claimed that he was the biological son of Badlu through the plaintiff's mother, who was at the relevant time married to Budh Ram. The plaintiff was born during the subsistence of that marriage out of the relationship between his mother and Badlu. The plaintiff's case was that Badlu subsequently adopted him as his son on 08.11.1970. The plaintiff alleged that, notwithstanding his status as the adopted son of Badlu, the defendants took advantage of Badlu's condition by taking him away on the pretext of getting him medically treated and thereafter procured from him sale deed dated 18.06.1973/19.06.1973, in their favour in respect of the disputed agricultural land. The plaintiff alleged that the transaction was fraudulent and that Badlu had not voluntarily and validly executed the sale deed. The plaintiff consequently instituted the suit seeking cancellation of the sale deed.

4. The defendants-appellants contested the suit. Their principal stand was that Badlu had voluntarily and knowingly executed the sale deed, that the document was genuine, and that the plaintiff was not the adopted son of Badlu and, therefore, had no right to maintain the suit. The defendants also disputed the alleged adoption and relied upon the absence of an appropriate entry concerning the plaintiff in the family register.
5. Before the Trial Court, the plaintiff examined, amongst others, P.W.1 Ajore Pandey, P.W.2 Pandit Mahesh, P.W.3 Tribeni, P.W.4 Ram Sewak and P.W.5 Budh Ram, the husband of the plaintiff's mother. Their evidence was relied upon to establish the ceremony of adoption. The plaintiff also relied upon entries in the Pariwar Register, school certificate and Gamma Pass Book, wherein he was shown as the son/adopted son of Badlu.
6. The defendants, on the other hand, examined witnesses including D.W.1 T.H. Siddiqui, Handwriting and Finger Print Expert,

D.W.2 Budh Ram son of Charan, D.W.3 Muni Ram and D.W.4 Hari Prasad. Their evidence was relied upon principally in support of the sale transaction and the defence that Badlu had not adopted the plaintiff. The First Appellate Court, however, found that the expert evidence did not materially assist the defendants because the original document with which the disputed document was allegedly compared had not been produced.

7. The learned Trial Court, after framing issues, held that the plaintiff was the adopted son of Badlu and consequently had the right to maintain the suit. It further held that the disputed sale deed was not a valid act of Badlu and was liable to be cancelled, and accordingly decreed the suit in favour of the plaintiff. The evidence considered by the courts below indicated that the adoption ceremony had taken place in or about 1970, and that the customary ceremony of giving and taking of the child had been performed.
8. The defendants preferred Civil Appeal No. 273 of 1979 before the District Judge, Basti. The learned First Appellate Court examined both the question of adoption and the validity of the sale transaction. It upheld the Trial Court's finding that the adoption had been duly proved, and further held that the evidence surrounding the sale transaction, including the circumstances relating to the consideration and the endorsement of the Sub-Registrar, justified the conclusion that the sale deed was not a genuine and valid document but had been fraudulently obtained.
9. This Court, while admitting the present second appeal by its order dated 28.07.1980, framed following substantial questions of law for determination:
 - (i) Whether a man could adopt his own illegitimate son?

(ii) Whether the finding of the two courts below that the sale deed in question was not duly executed for consideration is vitiated in law?

10. It is contended by the learned Senior Counsel that the adoption of an illegitimate child by his natural father was not permissible under the Hindu Adoption and Maintenance Act, 1956, as under the aforesaid Act, the child being given in adoption should have his relationship severed from the family of his natural parents. In the case at hand, the natural father himself adopts his illegitimate son, which runs contrary to the provisions of Section 12 of the Act. It has been further contended that, according to Section 9, the mother can give the child in adoption only with the consent of his father, unless his father is dead, has completely and finally renounced the world, or has ceased to be a Hindu. Therefore, the adoption of the petitioner by his mother in favour of his father was not recognised in law. It was further contended that the reasoning of the District Judge in invoking Section 9(4) of the Act cannot be accepted, as the said provision was not applicable at the time of the alleged act of adoption.
11. The learned Senior Counsel for the appellant further contended that the sale deed executed by Badlu in favour of the appellants was valid and genuine. There is nothing on record to establish the mental incapacity of Badlu. Moreover, a registered sale deed carries a presumption of valid execution under Section 91 of the Indian Evidence Act, 1872, and no amount of oral evidence can prove to the contrary between the parties, as contemplated under Section 92 of the Indian Evidence Act, 1872. It was further contended that the endorsement on a registered document admitted for registration and certified by the registering officer by issuance of a certificate of registration proves the execution of the document, which cannot be rebutted merely on conjectures and

surmises. The attention of the Court was drawn to the provisions of Sections 58, 59 and 60 of the Registration Act, 1908.

12. It has been further contended that the discrepancy in the statements of the witnesses regarding the consideration would not nullify the registered document of sale. The findings of fraud and undue influence are based on no evidence or pleadings, as the averments in the plaint do not dispute the fact that the sale deed was not executed by Badlu.
13. I have heard learned Senior Counsel for the appellant and have carefully considered the judgments of the courts below, the grounds taken in the memorandum of appeal and the evidence noticed therein.
14. The first question requires examination of the statutory law as it stood on the date of the alleged adoption. The adoption pleaded by the plaintiff was admittedly of the year 1970. The governing statute was, therefore, the Hindu Adoptions and Maintenance Act, 1956, as it stood at that time. The following provisions of Hindu Adoption and Maintenance Act, 1956, as existing at the relevant point of time are as under:-

2. Application of Act. (1) This Act applies—

(a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

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 (3) and sub-section (4), the father, if alive, shall alone have right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother 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.

(3) The mother may give the child in adoption if the father is dead or 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.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation.—For the purposes of this section—

(i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother;

SECOND APPEAL No. – 1210 of 1980

(ia) “guardian” means a person having the care of the person of a child or of both his person and property and includes-

(a) a guardian appointed by the will of the child’s father or mother, and

(b) a guardian appointed or declared by a court; and

(ii) “court” means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

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

(i) if the 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 adoption.

12. Effects of adoption.— An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property,

including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

15. The argument of the appellants proceeds upon the assumption that the mere fact that Badlu was the natural or putative father of the plaintiff necessarily rendered it legally impossible for him to adopt the plaintiff. I am unable to accept that proposition.
16. The Act contains no such prohibition. On the contrary, Section 10, which prescribes the persons capable of being adopted, does not exclude an illegitimate child merely on the ground of his illegitimacy. Section 2 (bb) of the Act itself expressly recognises, for the purposes of its application, children who are legitimate or illegitimate. Section 10 prescribes that the person to be adopted must be a Hindu, must not already have been adopted, must not be married unless a custom permits such adoption, and ordinarily must not have completed fifteen years of age. Illegitimacy is conspicuously absent from the statutory disqualifications.
17. The argument based upon Section 11(i) also does not assist the appellants. Section 11(i), in the case of adoption of a son, prohibits an adoptive father or mother from having a Hindu son, son's son or son's son's son living at the time of adoption, whether by legitimate blood relationship or by adoption. The statutory language thus specifically refers to legitimate blood relationship or adoption. It does not treat the existence of an illegitimate son as the statutory disqualification contemplated by Section 11(i).
18. The more substantial question, therefore, concerns the person competent to give the illegitimate child in adoption. This is where the reasoning of the learned District Judge requires correction.
19. The learned District Judge proceeded substantially on the footing that under Section 9(4) either the father, mother or guardian had capacity to give the plaintiff in adoption and that, since the

maternity of the plaintiff was not in dispute, his mother could give him in adoption to Badlu. That reasoning, insofar as it invokes Section 9(4), cannot be accepted. Section 9(4) deals with the exceptional case of a guardian giving a child in adoption with the previous permission of the court, in circumstances such as the death, renunciation, abandonment or incapacity of both parents, or where parentage is unknown. There was no occasion to invoke that provision in the present case merely because the plaintiff was illegitimate.

20. The proper question is whether, under the law applicable in 1970, the natural mother of an illegitimate child had capacity to give the child in adoption to the person who desired to take him in adoption.
21. The answer is in the affirmative. The judicial interpretation of Section 9 has recognised the distinction between the natural mother of an illegitimate child and the putative father for the purpose of giving the child in adoption. In **Sunilkumar v. Anila V., dated 01.06.2010**, passed in **Matrimonial Appeal No. 1012 of 2009**, decided by the Kerala High Court, the court considered the adoption of an illegitimate child and referred to the settled position that the mother of an illegitimate child can give the child in adoption without the consent of her paramour, the putative father. The court consequently held that the consent of the putative father was not necessary.
22. The High Court of Mysore in the case of **Sadashiv Rama Patole Vs. Balakrishna and others, 1958 SCC OnLine Kar 176**, while considering the claim of a natural father for adoption of his illegitimate son has held that such adoption cannot be held to be invalid. The relevant paragraphs 41, 42, 43 and 44 of the aforesaid judgment are reproduced as under:-

“41. The second ground mentioned in *Apya Shettyu Talawar v. Rcmmdkka Apya Talawar* is that an adulterous son cannot

perform religious obsequies such as Shraddha, Sapindi Karana etc., to his adoptive father. It is based on the following reasoning:

“If therefore he is incapable of finding his natural father so as to perform his shradda, in my opinion, it is difficult to see how he could minister to the spiritual requirements of the adoptive family. If therefore he has no genitive father to whom he can offer pinda, he will not be able to perform the ‘sapindikarana’ of the adoptive Father.....”

42. I have already mentioned that where the parties belong to a community like the Lingayats who do not perform any such religious ceremony as Shradha or sapindi-karana, the above considerations ought not to apply. Besides, in the present case, the father being not unknown as in the case of a bastard child, no invalidity can be attached to the adoption on this ground. The next ground urged in that case is that an adulterous child is not entitled to heritage. Hence if such a child is given in adoption, he cannot be said to be entitled to inherit to his adoptive father. Wassoo-dew, J. quoting from Vishnu Smrithi and Vasistha. states that, according to the latter, the 12 classes of sons are divided into two groups of six each and that the first six are heirs while the second six are kinsmen but not heirs. It is in the latter group that an illegitimate son is classed. This, according to the learned Judge, shows that an aurasa son born to one who is not a wedded wife cannot be fit to confer spiritual benefit on his father. He, therefore, concludes that a bastard child will be much less competent to promote spiritual welfare to the adoptive father. In this connection, I think it better to quote from the judgment of Venkata Rahga Iyengar, J. in *Talawar Hanumi v. Talawar Guthya*

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“That even sons of immoral union, among those 12 kinds of sons could offer pindas is clear from the following passage in Manu IX, 130:— “Sages pronounce these eleven sons beginning with the appointed wife's son to be substitutes of the legitimate son for the sake of preventing the failure of obsequies.” Yajnavalkya in Vyavahara-dhyaya, verse 132, says after enumerating the 12 kinds of sons— “Among these, in the absence of preceding, each next succeeding is a giver of the funeral cake and the inheritor of a share.” Mitakshara's comment on this verse is as follows:— “Of these aforementioned sons of 12 kinds, in the absence of the preceding, each next in order as enumerated, must be considered to be the giver of the funeral cake i.e. performer of the Shraddha. and the inheritor of a share i.e. successor to the effects.” The five sons of Pandu. as can be gathered from the Mahabharata, were all Kshetrajyas, inasmuch as they were not born to Pandu, but were begotten by Yama, Vayu, Indra and the two Asvins on the two wives of Pandu. We find from the Mahabharata that, though Pandavas were all Kshetrajyas and not the aurasa sons of Pandu, they were not considered as sinful, but, on the other hand, they were recognised as being competent to perform ceremonies and sacrifices and

that they were also initiated into all the Samskaras With Vedic Mantras, just as in the case of aurasa sons,”

43. It may further be noted that in the above quotation from *Apya Shettya Talawar v. Rammakka Apya Talaioar Beaumont*, C.J. seems to have made an exception in the case of dasiputras. The worst that could be said of the plaintiff in the present case is that he is a dasiputra. It would not be possible to apply the invalidity to him on the ground that he is an illegitimate son. In this connection, it would be worth while noting that in *Vellyappa v. Nalaraja*(5), the Privy Council has held that an illegitimate son of a Sudra by a continuous concubine has the status of a son, that he is a member of the family and that the share of inheritance given to him is in recognition of his status as a son. If so, it is difficult to understand how the adoption of such a person can be held to be invalid.

44. For these reasons, I am inclined to come to the conclusion that even on the assumption that the plaintiff is an illegitimate son born of Sundara to Sakharam. his adoption cannot be held to be invalid.”

23. A similar view was taken by a coordinate bench of **Madras High Court in the case of Ashok Kumar Vs. Inspector General of Registration and others, 2024 SCC OnLine Mad 2111**. The relevant paragraphs 5, 6 & 7 of the aforesaid judgment are reproduced as under:-

“5. Section 6 of the Hindu Adoptions and Maintenance Act, 1956 sets out the requisites of a valid adoption. One of the conditions is that the person giving in adoption has the capacity to do so. Section 9(1) and (2) of the Act 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 world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]”

The first question that arises for consideration is whether the adoption is invalid since consent has not been obtained from the biological father of “A”. The answer is found in Section 6 (b) of the Hindu Minority and Guardianship Act, 1956. It states that in the case of a Hindu minor illegitimate boy or an illegitimate unmarried girl, the mother is the

natural guardian and after her, the father. The traditional view was that the mother is the lawful guardian of her illegitimate children. The High Court of Lahore held that where the father is known, he has preferential right (*Prem Kaur v. Banarsi Das* (AIR 1934 Lah 1003)). But the High Court of Madras in more than one decision (*Rajlakshmi v. Ramachandran*, AIR 1967 Mad 113), (*Dorai Raj v. SR Laskhmi*, AIR 1947 Mad 172) had taken a contra view. In any event, Section 6 of the Hindu Minority and Guardianship Act, 1956 had clarified the legal position. On the Act coming into force, the mother of the illegitimate minor child alone is the guardian of his person and property. Therefore, “K” is competent to give her biological child “A” in adoption. The proviso to Section 9(2) of the Act will kick in only if the father is around to claim paternity over the child. In this case, the father has not even been identified. “K” has not done so probably because that will expose him to prosecution under POCSO Act, 2012. One should therefore proceed on the premise that the biological father of the child is not available. There is a well known legal maxim “Lex Non Cogit Ad Impossibilia” (Law does not compel a person to do that which he or she cannot possibly perform). “K” cannot possibly obtain consent from the natural father of the child. Therefore, the proviso to sub-section (2) of Section 9 of Hindu Adoptions and Maintenance Act, 1956 cannot apply.

6. The expression “after” occurring in Section 6(a) of the Hindu Minority and Guardianship Act, 1956 was considered by the Hon'ble Supreme Court of India in *Githa Hariharan v. RBI* (1999) 2 SCC 228. It was held therein that the word “after” need not necessarily mean “after the lifetime”. It would mean “in the absence of”, the word “absence” referring to the father's absence from the care of the minor's property or person for any reason whatsoever. If the father is wholly indifferent to the matters of the minor and the mother is exclusively in charge, the father can be considered to be absent and the mother can be recognized as natural guardian and she can act validly on behalf of the minor. The very same approach can be adopted in the present case also. “A” was born on account of the illicit intimacy between “K” and “X”. “X” though alive is absent for all practical purposes in the life of “A” and it is the biological mother who is in charge of his person. In these circumstances, “K” cannot be called upon to obtain the consent of “X”. I hold that the proviso to sub-section (2) of Section 9 of the Hindu Adoptions and Maintenance Act, 1956 will not apply when the mother/father of the child to be given in adoption is absent in the sense laid down *Githa Hariharan's* case.

7. The reason given in the impugned refusal check slip betrays the patriarchal mind set of the registering authority. The underlying assumption is that an unmarried woman above the age of 18 years cannot give her biological child in adoption.

The marital status of the woman cannot be the determining factor. Section 9 of the Hindu Adoptions and Maintenance Act, 1956 uses the expressions “father” and “mother”. It does not use the words “husband” and “wife”. Even the proviso to sub-section (2) of Section 9 does not envisage obtaining the consent of one's spouse, if alive. It is possible that a child may be born through live-in relationship or on account of illicit intimacy. The mother may like to give the child in adoption in order to ensure proper future for the child. The father may have abandoned his child. He may not be around to assume responsibility. The reason set out in the impugned order is patently unsustainable.”

24. The aforesaid authorities have to be considered in the context of the peculiar facts of the present case. The plaintiff was born during the subsistence of the marriage of his mother with Budh Ram, although the plaintiff's case, accepted by the courts below, is that Badlu was his biological father. The plaintiff was thereafter given in adoption by his biological mother to Badlu. The question, therefore, is not merely whether an illegitimate child can be adopted, but whether there was any statutory prohibition against Badlu, the biological father, taking the plaintiff in adoption when the child had been born during the subsistence of his mother's marriage with Budh Ram.
25. In my considered view, the mere circumstance that Badlu was the biological father of the plaintiff does not, by itself, create a statutory prohibition against his taking the plaintiff in adoption. The capacity of a person to give a child in adoption and the capacity of another person to take the child in adoption are distinct matters. Section 9 deals with the former, whereas Sections 6 and 7 deal with the capacity and right of the person taking a child in adoption. The Act contains no express provision which disqualifies a Hindu male from taking in adoption a child who is his biological but illegitimate son.
26. The appellants' reliance upon Section 12 also does not advance their case. Section 12 prescribes the legal consequences flowing from an adoption validly made. The severance of the ties of the

child with the family of birth is the legal effect of a valid adoption; it is not an independent statutory prohibition against a biological father taking his illegitimate child in adoption. The validity of the adoption has instead to be tested with reference to the requirements of Sections 6, 7, 9, 10 and 11 of the Act.

27. The more substantial objection concerns the capacity of the plaintiff's mother to give the plaintiff in adoption. The alleged adoption took place on 08.11.1970 and, therefore, the provisions of Section 9 applicable on that date have to be considered. The learned District Judge was not correct in invoking Section 9(4) as the statutory basis for sustaining the adoption. The learned District Judge was not correct in invoking Section 9(4) of the Act, since the said provision was not applicable to the alleged adoption of 08.11.1970. The present case was not one founded upon such permission or upon the circumstances contemplated by that provision.
28. The incorrect reference to Section 9(4), however, does not by itself render the ultimate finding regarding the adoption unsustainable. The question has to be examined on the statutory position applicable to the adoption in question and upon the findings of fact recorded by the courts below. The evidence accepted by both courts establishes that the plaintiff's biological mother gave the plaintiff in adoption to Badlu and that Badlu took the plaintiff in adoption. There is thus no occasion to invalidate the adoption merely because Badlu was also the biological father of the plaintiff.
29. The requirement contained in Section 11(vi) is of particular significance. The child must actually be given and taken in adoption with the intention of transferring the child from the family of his birth to the family of adoption. The evidence of P.Ws. 2, 3 and 4, as concurrently accepted by the courts below, specifically establishes the ceremony of giving and taking. The

fact that the person who took the plaintiff in adoption was his biological father does not render that ceremony legally meaningless. What is material is whether the parties intended thereby to create the legal relationship of adoptive father and adopted son and whether the statutory conditions were otherwise satisfied.

30. The Supreme Court in **Lakshman Singh Kothari v. Smt. Rup Kanwar**, AIR 1961 SC 1378, emphasised that giving and taking is the operative part of the adoption. No particular form of ceremony is prescribed, but there must be a real act of giving and taking evidencing the transfer of the child.
31. The burden of establishing adoption is consequently a serious one. In **Kishori Lal v. Mst. Chaltibai**, AIR 1959 SC 504, the Supreme Court cautioned that because an adoption changes the course of succession, the evidence supporting it must be free from suspicion and sufficiently consistent and probable. The same principle has subsequently been reiterated by the Supreme Court.
32. It is against that legal background that the evidence in the present case has to be considered.
33. The trial court examined the evidence of the witnesses produced to prove the adoption. P.W.1, the village official, was examined with reference to the Parivar Register and explained the entry relating to the plaintiff. P.W.2, Pandit Mahesh, stated that he knew Badlu because the house of Badlu's father-in-law was situated in the same village where the witness's father resided and that he had acted as Pandit at the ceremony of adoption. He specifically stated that the ceremony of adoption of the plaintiff as the son of Badlu was performed in the year 1970. The objection that he was not the Pandit who ordinarily performed Badlu's religious ceremonies was considered and rejected by the trial court. The court observed that adoption was not an everyday or

ordinary ceremony and there was nothing inherently improbable in Badlu engaging another competent Pandit to conduct it according to the Shastric rites.

34. P.W.3 Triveni specifically deposed that the ceremony of giving and taking the child was performed in his presence. P.W.4 Ram Sewak was an attesting witness and proved his signature as well as the signature of the executant on the relevant document. P.W.5 Budh Ram, the husband of the plaintiff's mother, stated that about eight or nine years earlier his son had been taken in adoption by Badlu. The learned Munsif found that these witnesses had specifically spoken to the ceremony of giving and taking and had withstood cross-examination. He consequently recorded a finding that the ceremony of adoption had been fully proved.
35. The first appellate court independently considered this evidence. It noticed the challenge to the testimony of P.W.2 and found no cogent reason to reject it. It further noticed the evidence of P.Ws. 3, 4 and 5 and held that the finding of the trial court that the adoption had been proved did not warrant interference.
36. The documentary evidence was also considered. The plaintiff was recorded as the adopted son of Badlu in the Khatuni extracts, and his name as the son of Badlu also appeared in the school certificate and Ganna Pass Book. The trial court was conscious that such entries by themselves do not constitute the adoption ceremony; nevertheless, they constituted corroborative evidence when read with the oral evidence. The court also dealt with the Parivar Register and the allegation that the relevant entry had been scored out.
37. The appellants have urged that a document relating to the adoption, which according to the plaintiff was executed at the time of adoption, was not produced and that therefore the oral evidence should not have been accepted. This submission cannot

be accepted as a proposition of law. The adoption took place in 1970. The special provision introduced by the 1976 amendment to Section 16, requiring a registered document as the only admissible proof of giving and taking for adoptions made on or after 1 January 1977, was not applicable to an adoption of 1970. The statutory text expressly makes the amendment prospective.

38. Accordingly, in respect of an adoption made in 1970, the absence of a documentary adoption deed is not by itself fatal. The factum of giving and taking could be established by legally admissible evidence. Whether that evidence was sufficient, was essentially a question of fact, and both courts below have concurrently found it sufficient.
39. I therefore hold that there was no absolute statutory prohibition under the Hindu Adoptions and Maintenance Act, 1956 against a Hindu male taking in adoption his own illegitimate son. The fact that Badlu was the biological father of the plaintiff does not, by itself, invalidate the adoption. The validity of the adoption has to be tested with reference to the statutory requirements applicable on the date of adoption, including the capacity of the person giving the child, the capacity of the person taking the child and the actual giving and taking with the requisite intention. Although the learned District Judge was not correct in invoking Section 9(4) of the Act, the said error in the statutory reasoning does not, in the facts of the present case, render the concurrent finding of the courts below regarding the adoption unsustainable.
40. The more important question, therefore, is whether the concurrent finding recorded by the courts below with regard to the impugned sale deed suffers from any error of law so as to warrant interference in the present second appeal.
41. The appellants have contended that the sale deed executed by Badlu in their favour was a genuine and valid registered

instrument; that Badlu had voluntarily executed the same; and that the consideration recited therein had been paid to him. It has further been contended that the registration of the sale deed, coupled with the endorsement made by the registering officer, establishes its due execution and that the courts below erred in discarding the registered document on the basis of oral evidence. Reliance has also been placed upon Sections 58, 59 and 60 of the Registration Act, 1908.

42. There can be no quarrel with the proposition that a registered document is a piece of evidence entitled to due consideration and that the fact of registration carries evidentiary significance. The endorsement made by the registering officer with regard to presentation, admission and registration of the document is a relevant circumstance. But the fact of registration does not, by itself, conclude the question where the execution of the document is impeached on the ground of fraud, want of free and conscious consent, undue influence or other circumstances vitiating the transaction. The civil court is required to examine the entire evidence and the circumstances surrounding the execution of the document.
43. Sections 91 and 92 of the Indian Evidence Act, 1872, do not lay down that a registered instrument is immune from challenge on the ground of fraud or that its execution and the truth of every recital contained therein stand conclusively established merely by reason of registration. Where the very genuineness or voluntary character of the transaction is questioned, the court is entitled to consider the evidence led by the parties for determining whether the document represents the true and voluntary act of the executant.
44. In the present case, the courts below have not ignored the registered character of the sale deed. The learned District Judge considered the endorsement of the Sub-Registrar along with the

oral evidence and the surrounding circumstances of the transaction. Upon such consideration, he concurred with the learned Munsif that the sale deed was not a genuine and valid transaction and that it had been obtained fraudulently.

45. The circumstances noticed by the learned District Judge are material. The sale deeds recited payment of Rs.6,000/- to the executant. The stamps were purchased on 16 June 1973 and 18 June 1973, whereas the sale deeds were stated to have been executed on 18 June and 19 June 1973 and thereafter presented for registration. The oral evidence led by the defendants with regard to the payment of consideration, however, was not consistent.
46. D.W.2 Budh Ram stated in his examination-in-chief that Badlu had taken Rs.18,000/-. In cross-examination, he stated that although Badlu had demanded Rs.18,000/-, he had been paid Rs.6,000/- before the Sub-Registrar and that the sale deed had been executed for that amount. D.W.3 Muni Ram stated that Badlu had admitted having received Rs.6,000/-, but he was admittedly not a witness to the payment. D.W.4 Hari Prasad gave yet another version, stating that he had met Badlu at the registry office, that Badlu had agreed to sell half his share in his favour, that they returned to their house, where Badlu received Rs.3,000/- from him, and that the sale deed was thereafter registered on the following day. The learned District Judge was entitled to take these material inconsistencies into consideration while assessing the genuineness of the transaction.
47. It is, therefore, not correct to contend that the sale deeds were cancelled merely because there was no independent receipt evidencing payment of consideration. The finding of the courts below was based upon the cumulative effect of the circumstances proved before them, including the evidence relating to the condition of Badlu, the manner in which he was taken to the

registry office, the evidence concerning payment of consideration, the material inconsistencies in the statements of the defendants' witnesses and the circumstances appearing from the registration of the documents.

48. The question whether consideration was actually paid is distinct from the question whether the document was voluntarily and consciously executed by the person whose property was purportedly conveyed. A recital in a registered instrument that consideration has been received is a circumstance which may be taken into consideration, but such recital cannot, by itself, preclude the court from examining whether the instrument was procured by fraud or undue influence or whether it represented the free and conscious act of the executant.
49. The learned District Judge, after considering the evidence on record, expressly affirmed the finding of the learned Munsif that the sale deed was not a genuine and valid document and had been obtained fraudulently. The said finding was thus not founded upon the mere fact that the consideration was disputed, but upon an appreciation of the evidence as a whole.
50. The appellants have also relied upon the fact that the sale deed bears the thumb impression of Badlu and that he appeared before the Sub-Registrar. These circumstances are undoubtedly relevant and were required to be considered. But the mere presence of the executant before the registering officer cannot, in the facts of the present case, render the transaction immune from challenge. The question remains whether the document was the result of the free and conscious act of Badlu and whether the transaction represented a genuine sale.
51. The first appellate court, being the final court of fact, considered the evidence bearing upon these matters and concurred with the findings recorded by the trial court. The appellants essentially

seek a different appreciation of the oral evidence and a different inference from the circumstances proved on record. Such an exercise does not fall within the limited jurisdiction of this Court under Section 100 of the Code of Civil Procedure.

52. It is well settled that concurrent findings of fact cannot ordinarily be interfered with in second appeal unless the findings are shown to be perverse, based on no evidence, arrived at by ignoring material evidence, founded upon an erroneous legal approach, or are otherwise such that no reasonable court could have arrived at them. The existence of another possible view of the evidence is not, by itself, a ground for interference under Section 100 of the Code of Civil Procedure.
53. Examined from the aforesaid standpoint, I find no such infirmity in the findings recorded by the courts below. They considered the registered nature of the sale deed as well as the endorsement of the Sub-Registrar. They also considered the oral evidence of the defendants' witnesses, the circumstances in which Badlu was taken to the registry office and the evidence relating to the payment of consideration. Upon an overall assessment of the material, both courts concluded that the transaction was not genuine and that the sale deed had been fraudulently obtained.
54. The contention that the appellants were neither related nor otherwise connected with Badlu and, therefore, could not have exercised undue influence, also does not demonstrate any error of law in the concurrent findings. The existence or otherwise of a formal relationship between the parties is not by itself determinative of whether a transaction was voluntarily entered into. The court is entitled to consider the condition of the executant, the circumstances in which the transaction was brought about, the conduct of the parties and all other surrounding circumstances. The courts below considered the evidence in its entirety and drew their conclusions therefrom.

55. Likewise, the fact that the sale deed was presented before and registered by the Sub-Registrar cannot, by itself, conclude the controversy. Registration establishes that the document was registered in accordance with the procedure followed by the registering authority; it does not prevent a competent civil court from examining, upon appropriate evidence, whether the transaction embodied in the document was in fact voluntary, genuine and free from fraud.
56. The submission of the appellants that the evidence of their witnesses was not contradictory in every respect also does not furnish a ground for interference. The evidence has to be assessed cumulatively and in the light of the surrounding circumstances. It is not necessary that every witness examined on behalf of a party should contradict another witness before the evidence of that party can be disbelieved. The first appellate court considered the material evidence and affirmed the conclusion reached by the trial court.
57. The evidence concerning the consideration, therefore, cannot be viewed in isolation. The material inconsistencies in the versions given by the defendants' witnesses were one of the circumstances considered by the courts below. The ultimate finding rested upon the cumulative assessment of the evidence and circumstances bearing upon the genuineness and voluntary character of the transaction.
58. The appellants have also referred to the evidence relating to the thumb impression and to the absence of any conclusive assistance from the handwriting or fingerprint expert. The trial court noticed that the expert evidence did not materially assist either side, particularly as the original document with which comparison was sought had not been produced. The first appellate court nevertheless considered the other evidence available on record and found the transaction to have been fraudulently obtained. No

material circumstance has been shown to establish that the courts below ignored any legally admissible evidence which could have altered the result.

59. It is thus not possible to characterise the concurrent finding of the courts below as a finding based on no evidence. Nor can it be said that the courts proceeded upon any proposition of law which is demonstrably erroneous. The appellants seek, in substance, a fresh appraisal of the evidence and a reassessment of the credibility of the witnesses. Such an exercise is beyond the permissible scope of jurisdiction under Section 100 of the Code of Civil Procedure in the absence of perversity or a substantial error of law.
60. The expression “not duly executed for consideration”, occurring in the substantial question of law, cannot be understood as requiring this Court, in second appeal, to undertake a fresh determination merely as to whether some amount of money was paid to Badlu. The real controversy arising from the concurrent findings is whether the impugned sale deed represented the genuine and voluntary act of Badlu and whether the consideration asserted by the defendants was proved in the manner claimed by them. The courts below, upon appreciation of the evidence, answered those questions against the defendants.
61. The finding so recorded is essentially a finding of fact. No perversity, misreading of material evidence, absence of evidence or violation of any binding rule of law has been demonstrated before this Court. The first appellate court independently considered the material evidence and concurred with the trial court. Merely because another view of the evidence may be possible would not justify interference in second appeal.
62. The present case is, therefore, not one where a registered sale deed has been set aside merely upon suspicion or upon a bald allegation of fraud. The challenge to the transaction was considered on the

pleadings and evidence, and the courts below examined the circumstances attending the execution of the document, the evidence concerning the consideration and the registration endorsement before recording their concurrent finding. That finding cannot be said to be perverse or such as no reasonable court could have reached.

63. The **first substantial question is accordingly answered as follows:** a Hindu male was not, merely by reason of being the biological father of an illegitimate child, prohibited under the Hindu Adoptions and Maintenance Act, 1956 from taking such child in adoption, provided the statutory requirements of a valid adoption were otherwise fulfilled. In the present case, the adoption being of the year 1970, the subsequent U.P. requirement concerning documentary proof of adoptions made on or after 1 January 1977 had no application. On the evidence accepted concurrently by the courts below, the giving and taking of the plaintiff in adoption was proved. The reference by the learned District Judge to Section 9(4) was not the correct statutory basis; nevertheless, the ultimate conclusion that the plaintiff had been validly adopted by Badlu is sustainable on the facts and law applicable to the adoption in question.
64. The **second substantial question is answered in the negative.** The concurrent finding of the courts below that the impugned sale deed was not the genuine and voluntary transaction of Badlu and that the consideration pleaded by the appellants was not satisfactorily established has not been shown to be perverse, to be based on no evidence, to be the result of misreading of material evidence, or to be contrary to any binding rule of law. The registered nature of the document did not make it immune from challenge, and the courts below were entitled, upon consideration of the evidence and surrounding circumstances, to hold that the transaction was fraudulent and liable to be cancelled.

65. Before concluding, it is necessary to make one further observation. The appellants had raised a number of additional grounds concerning limitation, the form of relief, possession, entries in the revenue records and the alleged status of Budh Ram or other persons as co-tenure holders. The learned District Judge dealt with some of these contentions, including the argument that the suit should fail because possession had not been claimed. He rejected that contention after noticing the Khatuni entries which showed Budh Ram as next friend of the minor plaintiff and as co-tenure holder with the respondent over the plots in suit. Those matters, however, do not give rise to the two substantial questions of law formulated for decision in this second appeal and do not warrant reopening the concurrent findings on the issues which have been decided.
66. In view of the foregoing discussion, neither of the substantial questions of law framed for consideration warrants interference with the judgments and decrees of the courts below. The decree of the learned trial court, as affirmed by the learned District Judge, therefore, does not call for interference in this second appeal.
67. The second appeal is, accordingly, dismissed.
68. The judgments and decrees passed by the learned trial court and affirmed by the learned District Judge, Basti in Civil Appeal No. 273 of 1979 by judgment dated 2 February 1980 are hereby affirmed.
69. The appellants shall bear the costs of the appeal.

(Arun Kumar, J.)

September 3, 2026

Ranjeet Sahu