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**(2014) 05 AHC CK 0285**  
**In the Allahabad High Court**  
**Case No : Second Appeal (Def.) No. 31 of 1999**

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| Babu Lal   | Vs | APPELLANT  |
| Lal Chanda |    | RESPONDENT |

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**Date of Decision :** 13-05-2014

**Acts Referred:**

Evidence Act, 1872 — Section 90-A(2)

**Citation :** (2014) 104 ALR 889

**Hon'ble Judges :** Pankaj Naqvi, J

**Bench :** Single Bench

**Advocate :** Manish Chandra Tiwari and Aditya Narain Yadav, Advocate for the Appellant; D.S.P. Singh and S.K. Singh, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pankaj Naqvi, J.—Heard Sri U.N. Dixit holding brief of Sri Aditya Narain Yadav, learned Counsel for appellants and Sri Shailendra Kumar Singh for respondent on the admission of appeal. This second appeal has been preferred by plaintiffs, whereby suit for cancellation of adoption deed in favour of defendant/respondent has been dismissed.

2. For the sake of convenience, parties shall be referred as they were described in Trial Court, i.e., as plaintiff/defendant which would include their predecessor also, unless specified otherwise.

3. The undisputed facts of the case are that one Shiv Raj had two sons namely Sukh Nandan and Raghu Nandan. Sukh Nandan had a son called Lurkhur and a grandson Jagan. Jagan had four sons namely Babu Lal, Chhavi Nath, Hari Nath and Chhotey Lal. On the other hand, Raghu Nath had two sons namely Prasad and Shiv Prasad. However, it appears that Prasad adopted defendant as his son in 1945, which irked sons of Jagan, which eventually led them to file a suit for cancellation of a deed of adoption in favour of Prasad.

4. Both the Courts below have dismissed the suit of plaintiff on merits.

5. Learned Counsel for appellant contended that in view of section 90-A(2) of the Evidence Act as amended by the State of U.P., a presumption shall not be made in respect of any document, which is the basis of a suit or a defence or is relied upon a plaint or written statement. Thus, the contention is that in view of said embargo, no presumption could have been drawn in favour of the execution of the adoption deed.

6. The Court need not answer the contention of the appellant as the Court has dismissed the suit also on the ground that the execution of deed of adoption of 1945 such as performance of religious ceremonies accompanying the adoption, including the handing and taking over of the adoptee in the adoptee family was duly proved. No perversity could be demonstrated on this aspect. However, P.W. 1 in his testimony stated that Ram Prasad, i.e., adoptive father of Ram Sewak died in 1974 and that in 1974, itself, he acquired knowledge of the adoption deed. Admittedly, no proceedings were initiated by plaintiff challenging the alleged adoption deed in favour of defendant-respondent/Ram Sewak as late as 1993. It is also not disputed that in a suit for cancellation of an instrument, limitation is three years. Thus the Court is of the view and as was rightly observed by the 1st Appellate Court, that the cause of action to file the suit for cancellation of adoption deed of 1945 accrued to the plaintiff-appellant for the first time in 1974 itself and if that be the position, a suit filed in 1993 was hopelessly barred by limitation and accordingly the same has been rightly dismissed.

7. No substantial question of law arises. No other plea has been urged. The appeal lacks merit and the same is dismissed.