

(1972) 07 AHC CK 0011
In the Allahabad High Court
Case No : Second Appeal No. 2170 of 1964

Lallan Ram	Vs	APPELLANT
Gobri Ram and Another		RESPONDENT

Date of Decision : 17-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, 100

Citation : AIR 1972 All 540 : (1972) 42 AWR 612

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : Kunwar Bahadur Verma, for the Appellant; Satya Prakash, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—This is a defendant's appeal arising out of a suit for declaration that defendant No. 1 was not the adopted son of the plaintiff and that the property shown in list Kha and Da of the plaint was the exclusive property of the plaintiff. The suit was contested by the defendant No. 1 on various grounds and was partly decreed and partly dismissed by the trial Court. The trial Court found that the defendant No. 1 was the adopted son of the plaintiff and consequently it dismissed the suit so far as relief of declaration that defendant No. 1 was not the adopted son of the plaintiff is concerned. In regard to the relief about ownership of the property in dispute a decree was granted by the trial Court declaring the plaintiff and defendant No. 1 to be co-owners of the said property. On appeal by the plaintiff the Lower Appellate Court has decreed the suit for declaration that the plaintiff was the exclusive owner of the property in dispute. It has, however, dismissed the suit for the second relief, viz., that the defendant No. 1 was not the adopted son of the plaintiff. Even though the Lower Appellate Court on appraisal of evidence has recorded a finding that the defendant No. 1 had not been proved to have been adopted by the plaintiff, it dismissed the suit so far as this relief is concerned on the ground that the suit qua this relief was barred by

time. Aggrieved the defendant has filed this second appeal.

2. In the second appeal the finding of the Lower Appellate Court that the defendant No. 1 was not the adopted son of the plaintiff has been challenged mainly on two grounds: (1) that the said finding is not borne out from the evidence on record and" (2) that in any case the principle of *factum valet* was applicable to the facts of the case. So far as the first point is concerned the finding recorded by the lower Appellate Court being based on appraisal of evidence it is not open to this Court to reappraise the said evidence and record a contrary finding in second appeal. The plea of *factum valet* is also not sustainable. The meaning of this doctrine is that where a fact is accomplished or an act is done and finally completed, though it may be in contravention of a hundred directory texts, the fact will stand, and the act will be deemed to be legal and binding. This doctrine will not apply where an act is done in contravention of texts which are in their nature mandatory. In the instant case the Lower Appellate Court has recorded a categories finding that the ceremonies of adoption including that of giving and taking were not proved to have been performed. Under the Hindu Law performance of the ceremony of giving and taking is a mandatory requirement for a valid adoption. See *Lakshman Singh Kothari Vs. Smt. Rup Kanwar*, . Once this mandatory requirement is lacking the fact of adoption cannot be said to have been accomplished and there is consequently no scope of applying the doctrine of *factum valet*,

3. The learned Counsel for the respondent has relied upon the case of *Priyanath v. Indumati* AIR 1971 Ori 211. This case does support the respondent but the proposition of law seems to have been too widely stated in it. Doctrine of *factum valet* has been applied in cases of adoption also where the breach was of a requirement which was only directory in nature see *Balusu v. Balusu* (1899) ILR 21 All 460 PC

4. The finding that the plaintiff was the exclusive owner of the property in suit was challenged on the ground that once the suit in regard to the declaration that defendant No. 1 was not the adopted son of the plaintiff had been dismissed the plaintiff was not entitled to a declaration that he was the exclusive owner of the property in suit. So far as this question is concerned I am of the opinion that even if the suit was not for a declaration in regard to the relief of adoption and was only restricted to the relief of declaration in regard to the property the question as to whether the defendant No. 1 was the adopted son of the plaintiff or not would even then have been incidentally necessary to be decided for arriving at a conclusion "as to whether the plaintiff was the exclusive owner or defendant No. 1 was also entitled to an interest in the property being the adopted son of the plaintiff. For recording a finding on an incidental issue the plea of limitation loses significance. The law of limitation does not extinguish the right but only bars the remedy except in cases falling under certain categories for example cases regarding possession over immovable property vide *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*,

consequently even though the suit of the plaintiff may have become barred by time for getting the relief in regard to the declaration that defendant No, 1 was not his adopted son it would still be open to the plaintiff to raise this plea incidentally for getting a determination in regard to the title of the property in dispute. On the finding recorded by the Lower Appellate Court that defendant No. 1 was not the adopted son of the plaintiff there is no escape from the conclusion that the property in dispute belongs exclusively to the plaintiff and the finding of the Lower Appellate Court in this behalf being essentially one of fact does not call for any interference in the second appeal.

5. In the result the appeal fails and is dismissed with costs.