Dhari Lal
v.
Amolak Ram
———
Falshaw, J.

alleged to have supplied the oil, and I cannot see any reason for supposing that these entries are not genuine. The other item refers to a claim put in by both the parties and signed by them relating to their losses at Lahore for compensation. The claim was submitted to the Registrar, Refugee Claim East Punjab at Jullundur and there is a vague item of Rs. 4,500 as outstandings. There is no means of knowing to what extent this item is genuine and in my opinion it was rightly left out of account both by the local Commissioner and the lower Court. In these circumstances there is no alternative but to dismiss the appeals and leave the parties to bear their own costs.

DUA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw and Inder Dev Dua, JJ.

MADAN GOPAL.—*Appellant.*

versus

B. MUKAND LAL AND ANOTHER.—*Respondents.*

Regular First Appeal No. 143 of 1950 with Cross-objections.

1958
———
Dec., 9th

Hindu Law—Adoption of sister's son in the Punjab—Whether valid—Family arrangements—Whether binding—Pleadings—Construction and object of—Statements in replication—Whether supplement those in the plaint.

(1) *Held*. that the adoption of a sister's son is valid under Hindu Law as applicable to the Punjab and the areas round about Delhi. The strict rule of Hindu Law that no one can be adopted whose mother, in her maiden state, the adoptor could not have legally married, has been greatly varied and relaxed in the Punjab by family customs and is no more sacro—sanct and in view of that the doctrine of *factum valet* can also legitimately be held applicable.

(2) *Held*, that a family arrangement which ensures peace and goodwill amongst the family members and avoid family disputes and litigation is binding and should be upheld.

(3) *Held*, that the pleadings in this country have not to be construed too narrowly and the attitude of the courts towards pleadings should not be unduly rigid, the object of the pleadings is only to see whether the parties differ.

(4) Held, that statements in replication can legitimately be taken to supplement those in the plaint.

Case Law reviewed.

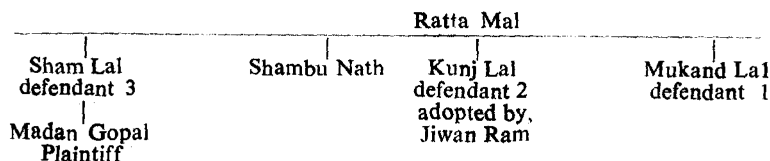
Regular First Appeal from the decree of Shri Banwari Lal, Sub-Judge, Ist Class, Hissar, dated the 29th March, 1950; granting the plaintiff a decree for a declaration that the Joint Hindu Family of L. Sham Lal and his descendants including the plaintiff was the owner of 1/3rd share in that Haveli in suit and for joint possession of the same against the contesting defendants 1 and 2 and further ordering that defendant No. 3 was pro forma *and the decree would also ensure for his benefit and disallowing the rest of the claim in suit and leaving the parties to bear their own costs.*

SHAMAIR CHAND, G. P. JAIN and P. C. JAIN, for Appellant.

D. K. MAHAJAN, D. N. AWASTHY and N. N. GOSWAMY, for Respondents.

JUDGMENT

DUA, J.—The pedigree-table reproduced below will be helpful in understanding the dispute:— Dua, J.



Madan Gopal plaintiff son of Sham Lal defendant 3 filed the present suit for a declaration that the *haveli* in dispute situated at Sirsa with

Madan Gopal v. Mukand Lal and another

Dua, J.

all furnitures and domestic articles is the joint ancestral property of the plaintiff and defendants 1 and 2 have no right or title in it and that the registered document dated the 28th September, 1939, executed between the defendants *inter se* is illegal, void and unconscionable and, therefore, not binding on the plaintiff; further relief for possession by way of ejectment from the said *haveli* and for possession of the articles mentioned in schedule A attached with the plaint has also been claimed against defendant 1. Defendants 1 and 2, as is clear from the pedigree-table, are real brothers of Sham Lal defendant 3, father of the plaintiff. According to the plaintiff's case, Kunj Lal defendant 2 had been adopted by his maternal uncle Jiwan Ram in 1905 during the lifetime of Ratta Mal, plaintiff's grand father, who died on 10th December, 1917. Shambu Nath and Mukand Lal executed a deed on 19th May, 1921, by which they relinquished their rights in the family property including the *haveli* in question in consideration of the expenses said to have been incurred by Sham Lal defendant 3 (plaintiff's father) on them and their families. On 28th September, 1939, Sham Lal defendant 3 and Kunj Lal defendant 2 executed a deed purporting to declare the existence of 1/3rd share of Mukand Lal defendant 1 in the *haveli* in suit. According to the plaintiff, after the execution of the deed of 1921, Sham Lal and his descendants became sole owners of the *haveli* in suit which became their joint Hindu family property. It is further pleaded that the deed of 28th of September, 1939, is in effect a transfer of 1/3rd share in this *haveli* to Mukand Lal defendant and 1/3rd share in the same to Kunj Lal defendant 2.

Shambu Nath is alleged to have been left with no interest in the family property after the execution of the deed of 1921. Mukand Lal and his family

members were permitted to live in this *haveli* and are, therefore, in possession of a part of it, the rest of the *haveli*, it is pleaded, is in possession of the plaintiff and his family. With respect to the list of articles claimed by the plaintiff and his family and which are said to be lying in the *haveli*, some of them have been stated to be in the possession and use of Mukand Lal defendant 1 with the permission of Sham Lal defendant 3, father of the plaintiff. The plaintiff claims to be the manager of the joint Hindu family, consisting of his father Sham Lal and his descendants, by appointment owing to his father's old age. It is, in the circumstances, claimed that the execution of the deed dated 28th September, 1939, which in effect operates as a transfer of 2/3rd share in the *haveli* in suit, is without consideration, family necessity and is thus illegal and unauthorised, it is averred that this document was executed by defendant 3 at the instance of defendants 1 and 2 when he was under their influence.

Mukand Lal defendant has among other pleas denied the execution of the deed dated 19th May, 1921; he has also pleaded that this deed is without consideration and has never been acted upon. He has denied his possession of the *haveli* to be with the permission of Sham Lal defendant; on the other hand, he claims to be in possession of the entire *haveli* in his own right and adversely to the plaintiff and defendant 3 with the exception of one *kothri* which, according to him, is in possession of Kunj Lal defendant 2. He has also denied that the deed of 1939 is in effect a transefr; on the other hand, he asserts that this document was executed with a view to clear doubts, about his title to the property, which appear to have been caused by the registered deed of 1921. Thus, according to him,

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

the document of 1939 merely clarified and declared his existing rights and title to this property. Limitation has also been pleaded by him as also misjoinder of parties and cause of action and non-joinder of parties; the form of the suit has also been objected to and it is further pleaded that the suit is bad on account of inconsistency in pleadings.

Kunj Lal defendant 2 has admitted that he was adopted by Jiwan Ram but he claims that his adoption was in Kritma form and not in Dattaka form. He denied having lost his rights in the property of his natural father on account of this adoption and claims that he was actually given his share in the property of his natural father by his other natural brothers and that, therefore, he is lawfully entitled to the same. The execution of the deed of 1921 by Shambu Nath whereby he relinquished his interest in the property of Ratta Mal is admitted by Kunj Lal. He, however, pleads in addition that from 1910 to 1922 Sham Lal defendant 3 "led the life of a spendthrift and a licencious man" and was, therefore, unable financially to help his father or other members of the family. He also claims to be in possession of a part of the *haveli* in suit. He further alleged that the plaintiff and defendant 3 had from time to time taken a loan of Rs. 12,000 from him and in 1940 defendant 3 gave his 1/3rd share in the *haveli* to him, that another debt of about Rs. 8,000 is due from the plaintiff and his father on the basis of a mortgage and that the present suit has been filed because payment of this debt had been demanded by him. The transaction of 1939 has been asserted to be a family settlement. The plaintiff is also alleged to be bound by the acts of his father. The other pleas taken by him are more or less similar to those of Mukand Lal. Both defendants 1 and 2 claim

to have made constructions in this *haveli* from time to time; and in fact similar claim has also been put forth by the plaintiff. The pleadings of the parties gave rise to the following issues:—

(1) Whether Dr. Shambu Nath and sons of Mukand Lal are necessary parties to the suit?

(2) Whether this suit is bad for misjoinder of causes of action?

(3) Whether the suit is maintainable in the present form?

(4) Whether this suit is bad on account of inconsistent pleas?

(5) Whether the plaintiff is entitled to sue in the presence of his father?

(6) Does not the plaint disclose any cause of action in respect of movable property?

(7) Is the plaintiff's suit within time?

(8) Cannot the plaintiff sue with respect to articles mentioned in para (D) of Schedule A attached to the plaint?

(9) Whether the plaintiff and defendant 3 are exclusive owners of the *haveli* in suit?

(10) Whether there is any movable property in the *haveli* in dispute owned by the plaintiff and defendant 3?

(11) Is the plaintiff's suit barred by the rule of estoppel and acquiescence?

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

(12) Is the plaintiff the manager of his joint family and, if not, what is its effect?

(13) Was the deed dated the 28th September, 1939, executed by defendant 3 without understanding the contents and under influence of defendants 1 and 2?

(14) Has the plaintiff brought this suit in collusion with defendant 3 and what is its effect?

(15) Are defendants 1 and 2 in adverse possession of the property in dispute for more than 12 years?

(16) What is the nature of the document dated the 28th September, 1939, and what is its effect?

(17) Did defendant 3 realase his 1/3rd share in the *haveli* in dispute in favour of defendant 2 in 1940?

(18) What is the market value of the movable property in suit?

(19) Has defendant 2 any right to inherit the property left by Ratta Mal deceased in face of his adoption by Jiwan Ram?

(20) Relief.

The trial Court decided issues Nos. 1 to 6 against the defendants. Under issue No. 7, it was held that suit for exclusive ownership under Exhibit P. 7 (a copy of the deed of 1921) and for exclusive possession was barred by time as there was no independent evidence to establish permissive nature of the possession of the defendants, but the

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

suit was found to be within limitation in so far as the transaction of 1939 covered by Exhibit D. 1. is concerned. With respect to issue No. 8, the counsel for the plaintiff had admitted at the Bar that the plaintiff was seeking no relief regarding the articles mentioned in para D of schedule A attached to the plaint with the result that no decision on this issue was called for. Similarly issues No. 10 and 18 were found against the plaintiff as no movable property was held to exist in the *haveli* owned by the plaintiff and defendant 3. Under issue No. 12, the decision of the trial Court is in favour of the plaintiff as it was not disputed that there was no bar to the plaintiff acting as manager of the joint Hindu family in the lifetime of his father; the plaintiff was held to have been managing his family property since 1940. Under issue No. 14, the Court held that there was no collusion between the plaintiff and defendant 3 and under issue No. 19, the Court came to the following conclusions:—

> "(a) The fact of adoption of Kunj Lal by his maternal uncle Jiwan Ram during the life of Ratta Mal has been admitted.
>
> (b) Amongst the parties to the suit adoption of a sister's son is not permitted under the law.
>
> (c) The adoption took place before 1912.
>
> (d) This adoption was not in Kritma form.

On these findings, the learned trial Court concluded that the adoption of Kunj Lal was invalid under Hindu Lal and that the doctorine of *factum valet* did not apply because there was a disregard of the mandatory provisions of Hindu Law. On

Madan Gopal *v.* B. Mukand Lal and another

Dua, J.

the basis of this conclusion, the trial Court held that Kunj Lal in the circumstances did not lose his right to inherit in his natural family. Under issue No. 9, the Court below held that Sham Lal and his descendants were owners of 1/3rd share in the *haveli* in suit. Under issue No. 15, the defendants were held to have failed to discharge the *onus* placed on them and they were thus held not to be in adverse possession of the property in suit. Issue No. 13, was decided against defendant 3. Under issue No. 16, the trial Court came to the conclusion that the transaction in question did not amount to a transfer or alienation which the plaintiff could challenge. In its opinion, the document of 1939, merely declared the existing rights, of the parties to the suit and of Mukand Lal, in the property in dispute and it was merely meant to remove clouds on the title of Mukand Lal created by the registration of Exhibit P. 7. Under issue No. 17, decision was given against the defendants and it was held that defendant 3 did release his 1/3rd share in the *haveli* in question in favour of defendant 2.

In the result, the plaintiff's suit was decreed in part and he was granted a decree for a declaration that the joint Hindu family, consisting of Sham Lal and his descendants including the plaintiff, is the owner of 1/3rd share in the *haveli* in suit and for joint possession of the same against the contesting defendants 1 and 2. The remaining claim in the suit was disallowed and the parties were left to bear their own costs.

Against the judgment and decree of the trial Court, Madan Gopal plaintiff has come up in appeal to this Court and cross-objections have been preferred on behalf of defendants 1 and 2.

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

The learned counsel for the appellant has, to begin with, submitted that the learend Subordinate Judge when dealing with issue No. 19, has committed an error when he says that there is no allegation or plea that in matters of adoption Hindu Law has been modified by custom under which adoption of a sister's son is permitted. The learned counsel has in this connection referred me to the replication filed by the plaintiff on 28th of March, 1945, in which at page 40 of the printed paper-book Volume I, it is stated as follows:—

> "Although according to strict Hindu Law defendant No. 2, may not be a Dattaka son as under Hindu Law, yet according to custom prevailing in Punjab amongst Mahajans generally and in the Districts of Sirsa and Hissar particularly he, as sister's son, could be adopted with incidents analogous to those of a Dattaka son under the Hindu Law."

That the defendants were aware of this plea is clear from the application dated 27th of November, 1946, filed by them, and printed at pages 66 to 68 of the printed paper-book, Volume I, para 2 of which clearly refers to this plea of custom put forward by the plaintiff. A reply to this petition was filed by the plaintiff on 16th of December, 1946. It was made clear that the plaintiff relied on Hindu Law as interpreted in the Punjab which involved a legal point. At the bottom of this reply a note is added stating that reliance was placed on Hindu Law as applicable to the Punjab and the Old Delhi territory. Statements in replication can legitimately be taken to supplement those in the plaint. It has been repeatedly observed that pleadings in this country have not to be construed too narrowly and the attitude of

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

Courts towards pleadings should not be unduly rigid; object of the pleadings is only to see where the parties differ. I would thus agree with the counsel for the appellant that the trial Court was in error when it observed that there was no allegaton of Hindu Law having been varied by custom in the matter of adoption.

Reliance on behalf of the appellant has been placed on the *riwaj-i-am* concerned in the preparation of which, the Mahajans were consulted and they stated that amongst them sister's son could be validly adopted. The learned counsel for the appellant has then referred to certain passages in Mayne on Hindu Law and Usage and in The Principles of Hindu Law by Mulla. He has also relied on a number of decided cases where Aggarwala and Jains have been held to be governed, in the matter of adoption, by Hindu Law as varied by custom. In this connection I may at this stage refer to the evidence of Shri Sham Lal, Advocate, father of the plaintiff-appellant, as P.W. 20, wherein he has stated that Ratta Mal's *got* was Garg and that of Jiwan Ram, Bansal; these are indisputably the *gots* of Aggarwal-Mahajans. It is also relevant to state at this stage that it has not been denied that Kunj Lal has ever since his adoption been treated by all the members of the family, as well as others concerned, to be a validly adopted son of Jiwan Ram.

In Mayne on Hindu Law and Usage, 11th edition, at page 230 there is a discussion on the rule according to which no one can be adopted whose mother, in her maiden state the adopter could not have legally married. It has been noted that a considerable controversy has arisen around this rule. Some commentators have actually observed that a close examination of the original authorities discloses that there is very little, if anything,

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

in the Sanskrit treatises to warrant the formation of this rule. At page 233 in paragraph 178 of this book, the learned author has observed that the restrictive rule applies to the three higher castes but not to the Sudras who may adopt a daughter's or a sister's son. The learned author then observes that in the Punjab such adoptions are common among the Jats, and this laxity has spread even to Brahmans, and to the orthodox Hindu inhabitants of towns, such as Delhi and to the Borah Brahmans in the United Provinces. They are also permitted among the Jains. At page 236 of the book, it is also noted that in the Punjab, there is no restriction of age as in the Punjab Customary Law, there is no religious significance regarding the appointment of an heir. Among the Aggarwal Jains the limit of age extends to the thirty-second year and amongst the Jains generally even a married man can be adopted. Similarly in Southern India even among the Brahmans including Nambudri Brahmans of Malawar such adoptions are undoubtedly common and are valid by custom. It is further observed that in Western India also such adoptions are permitted. Mulla in his well-known book on Hindu Law also deals with this subject in paragraph 480 which lays down that subject to the following rules, any person who is a Hindu, may be taken or given in adoption: —

(1) * * * * * *.

(2) * * * * * *.

(3) he must not be a boy whose mother the adopting father could not have legally married; but in Bombay this rule has been restricted in recent cases to the daughter's son, sister's son, and mother's

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

> sister's son. This prohibition, however, does not apply to Sudras. Even as to the three upper classes, it has been held that an adoption, though prohibited under this rule, may be valid, if sanctioned by custom. * * * * * *.
>
> * * * * *

In the commentary under this rule, at page 586 of 11th edition, a number of instances are given in which daughter's son or sister's son has been validly adopted. Among Vaisyas the adoption of a sister's son has been held to be valid as also amongst Bhora Brahmans of Uttar Pradesh.

Coming to the decided cases the first authority to which the learned counsel for the appellant has referred is *Chiman Lal* v. *Hari Chand* (1), where it is held that among Aggarwal Banias of Zira, Ferozepore District, the general rules of Hindu Law as to adoption do not apply and that an unequivocal declaration by the adopting father and subsequent treatment of the adoptee as the adopted son is sufficient to constitute a valid adoption. This was an appeal to the Privy Council from a decision of the Punjab Chief Court and John Edge, J., had observed that it had been held over and over again that nowhere in the Punjab could it be said that religious rights were necessary to constitute a valid adoption even among Hindus of non-agricultural classes. The next case to which reference has been made is *H. H. The Maharaja Brij Indar Singh* v. *Bansi Lal* (2), in which the head note runs thus—

> "Non-agricultural Banias, who reside in a town, are not governed by the Customary Law, and amongst them the adoption

(1) 102 P.R. 1913
(2) 17 I.C. 36

of a sister's son is valid, and the adopted son succeeds to an occupancy-tenancy."

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

The following observations from this judgment have been particularly relied upon by the learned counsel:—

> "That in the South-East Punjab such adoptions are often recognized is quite certain and I see no reason, after consulting the rulings quoted, for differing from the two lower Courts in their finding that the adoption of a sister's son was valid."

The parties to this case, it may be mentioned, were non-agriculturist Banias. In *Manak Chand* v. *Munna Lal* (1), a Division Bench of the Punjab Chief Court held that amongst Jains adoption is a purely secular transaction designed, *inter alia*, to perpetuate the name and family of the adoptor without any religious meaning. It was observed that in Delhi a public distribution of *laddus* to the brotherhood in token of an adoption fulfils all the requirements as to publication. The next case cited is *Madhu Sudan Sinha, etc.* v. *Kali Charan Sinha, etc.* (2), where the adoption of a daughter's son was held to be valid under the Mitakshara School of Hindu Law prevailing in Western India. It is not disputed that according to the strict text of Hindu Law sister's son and daughter's son are treated as equally disqualified for adoption on the basis of the rule mentioned in paragraph 480 of the Principles of Hindu Law by Mulla. Validity of adoption of a daughter's son among the Khatris of the town of Amritsar has also been recognised by custom as is clear from *Parma Nand* v.

(1) 4 I.C. 844
(2) 46 I.C. 246

Madan Gopal v. B. Mukand Lal and another

Dua, J.

Shiv Charan Das, etc. (1), and *Roshan Lal* v. *Samar Nath* (2). In *Mt. Ballo* v. *Ram Kishan and another* (3), similarly the adoption of a daughter's son amongst Aggarwala Vaishas has been upheld and while dealing with this question, the learned Judges observed that in the *wajib-ul-arzes* relating to a number of villages general custom to adopt a daughter's son or sisters's son had been relied upon. In *Ramalinga Pillai* v. *Sadasiva Pillai* (4), the adoption of a sister's son by a Vaisya was upheld by the Judicial Committee of the Privy Council. The parties to the reported case undoubtedly belonged to South India but the following observations from the judgment of the Judicial Committee are instructive:—

> "If the genuineness of the depositions is established, of which their Lordships entertain no doubt, they are decisive of the case. In them the appellant's father three times deliberately styles the respondent an adopted son. Now if there were no adoption at all, or if the actual adoption were for any reason legally invalid, the respondent would of course not be entitled to that designation. They amount, therefore, to a complete admission of the whole title of the respondent, both in fact and in law, and show that the objections which have been urged to his claim, in the opinion of the appellant's father, who probably was well acquainted with all the circumstances, and may be assumed to have known the Hindu laws and customs, had no foundation."

(1) I.L.R. 2 Lah. 69
(2) I.L.R. (1938) 19 Lah. 173
(3) A.I.R. 1924 All. 49
(4) 9 Moore's Indian Appeals 510

Madan Gopal
v.
B. Mukand Lal and another

Dua, J.

In the present case Kunj Lal, the adoptee, and his brothers—Mukand Lal and Sham Lal, the plaintiff's father—are all lawyers and as such can, in my opinion, be reasonably assumed to know the rules of Hindu Law and Custom on the question of adoption as applicable to them and they all have been considering the adoption in question to be valid. The learned counsel has also referred to *Dhanraj Joharmal* v. *Soni Bai,* (1), where it has been held that adoption amongst Jains and Aggarwals is a mere temporal act. The next case relied upon is *Prahlad Sheonarayan Chokhani* v. *Damodhar Rankaran Vaishnao and others* (2), where it was also held that amongst Aggarwals, either Vaishnavas or Jains, adoption is purely a secular affair. In the last cited case a married man or an orphan was held to be capable of being a nominee. The counsel then referred to *Panna Lal* v. *Chiman Parkash and others* (3), where it was obseved that strict rules of Mitakshara have not always been followed by all tribes and families of Hindus in the Punjab. In this case adoption of an orphan amongst Aggarwals in Ambala District was upheld. Reliance is next placed on *Deoki Nandan* v. *Madanlal and others* (4), were an uncle was held capable of being adopted by a nephew. I, however, do not think that this decision is of much relevance for the purposes of the case before us. In *Puttu Lal and others* v. *Mt. Parbati Kanwar and another* (5), an adoption by a widow of her brother's son was held to be valid, it being held that the adoption by the widow is not an adoption to herself but is an adoption to her deceased husband. It may be borne in mind

(1) A.I.R. 1925 P.C. 118
(2) A.I.R. 1958 Bom. 79
(3) A.I.R. 1947 Lah. 54
(4) A.I.R. 1958 A.P. 693
(5) A.I.R. 1915 P.C. 15

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

that the Privy Council as far back as 1909 recognized laxity of the rule, laid down in paragraph 480(3) of Mulla's Hindu Law as applicable in the area roundabout Ambala. In *Lala Rup Narain* v. *Gopal Devi* (1), the Judicial Committee at page 795 observed as follows:—

> "It was sought to raise another point in connection with the adoption, that if it took place in fact, it was invalid in law on the ground that under Hindu Law a daughter's son could not be adopted. With this point their Lordships think the District Judge dealt rightly. The general rule of Hindu Law cannot be disputed, but it may be varied by family custom and often is so varied in the province from which this appeal comes."

This was a case from Ambala District. If the original text of Hindu Law is not sacrosanct in the locality in question before us, then in my view, the doctrine of *factum valet* may also legitimately be held applicable. In *Basant Singh, etc.* v. *Brij Raj Saran Singh, etc.* (2), their Lordships observaed as follows at page 138:—

> "Accordingly, their Lordships are of opinion that the respondents have established that the customary law applied to Khushal Singh when he left the Delhi District in 1858. But the appellants maintain that the adoption of defendant I was invalid in that it did not comply with the customary law in two respects, viz., that defendant was an orphan, and that he was not of the same *gotra* as

(1) I.L.R. 36 Cal. 780
(2) A:I,R, 1935 P,C, 132

Madan Gopal v. B. Mukand Lal and another

Dua, J.

Khushal Singh, either of which would invalidate the adoption. The reason that under the Mitakshara law, an orphan cannot be adopted is because a boy can be given in adoption only by his father or his mother, and such giving is an essential part of the ceremonies, but answer 87 in the 1911 manual does not prescribe such giving as a formality necessary to constitute a valid adoption; answer 83 shows that a borther can be given in adoption, and answer 86 shows that a sister's son or a daughter's son may be adopted, and further, answer 8 shows that a boy may be adopted even after tonsure or investiture with the sacred cord, and that there is no age limit except that the age of the adoptive son should be less than that of the adoptive father. This makes it clear that the conditions of adoption under the Mitakshara law are completely superseded by the customary law, and there is no reason for excluding an orphan under the latter; but, if it were necessary, their Lordships agree with the High Court that the evidence in the present case is sufficient to place the validity of the adoption of an orphan beyond question.

It is admitted that defendant 1 does not belong to the same *gotra* as Khushal Singh, and the appellants found on answer 174 in *riwaj-i-am* of 1880. No such restriction is suggested in the manual of 1911. But answer 174 of 1880 appears to make clear, by the

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

> second example in the column of particulars, that it is only a recommendation that they should be of the same *gotra,* and that a person of a different *gotra* may be adopted; in other words, *factum valet.* Their Lordships are, therefore, of opinion, on the whole matter, that the adoption of defendant I was valid, and that the appellant's appeal fails."

This passage was quoted with approval by this Bench in *Data Ram, etc.,* v. *Teja Singh, etc.* (1). Not a single ruling has been brought to our notice on behalf of the respondents showing that the adoption of a sister's son amongst the Aggarwals or for the matter of that, amongst any other parties from the area roundabout Delhi was ever declared invalid. I would, therefore, be inclined to hold that the adoption of Kunj Lal by Jiwan Ram is not invalid.

The learned counsel for the appellant has then urged that by virtue of the execution of Exhibit P. 7. Shambu Nath and Mukand Lal had relinquished their right in the family property including the *haveli* in question and, therefore, it was not open to Mukand Lal to claim any right in the *haveli.* The learned counsel for the appellant has taken us through the evidence on the record for the purpose of showing that it has been fully acted upon. After going through the evidence, however, I am of the view that this arrangement was never acted upon. No reliable evidence has been led to this effect and even mutations were not effected as contemplated by the alleged arrangement. It would be instructive in this connection to refer to Exhibit D. 41 a mutation entry of the year 1919 on the death of Ratta Mal. It is

(1) R.S.A. No. 679 of 1953

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

expressly stated therein that though Kunj Lal has also been adopted by another person yet the rest of his brothers want that right of succession should devolve on him also. In 1933 we find that Sham Lal gave to Shambu Nath a *nohra* with the result that the latter felt that he had been brought to the level of his other brothers Kunj Lal and Mukand Lal. Agricultural land actually remained in the names of all the brothers. The *haveli* also, according to the evidence on the record, remained in possession of Mukand Lal and Kunj Lal and in fact even Jiwan Ram also came and started living in this very *haveli*, and there is hardly any reliable or convincing evidence that these persons were living in the *haveli* with the permission of Sham Lal. As a matter of fact even constructions on the premises in question have been effected by Kunj Lal. On the 12th of September, 1928, we also find a suit for recovery of Rs. 110 and for rendition of accounts being filed jointly by Sham Lal, Kunj Lal and Mukand Lal against the tenants. This plaint has been admitted by Sham Lal, the father of the plaintiff, to be in his own handwriting. It appears to me that this so-called arrangement was merely a paper transaction which might well have been brought about because one of the brothers was indulging in speculative dealings. Some dispute seems to have arisen later, presumably because of the existence of the deed of 1921 and of the transaction of 1933, and in 1939 we find a family arrangement having finally been brought about. This arrangement of 1939 (Exhibit P. 6), in my opinion, was a genuine family settlement of disputed claims which is binding on all the parties; it was executed by Sham Lal and Kunj Lal and attested by Mukand Lal, Shambhu Nath, the fourth brother having already been given a *nohra* in 1933 was apparently satisfied and thus disinterested in this *haveli*, the circumstances of the case thus clearly

Madan Gopal
v.
B. Mukand Lal
and another
———
Dua, J.

point to this arrangement having been entered into in a bona fide manner in order to satisfy the genuine grievances and claims of the brothers and to settle the family dispute raised by them. In *Bishambhar Nath Kapoor and others* v. *Lala Amar Nath and others* (1), their Lordships of the Privy Council upheld a family settlement of disputed claims between various members of a Hindu family. In *Martin Cashin and others* v. *Peter J. Cashin* (2), also the Privy Council observed that where family agreements have been fairly entered into, without concealment or imposition on either side, with no suppression of what is true, or suggestion of what is false, then, although the parties may have greatly misunderstood their situation, and mistaken their rights, a Court of equity will not disturb the quiet, which is the consequence of that agreement. In *Karam Singh* v. *Surendar Singh and others* (3), a family arrangement entered into by a father for preserving peace and security of the family and avoiding family disputes and litigation was held binding on the son. I respectfully agree with dicta of the above decisions. As a matter of fact Courts always lean in favour of family arrangements which ensure peace and good-will amongst the family members. (See *Sahu Madho Das, etc.* v. *Mukand Ram, etc.* (4):

The learned counsel for the respondents has also urged in the alternative that if the transaction of 1921 is held to be a genuine transaction, then the respondents, having continued in possession of the *haveli* in assertion of their own right, for more than twelve years, their title should be deemed to have matured into full ownership by adverse possession, there being absolutely

(1) A.I.R. 1937 P.C, 105
(2) A.I.R. 1938 P.C. 103
(3) A.I.R. 1931 Lah, 289 (2)

Madan Gopal
v.
B. Mukand Lal
and another

Dua, J.

no reliable evidence of their possession being permissive. Basing his argument on this contention, Mr. Mahajan submits that the entire suit of the plaintiff is liable to be dismissed on the ground that the whole of the *haveli*, has become the absolute property of the respondents by means of adverse possession. There would certainly have been force in this contention had the deed of 1921 represented a genuine transaction but, as held above, the transaction of 1921 was never acted upon and therefore it is not necessary to deal at length, with this contention which is based on the assumption of the transaction of 1921 being a genuine one. It has also been contended by Mr. Mahajan that the property given to Sham Lal by his brothers should be considered to be self-acquired property with the result that the plaintiff would have no right to challenge the alienation or dispossession effected by Sham Lal. In support of his contention he has relied on *Gurumurthi Reddi* v. *Gurammal and another* (1), and *Raj Kishore* v. *Madan Gopal, etc.* (2). According to the counsel the finding under issue No. 5 should have been against the plaintiff. In reply the learned counsel for the appellant has submitted that he was a member of the coparcenary consisting of himself and his father and, therefore, he was entitled to challenge an alienation of coparcenary property by his father. This aspect of the case was not placed before the Court below by the defendants and no arguments seem to have been advanced by the parties. As at present advised, however, I would be inclined to agree with the view of the trial Court and hold that the plaintiff is entitled to institute the present suit.

The next contention raised by the respondents' counsel is that the suit instituted by Dr. Madan

(1) I.L.R. 32 Mad. 88
(2) I.L.R. 13 Lah. 491

Madan Gopal *v.* B. Mukand Lal and another

Dua, J.

Gopal is collusive as it is Sham Lal who is really fighting this battle. For this contention he has relied on *Ajaib Singh, etc.* v. *Sham Singh, etc.* (1), *Sant Bakhsh Singh, etc.* v. *Lachhman Prasad, etc.* (2). I do not think that the plaintiff can be non-suited merely because Sham Lal has been attending the hearings or has been helping the appellant in the conduct of the case. This conduct does not constitute collusion which can, in law by itself, entail dismissal of the suit.

For the reasons given above, I would dismiss the appeal but would make no order as to costs.

The cross-objections have been preferred claiming the dismissal of the entire suit. Main reliance has been placed on the contention that by adverse possession the respondents have acquired indefeasible title to the entire *haveli.* I have already dealt with and repelled this contention, while considering Dr. Madan Gopal's appeal. It need only be stated here that there is absolutely no evidence regarding the adverse possession of the entire *haveli,* by the respondents. Thus, in my view, the cross-objections also have no merit and they must be dismissed but without any order as to costs.

In the result, both the appeal and the cross-objections are dismissed without any order as to costs.

FALSHAW, J.—I agree.

B.R.T.

---

(1) A.I.R. 1925 Lah, 127(1)
(2) A:I,R, 1946 Oudh, 92