

Before Ranjit Singh, J.

**SHAMSHER SINGH (DECEASED) THROUGH HIS L.Rs.—
*Plaintiff/Appellants***

versus

GOBIND SINGH AND OTHERS.—*Defendant/Respondents*

R.S.A. No. 119 of 1982

2nd July, 2008

Code of Civil Procedure, 1908—Adoption deed—Plaintiff asserting his right as an adopted son for first time when he filed a suit in 1958 after 10 years of death of his alleged adopted father—No explanation for delay of 10 years and allowing the property to be mutated in name of wife of alleged adopted father—Courts below discarding from consideration by giving cogent and valid reasons—Courts below properly discussing and adjudicating all issues—No legal infirmity in any of findings recorded by lower Appellate Court—Appeal dismissed.

Held, that the pedigree entries showing Shamsheer Singh to be adopted son of Ganda Singh is only a record prepared by the revenue authorities without much basis, which cannot be considered as a valid evidence. The stand taken by father of appellant-plaintiff Gurbachan Singh which has been noticed in detail in the foregoing paragraphs can also not be ignored. Gurbachan Singh natural father of the appellant denied the adoption of Shamsheer Singh and in this background the observations of the courts below that Sham Kaur agreed to the so called adoption earlier only when Basant Kaur and Baljit Kaur went into litigation against her and was for her self protection can well be noticed as valid explanation to explain this so called admission. This admission, as such, can easily be ignored as has been done by the Courts below.

(Para 37)

Further held, that the appellant had made an application for permission to adduce additional evidence under Order 41 Rule 27 CPC to produce a copy of the judgment passed by Senior Sub Judge, Ambala

on 31st October, 1952 dismissing the suit of Basant Kaur and Baljit Kaur for possession of a land. The lower Appellate Court considered this application and came to the conclusion that this judgment is not relevant for deciding the controversy in the present case. As observed by the lower Appellate Court, the question involved in the instant case was to see as to who would succeed Sham Kaur i.e. whether plaintiff or Basant Kaur and Baljit Kaur and as such the judgment rendered by Senior Sub Judge, Ambala would not have much relevancy in this regard. The copy of this judgment was otherwise placed before me and perusal thereof would show that the suit was dismissed when the plaintiff therein refused to amend the plaint to restrict their claim to the property situated in District Ambala. There was no adjudication on merits. Even otherwise, the counsel could not show if the plaintiff had made out a case for leading additional evidence at the appellate stage. It cannot be said that the application for additional evidence was not considered by the Appellate Court.

(Para 38)

Further held, that the appellant-plaintiff asserted his right as an adopted son for the first time when he filed a suit in the year 1958. This was after ten years of the death of Ganda Singh, his alleged adopted father. Why would he wait for ten years and allow the property to be mutated in the name of Sham Kaur cannot easily be explained. He still did not succeed and thereafter did not pursue the matter. Subsequently, he has filed this suit in the year 1976. Why did he wait for 1958 to 1976 to file the present suit ? In the initial suit filed by him in the year 1958, his natural father filed a written statement on behalf of Sham Kaur to say that the adoption never took place. All these issues have been properly discussed and adjudicated by the Courts below. I do not find any legal infirmity in any of the findings recorded by the lower Appellate Court.

(Para 41)

Deepak Sibal, Advocate with Davinder Lubana, Advocate,
Akshay Bhan, Advocate, *for L.Rs of the appellants.*

Vinod Bhardwaj, Advocate.

Ajay Tewari, Advocate, for applicant in CM No. 444-C of 2007.

G. S. Grewal, Senior Advocate *with Ms. Tanisha Peshawaria,*
Advocate, for the respondents.

RANJIT SINGH, J.

(1) Appellant has claimed right and title to the property being an adopted son. He remained unsuccessful in suit which he filed and in the first appeal and thus has challenged both the verdicts by filing the present Regular Second Appeal.

(2) The dispute goes to pre-partition era and present appeal is pending since 1982. Even the appellant-plaintiff is no more and stands substituted by his L.Rs. Similarly some of the respondents also stand substituted by their L.Rs. on their death and this is so reflected in the amendments carried out in the memo of parties from time to time. Even now, one application is pending adjudication whereby prayer has been made for impleading Gursharan Kaur as respondent No. 18 under Order 1 Rule 10 CPC. This application was filed once the arguments in the case were heard and the judgment reserved. The applicant claims herself to be legal heir of Sham Kaur wife of Ganda Singh, whose property is in issue in the present appeal. It is not made clear in the application as to how the applicant has woken to be heard now and where she has remained though suit was filed in the year 1976 and decided in 1979. This application accordingly has been opposed by the respondents and the same shall be dealt with after making reference to the controversy that requires adjudication in the present case.

(3) The facts in this case as noticed are that Shamsheer Singh (appellant-plaintiff) instituted a suit for declaration to the effect that he is owner in possession of the land as described in the heading of the plaint and for further declaration that he is owner of the equity of redemption regarding land as separately detailed in the heading of the plaint being Khata No. 35/35 and Khasra number as mentioned and entered in jamabandi for the year 1973-74, situated in the area of village Sukhgarh, Hadbast No. 89, Tehsil Kharar. In the alternative, appellant-plaintiff also has claimed possession of the land in suit. This land originally belongs to Ganda Singh son of Nihal Singh of village

Sukhgarh. Appellant-plaintiff is son of Karam Kaur daughter of Harnam Singh, who was collaterally related to Ganda Singh. After the death of Harnam Singh, the property owned by him was inherited by his real brother Amar Singh. Amar Singh died issueless as he was not married and thus property owned by Amar Singh was inherited by Ganda Singh as he was the only surviving cousin of Amar Singh. Ganda Singh died in the year 1948, leaving behind his wife Sham Kaur and allegedly his adopted son Shamsher Singh (plaintiff-appellant). Ganda Singh was a Jat agriculturist and thus was governed by the customs in the matters of succession and adoption. The averment in the suit further is that after the marriage of Karam Kaur with the appellant-plaintiff's father, she lived with Ganda Singh and gave birth to two children, i.e., the appellant-plaintiff and his younger brother Shivdev Singh. Ganda Singh was also issueless and thus it is claimed that soon after the birth of appellant-plaintiff, he had adopted the plaintiff as his son under the custom after performing the requisite ceremonies. It is claimed that this adoption was performed in the collection of brotherhood where 'Gur' (Jaggery) was distributed and the appellant-plaintiff was taken in lap by Ganda Singh. Ever since that date, appellate-plaintiff claims to have lived with Ganda Singh and was treated as his son and the appellant had been treating Ganda Singh as his father. It is also mentioned that Sham Kaur wife of Ganda Singh has also been treating the appellant as her son. Appellant also claims to have been brought up, educated and married by his adopted father Ganda Singh. The case further is that after the death of Ganda Singh, he alone was entitled to succeed his property being his adopted son, but to gain the confidence of his adopted mother, he allowed the mutation to be sanctioned in favour of Sham Kaur, widow of Ganda Singh and adopted mother of appellant-plaintiff. The mutation was sanctioned in the names of Sham Kaur and Shamsher Singh in equal share. Appellant Shamsher Singh had also acted as Lambardar for some time and states to have been acknowledged as the adopted son by Sham Kaur. He continued to live with his adopted mother and enjoyed the property jointly with her. Appellant then claims that six years prior to filing of suit, Sham Kaur died. He continued to be in possession of the property but Basant Kaur and Baljit Kaur mothers of defendants No. 1 to 4 and 5 and 5-A respectively in collusion with revenue authorities got the mutation of land sanctioned in their

favour by-passing the appellant. He, thus, claims that the property was wrongly mutated in favour of Basant Kaur and Baljit Kaur daughters of Harnam Singh as he being adopted son was entitled to inherit the property after the death of Sham Kaur. Appellant would further claims that Sham Kaur was not the owner of the suit property and was merely a trustee 'Benamidar' for the appellant-plaintiff; whereas the legal and beneficial (equitable ownership) vested in the appellant-plaintiff. Appellant has also claimed that he is managing the property left by Sham Kaur, his adopted mother, and is in cultivating possession thereof. It is stated that the mutation sanctioned in favour of defendants No. 1 to 5-A,—*vide* mutation No. 1064, dated 19th August, 1971 is without any right and authority and as such is altogether illegal. It is on the basis of this mutation that the defendants are threatening the appellant-plaintiff to take forcible possession of the suit land for which they do not have any right to interfere in the peaceful possession of the appellant-plaintiff. He has thus claimed declaration of ownership regarding the land in his possession. As regards the land which is in possession of the mortgagees, the appellant-plaintiff has claimed declaration that he is the owner of equity of redemption and in alternative he has claimed possession of the said suit land as well. In short, the claim of the appellant-plaintiff is based on the fact that he is the adopted son of Ganda Singh and Sham Kaur and thus is entitled to the ownership and possession of the land to the exclusion of Basant Kaur and Baljit Kaur daughters of Harnam Singh.

(4) The suit was resisted by the defendants, who are the offspring of Basant Kaur and Baljit Kaur. As per the defendants, the suit land was never owned or possessed by Ganda Singh. They also denied if the appellant-plaintiff was ever adopted by Ganda Singh as his son. It is claimed that he never became the adopted son of Ganda Singh and Sham Kaur. The respondents would plead that the appellant-plaintiff was never brought up, educated or married by Ganda Singh and was never treated as son by Ganda Singh and Sham Kaur. In their reply, the respondents would point out that the appellant-plaintiff is recorded as son of Gurbachan Singh in the school records and so too in the voters list and in the records of the Army service, where he had remained from the year 1939 to 1941. The respondent-defendants would also point out

that the appellant had raised a loan from the Co-operative Society, Sukhgarh describing himself as son of Gurbachan Singh. It is claimed that even Gurbachan Singh, the father of the appellant, has also denied the alleged adoption. The deed of adoption which was pressed into service, though not exhibited, is stated to be paper transaction besides urging that appellant-plaintiff was never adopted nor treated as such before or after the alleged deed of adoption which was also destroyed by Ganda Singh. Explaining the mutation of the land in favour of appellant, it is stated that the same was wrongly sanctioned in his favour and presence of Sham Kaur was also wrongly recorded. It is also mentioned that Sham Kaur never made any statement conceding to the adoption and rather had hotly contested the alleged adoption before a civil court in a suit filed by the appellant-plaintiff on 14th October, 1958, which was dismissed on 16th December, 1959. This suit was filed by the appellant claiming possession of the land belonging to Ganda Singh being his adopted son. Sham Kaur had denied the adoption as alleged by the appellant-plaintiff in the said suit of which she stately was enjoying the exclusive possession even to the exclusion of the appellant-plaintiff. It is further disclosed in the reply that Sham Kaur had died much prior to six years of the institution of the present civil suit. Accordingly, the ownership of the appellant and his possession over the suit land is denied by the respondent-defendants. According to the respondents, mutation was sanctioned in favour of Sham Kaur, she being the only heir of Ganda Singh, which was never contested by appellant-plaintiff. He also did not even make a claim before the Rehabilitation Authorities for allotment of a land belonging to Ganda Singh and left in Pakistan. It is, thus, claimed that mutation of inheritance of Sham Kaur was rightly sanctioned in favour of Basant Kaur, (mother of defendants No. 1 to 4 and Balbir Kaur, (mother of defendants No. 5 and 5-A).

(5) To further strengthen their case, the respondents would point out that the appellant-plaintiff had contested the mutation and failed upto Financial Commissioner. It is, thus, denied that the appellant-plaintiff is adopted son and is entitled to inherit the property of Sham Kaur or Ganda Singh as claimed. The averment that Sham Kaur was mere trustee is again denied by stating that she was the owner in

possession of the property and thus the land/property has rightly come into the possession and ownership of Basant Kaur and Baljit Kaur. It is also mentioned that Sham Kaur had never mortgaged any land and as such the question of consent by the appellant-plaintiff did not arise. Appellant-plaintiff is out of possession and having failed in his suit filed for possession in the year 1959, his right and title, if any, stood extinguished under Section 27 of the Limitation Act. Respondent-defendants, thus, would also claim that they are in adverse possession if not as rightful heir under a colour of title as owner, continuously without interruption openly to the knowledge of all concerned and as such have become owners by adverse possession. The land mortgaged was redeemed by the respondent-defendants on payment of mortgage money to which the appellant has never raised any objection. It is also stated that the appellant never took any action after dismissal of his suit filed for possession on 14th October, 1958, which was dismissed on 16th December, 1959. According to the respondents, this judgment is final and binding on the parties and would operate as *res judicata* against the appellant-plaintiff. The case of the respondents, thus, is that Sham Kaur was holding this property inherited from Ganda Singh as owner to the exclusion of the appellant-plaintiff since the year 1948. It is also stated that Sham Kaur was the owner of ½ share in squares No. 18 and 20 in Pakistan while Ganda Singh was owner of square No. 19. Sham Kaur and Ganda Singh held equal areas of land in Pakistan. P. Rights Sanad was issued in favour of Sham Kaur regarding the land owned and possessed by Ganda Singh as well as land owned and possessed by her in Pakistan. Appellant-plaintiff had challenged the same but failed before the civil court. As already noticed, he never approached the Rehabilitation Authorities for that purpose. Thus, the claim, he even may have, has become time barred.

(6) On the pleadings of the parties, as afore-mentioned, the trial court framed the following issues :—

- (1) Whether the plaintiff is adopted son of Ganda Singh ?
OPP.
- (2) Whether the plaintiff and Smt. Sham Kaur inherited the property of Ganda Singh in 1948 to the extent of ½ share, each ? OPP.

- (3) Whether the defendants 1 to 5 are the next heirs of Smt. Sham Kaur ? OPD.
- (4) Whether the judgment dated 16th December, 1959 of the court of Sub Judge 1st Class, Kharar operates as *res judicata* ? OPD.
- (5) Whether Ganda Singh was the owner of the entire property in dispute ? OPP.
- (6) Whether the suit is properly valued for purposes of court fee ? OPP
- (7) Whether the parties are governed by custom in the matters of adoption and succession. If so, what the custom is ? OPP
- (8) Whether the suit is within time ? OPP.
- (9) Whether Smt. Sham Kaur deceased held the property in suit in trust and was a benami for the plaintiff ? OPP.
- (10) Whether the plaintiff is entitled to succeed to Sham Kaur as her adopted son ? OPP.
- (11) Whether Sham Kaur and defendants 1 to 5 became the owners by adverse possession ? OPD.
- (12) Whether the defendants 1 to 5 got the land redeemed as mortgaged by Sham Kaur and what is its effect ? OPD.
- (13) Whether the plaintiff is entitled to the declaration or possession of the suit land ? OPP.
- (14) Relief.

(7) Issues No. 1 to 7, 9 and 10 were decided against the appellant- plaintiff by Sub Judge IInd Class, Kharar. He also found issue No. 11 in favour of the defendants. He accordingly dismissed the suit of the appellant- plaintiff with costs. The appellant-plaintiff filed

appeal against this order dated 30th April, 1979, which was also dismissed on 5th October, 1981 affirming the judgment passed by the Sub Judge Kharar. The findings on issues No. 8 and 11 have been reversed. That is how, the appellant- plaintiff is in second appeal.

(8) Having regard to the rival contentions raised by respective parties, the basic issue that would require determination in the present case would relate to the aspect of adoption as pleaded by the plaintiff-appellant and countered by respondent-defendants. The remaining issues as framed would accordingly depend upon the decision whether the appellant was able to establish his adoption to be valid or not. To prove this adoption, the appellant has relied upon the oral account given by himself, his natural father Gurbachan Singh (PW1), Amar Chand (PW5), Hari Singh (PW6) and Nand Singh (PW8). Their versions were analyzed and appreciated by both the courts below to conclude that it would not be safe to rely upon said versions to hold that adoption of the appellant was valid. On the contrary, the respondent-defendants have highlighted various circumstances and the evidence given by different persons to contest the adoption as pleaded by the appellant-plaintiff. The views as taken by the courts below have respectively been seriously challenged by the counsel representing the respective parties and need a notice.

(9) Reliance has been placed on a copy of adoption deed, which was marked 'A' and was not exhibited on record. The first question that arose was to see if this document can be looked into by the court in evidence or not. To counter this, the counsel for the appellant would rely on legal re-course by saying that the existence of the adoption deed has been admitted by the defendants in the written statement filed by them and this is a valid piece of evidence wrongly ignored. Averments in the reply in this regard are as under :—

“The alleged deed of adoption was all a paper transaction. In fact, the plaintiff was never adopted nor treated as such before or after the alleged deed which was destroyed by Ganda Singh”.

(10) This is stated to be an admission on the part of the respondents and it is urged that this would show that (i) the existence of adoption deed was admitted, (II) the contest thereof are also admitted when it is stated that it was not acted upon. Counsel would plead that this can be so urged only if one had gone through the contents of the adoption deed. He, thus, contends that the contents of the deed are admitted.

(11) The first question that would require consideration is whether this adoption deed can be taken into consideration or not. Concededly this document is a marked document and was not exhibited. The legal position in regard to marked document, is well settled. The main argument raised by the counsel for the appellant that the admission made by the respondents about the adoption deed would cure this defect would help the cause of the appellant if the contents of the reply, as referred and reproduced above, are termed as admission on the part of respondent-defendants. The contents cannot be taken as admission. The portion reproduced above and highlighted as admission apparently is taken out of context to urge that it would amount to admission. As to what constitute admission is well understood in the legal parlance to invite any uncalled for debate in this regard.

(12) Under Section 17 of the Indian Evidence Act, an admission is defined as a statement oral or documentary, which suggests any inference as to any fact and issue or relevant fact. An admission is a voluntary acknowledgment by a party or some one identified with him in legal interest of the existence of certain facts which are in issue or relevant to an issue in the case. Admission unless explained furnishes the best evidence, but admission as a whole has to be looked into for arriving at a conclusion. To have value and an effect as stated, an admission has to be clear, certain and definite and not ambiguous, vague or confused. Statement to operate as an admission must be clear in its meaning. Admission is not conclusive proof of the matter admitted, though it may in certain circumstances operate as estoppel. (See **K.S. Srinivasan versus Union of India (1)**). It has also been held in the case of **Nagubai Ammal and others versus B. Shama Rao and others (2)**, that an admission is not a conclusive as to the truth of a matter stated

(1) AIR 1958 SC 419

(2) AIR 1956 S.C. 593

therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel. It is further held that it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained. Section 17 of the Indian Evidence Act does not seem to be making any distinction between an admission made by a party in a pleading and other admissions and admission made by a party in a plaint signed and verified by him. However, such an admission cannot be regarded as a conclusive in the other suit and it is open to a party to show that it is not true. (**See Basant Singh versus Janki Singh (3).**)

(13) In this context, let us see if the alleged averment made in the reply, as reproduced above, can be taken as an admission or not. The contents of the reply that alleged adoption deed was a paper transaction is being pressed to say that this amounts to an admission by the respondents that there was an adoption deed. This certainly would not fit in the definition of an admission as noted above. This adoption deed, which is described as a paper transaction, is referred to as 'alleged'. This has also to be read as whole and not in isolation as is being done. In the reply, it is further mentioned that the plaintiff was never adopted nor treated as such and so this alleged deed was destroyed by Ganda Singh. The only inference that can be drawn from this reply is that there was an alleged adoption deed which was not true and was destroyed. How this can be treated as an admission on the part of respondents to say that there was a valid adoption deed is really not understood. In fact this has also to be appreciated in the context of complete averment in this regard in the reply. The perusal of the plaint would show that averment in regard to adoption of the plaintiff after performing the customs and ceremonies is averred in para 5 of the plaint. In reply to this, the respondents admitted the fact that Ganda Singh was issueless as correct but denied the remaining part as wrong by further mentioning that "plaintiff was never adopted by the deceased Ganda Singh". In para 6 of the plaint, it is stated that after adoption, plaintiff lived with Ganda Singh, who has been treating him

as his son and plaintiff has been treating Ganda Singh as his father. Similar averment in regard to Sham Kaur for treating the appellant-plaintiff as her son is also made, besides stating that the plaintiff was brought up, educated and married by his adopted father (Ganda Singh). This para of the plaint has again been denied as wrong. It is further stated that there was no such treatment as alleged. The fact as pleaded that plaintiff was brought up, educated or married by Ganda Singh is also denied and rather it is pointed out in the reply that the appellant-plaintiff is recorded as son of Gurbachan Singh. In the school record, in the voters list and in the Army where he was in the service from 1939 to 1941, It is further averred that the plaintiff had also raised a loan from Co-operative Society, Sukhgarh where he had described himself as son of Gurbachan Singh. Reference is also made that even his natural father Gurbachan Singh had denied the fact that the plaintiff was adopted. It is thereafter stated "that the plaintiff was never adopted by Ganda Singh nor treated as his son. The alleged deed of adoption is all a paper transaction. In fact the plaintiff was never adopted nor treated as such before or after the alleged deed which was destroyed by Ganda Singh." Reading in this context as a whole, this part of a written statement can certainly not be termed as an admission. In order to be competent, an admission has to be clear, certain, definite and not vague or confused which is not so in the present case.

(14) It is further required to be appreciated that the respondents are not party to the execution of the adoption deed. They are also not witnesses to said adoption deed. The admission in regard to adoption deed by them, as such, obviously would not carry any presumption against them even if the statement as alleged and reproduced above is taken as an admission on the part of the respondent-defendants. As per Section 70 of the Indian Evidence Act, admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution against him, but no such presumption otherwise be carried when the admission is in regard to a document which is not-executed by a party concerned. Section 70 is otherwise exception to Section 68 which requires examination of attesting witness to prove a document which is required by law to be attested. Requirement of examining an attesting witness thus, can be dispensed with where

executant admits execution and not in other cases. As per proviso to Section 68, calling of attesting witness to prove registered document can be dispensed with unless its execution is denied by the executant. Execution of the document is not admitted by the executant, who is not available, which would mean that the same is denied. The averments referred above certainly cannot be termed as 'admission'. This line of argument is, thus, required to be rejected.

(15) In fact, a further peep can be had to the stand of the respective parties, from the response, which, the respondents filed to the application seeking permission to lead secondary evidence in regard to this document. In para 1 of the application, it was averred by the appellant-plaintiff "that Ganda Singh deceased had adopted the plaintiff as his son and had also executed a registered adoption deed on 14th November, 1936". In reply, the respondents stated this para to be wrong and hence denied and then further stated "the plaintiff was never adopted by Ganda Singh. The alleged deed of adoption was got executed by Gurbachan Singh father of the plaintiff, when he (Ganda Singh) came to know that it was a deed of adoption, which never took place, he destroyed the same. He never executed any deed of adoption or if at all, it was executed, he was made to sign by Gurbachan Singh, exercising undue influence." This will explain the stand of the respondent-defendants in the reply filed where this deed was termed as alleged deed of adoption and it would have to be looked into as a whole and a few lines cannot be taken in isolation to conclude that the respondent-defendants have admitted the adoption deed. The admission made in ignorance or under duress cannot bind the maker of the admission. (See **Shri Krishan versus Kurushetra University (4)**). As already noticed, the alleged admission of this adoption deed by the respondent-defendants is not at all an admission nor it can be taken against the respondents, who were not party to this adoption deed" to make any such admission in regard to its execution. The line of reasoning as adopted by the counsel for the appellant to say that this document is required to be taken into consideration on the basis of an admission made as such cannot be accepted and is bound to be rejected.

(16) Though the adoption deed can not be taken to have been admitted but still the Trial Court took the same into consideration as

secondary evidence on the ground that its existence was established and destruction conceded. This approach on the part of the Trial Court was not put to any serious challenge before the lower Appellate Court or in the present Second Appeal.

(17) The record of the proceedings would reveal that certified copy of the adoption deed was kept as mark 'A' and was to be exhibited on proof of the existence and loss of the original deed. The Trial court after making reference to the record came to the conclusion that plaintiff was able to establish the loss of the original adoption deed and in this regard made reference to the contents of the reply filed by the respondent-defendants that the adoption deed was destroyed by Ganda Singh. It was accordingly observed that the existence of the original was established and so also the loss even from the statement made by the defendants and thus it was held that this document though kept as marked can be taken into consideration as evidence in the form of a secondary evidence. There was no argument raised before the Appellate Court in this regard. Mere admission of the document as secondary evidence would not mean that its contents will also stand proved. This would not be enough to show that this document contains truthful account of adoption and can be relied upon. Mere making a document or exhibiting the same would not dispense a party to prove the contents thereof. Mere proof of signature on a document would not lead to proof of the contents or truth of the account given therein. Here even signature or the thumb impression was not proved to say that documents or contents stood proved. Though elementary but document can be proved by various methods. Ordinarily handwriting and signatures can be proved by calling a person as witness, who wrote it, signed it or saw it being written or signed or who is qualified to express an opinion as to the handwriting or signatures in terms of Section 47 of the Evidence Act or as an expert under Section 45 of the Evidence Act. It can be proved by a comparing handwriting under Section 73 of the Evidence Act or by admission of the person against whom it is tendered. Signature alone does not in all cases complete the execution of a document for the purpose of giving it legal validity. Merely by proving the handwriting or signature of the person writing or signing a document through another

witness, the contents or the correctness of the said document could not be said to have been proved.

(18) Let us now proceed to see if this adoption deed has been proved or not. The courts below have given cogent and valid reasons in this regard to discard this exhibit from consideration. Various reasons were noticed to hold that the adoption deed can not be believed. The adoption deed is dated 14th November, 1936. From the copy which is marked 'A', it is seen that it contains a recital that Ganda Singh was 70 years old and thus there was no prospect of his getting any child and he being issueless had brought up Karam Kaur daughter of his real brother Babu Hranam Singh (deceased) like his own daughter and that he had married her to Babu Gurbachan Singh of District Ludhiana. It is further mentioned that he was keeping Gurbachan Singh and Karam Kaur as his son-in-law and daughter and they they had two sons born at his house and that he had adopted Shamsheer Singh as his son in the presence of panchayat baradari and with the consent of parents of Shamsheer Singh (appellant-plaintiff). The document also contains a reference that he had taken Shamsheer Singh in his lap. He brought him up like his own son, married him and was giving him education and that there was a treatment of father and son between them. It is further mentioned that he, his mother and father Gurbachan Singh were serving him and that Shamsheer Singh would be entitled to all the rights in his property like his natural son and that after his death he would succeed him as his natural son. Thus, the recital in the document would show that Shamsheer Singh was married prior to 14th November, 1936 and that marriage of his mother Karam Kaur was performed by Ganda Singh with Gurbachan Singh. It is also recorded in the document that Gurbachan Singh and Karam Kaur were living with Ganda Singh at his house and plaintiff Shamsheer Singh had been adopted by Ganda Singh right since the day he was born. Harnam Singh is recorded as real brother of Ganda Singh.

(19) Majority of the recitals in the adoption deed are factually incorrect and rather are wrong. The recitals in this document are also contrary to the evidence on record. Harnam Singh, who is recorded as brother of Ganda Singh, is not his brother. In fact, Harnam Singh is merely a collateral. Gurbachan Singh (PW-1), while appearing as

witness has stated that his marriage with Karam Kaur was performed by his father-in-law Harnam Singh. This is again contrary to the recitals in the adoption deed that PW1 was married by Ganda Singh. Harnam Singh in fact had died a year prior to 1920-22. Harnam Singh's property was inherited by his real brother Amar Singh. Appellant-plaintiff was born in the year 1919. This, marriage of his father Gurbachan Singh took place prior to 1919, i.e., during the life time of Harnam Singh. Thus, Harnam Singh would have married his daughter and no occasion would arise for Ganda Singh to marry Karam Kaur with Gurbachan Singh. In the year 1936, age of Ganda Singh is given as 70 years. Obviously, the adoption being in the year 1920 (immediately after birth of appellant-plaintiff) Ganda Singh was 50-52 years old at that time. Would he think of adopting a child at that age where he could certainly expect a birth of some child from the womb of his wife ? He was not certainly of that old age to lose hope of begetting a child. One may not lose sight of the fact that prior to 1955, there was no hindrance for Ganda Singh to get married more than once. Could he then think of adopting a child as is being made out ? This aspect would certainly cast another doubt regarding the fact of adoption as pleaded. It has also not been sufficiently established by any evidence on record that Gurbachan Singh's marriage with Karam Kaur was performed by Ganda Singh. Rather it has come on record that it was performed by Harnam Singh as stated by Gurbachan Singh (PW1). Karam Kaur is not the real daughter of Ganda Singh nor was she brought up by Ganda Singh as his own daughter. Evidence on record also would not show that Gurbachan Singh and Karam Kaur ever lived with Ganda Singh at village Sukhgarh.

(20) As per the stand of appellant-plaintiff, he was adopted by Ganda Singh soon after his birth by performing necessary ceremonies. In support of the same, he has produced on record the oral account of some of the witnesses. The appellant himself has appeared as a witness to say that on attaining the age of discretion he found himself to be adopted son of Ganda Singh. He has stated that he used to address Ganda Singh as his father and Sham Kaur as his mother. Gurbachan Singh(PW-1), natural father of the appellant, has appeared in support of the version of the appellant. He has stated that he has given the

appellant in adoption to Ganda Singh when he was 5-6 months old. As per PW-1, panchayats of village Sukhgarh and that of the surrounding villages had collected in the house of Ganda Singh, when appellant Shamsher Singh was put in the lap of Ganda Singh, who had then proclaimed that from the said date Shamsher Singh would be his son. His evidence further is that Ganda Singh and his wife kissed the head of appellant Shamsher Singh, besides proclaiming that he would thereafter be their son. It is also stated by PW-1, that the appellant-plaintiff thereafter lived with Ganda Singh and Sham Kaur and was married by Ganda Singh in village Karoran. This witness has also disclosed that in that year 1936, an adoption deed was executed by Ganda Singh, copy of which is mark 'A'. This deed was statedly attested by Devi Dial and Sahib Dass, both of whom had died and were not available to depose. It is also claimed that this deed was attested by Sub Registrar and was signed by Ganda Singh. It is in this background that the Ganda Singh, according to this witness, had brought up the appellant-plaintiff. He had also taken him to Pakistan Chak No. 130 in Sargodha District alongwith Sham Kaur. Ganda Singh, after the death of Amar Singh, had inherited the property belonging to Amar Singh which he owned in Pakistan. It is in the evidence of this witness that appellant-plaintiff was married by Ganda Singh at village Sukhgarh before he left for Pakistan.

(21) Other witnesses examined in support of the case set up by the appellant are Amar Chand (PW-5), Hari Singh (PW-6) and Nand Singh (PW-8). Amar Chand (PW-5) stated that he has seen appellant living with Ganda Singh and being treated by both Ganda Singh and Sham Kaur as their son. Hari Singh (PW-6) is the real uncle of Amar Chand and stated that he was the Pandit of Ganda Singh's family and thus knew that the appellant-plaintiff was an adopted son of Ganda Singh. According to PW-6, appellant was adopted about 50 years back and this witness claims to be present at the time of adoption. He has also given evidence that natural father of appellant, i.e., Gurbachan Singh (PW-1) had put appellant Shamsher Singh in the lap of Ganda Singh, who had then kissed forehead of Shamsher Singh and thus treated him as his son. At that time, appellant's natural mother was also present and both natural father and natural mother had proclaimed that their relationship with appellant Shamsher Singh would cease. Amar Chand

(PW-5) also gave evidence that appellant is adopted son of Ganda Singh. He gave his age as 50 years. His version was doubted by the courts on the ground that he had a motive to give evidence in support of the appellant and against the interest of respondent-defendants. In fact, he was the mortgāgee of land and mortgage in his favour had been got redeemed by Basant Kaur and Baljit Kaur, mothers of the respondent-defendants. PW-5 thus had to give up the possession of the land and thus was found to have interest and motive to give evidence against the respondents and in favour of the appellant-plaintiff, Hari Singh (PW-6) gave his age as 65 years on 3rd September, 1977. On this basis, it was noted by the court that he must be 8—10 years old in the year 1920, when this adoption allegedly took place. It is to be noted that appellant Shamsheer Singh was born on 19th November, 1919 and according to his natural father was given in adoption when he was 5-6 months old. Thus, this adoption was in the year 1920, when PW-6 would be 8—10 years of age. There is substance in the observation made by the court that a person who was 8—10 years old would hardly be able to recollect the happenings which took place 55—60 years ago. The witness would not be having the age of discretion where he would have been able to understand the niceties of adoption ceremony and to give evidence thereof after such a long lapse of time in the manner he has deposed. Devi Dial, Sahib Dass, Dasondha Singh and others were stated to be present but two out of these could not be examined as are dead. It is not clear if this deed was required to be registered as per law. If so, then Sections 68 and 70 of Evidence Act would come into play. Execution of adoption deed is not admitted and as such the appellant was required to prove this document in the absence of attesting witnesses. PW-5 and PW-6 were also found to be belonging to village Mauli Baidwan and not to village Sukhgarh. They have not explained as to how they were called though not belonging to the village of Ganda Singh. In fact, none from village Sukhgarh has been produced to prove adoption except Nand Singh (PW-8). PW-8 has given evidence in regard to the ceremonies performed at the time of adoption. This witness himself has claimed that he was 15-16 years old while his father was 40—50 years old at the time of adoption. He is Saini by caste. Ganda Singh was a Jat. It is difficult to accept that a person of Saini caste, that too aged 15-16 years, would be called to witness the

adoption ceremony and no Jat would be so called to come present. No one has appeared from the brotherhood of Gurbachan Singh (PW-1) to prove the adoption. The respondents, thus, pleaded that the evidence led on behalf of the appellant-plaintiff in support of the adoption was properly analysed and discarded for valid and justified reasons. The versions of these witnesses were not found safe for reliance to come to a conclusion that adoption of the appellant-plaintiff stood proved or established. I would not find any justifiable reasons to interfere with this reasoning given by both the courts below in ignoring the evidence of such witnesses in this Regular Second Appeal. Merely because a different view may also be possible on the basis of evidence, which is available on record, cannot be a sufficient reason under law to interfere in the findings of fact as recorded on proper appreciation of that evidence. This is more so in the background that there is rather more convincing evidence led by the respondent-defendants to show that the adoption indeed was never executed or acted upon subsequently. As held in **Inder Singh versus Gurdial Singh (5)** the formalities necessary for adoption are declaration of adoption and then general treatment of the appointed heir as a son. It is further held that a mere declaration or even the execution of a deed of adoption unaccompanied by precedent or subsequent treatment is insufficient. If really Ganda Singh had adopted appellant-plaintiff, it was bound to be reflected in the school record, where Shamsheer Singh was got admitted. In the school leaving certificate, he is shown as son of Gurbachan Singh and not as adopted son of Ganda Singh. This certificate issued by Khalsa High School, Sohana is on record as Exh.D2. The plaintiff was admitted in the school on 26th February, 1936 and withdrawn on 31st March, 1936. Similarly, the plaintiff was admitted in Government Primary School, Raipur Kalan on 1st December, 1927 and withdrawn on 31st March, 1930, where again he was shown as son of Gurbachan Singh. Another fact of significance, as may be noticed, is that the appellant-plaintiff was admitted in Primary School, Raipur Kalan, District Ropar by Ganda Singh, who described him as his 'Dhota'. The appellant-plaintiff had joined the Army service where he remained in the service for 2-3 years and was discharged in the year 1945. In the Army record, the name of the father of the appellant-plaintiff is mentioned as Gurbachan

Singh. Similarly, he became member of the Co-operative of Village Sukhgarh where he again gave his father's name as Gurbachan Singh. Thus, it can be seen that neither in the year 1920 nor after 1936, the appellant-plaintiff was ever treated by Ganda Singh as his adopted son. Even if some adoption was done or ceremony performed, it was not acted upon as can be seen from the subsequent treatment both the appellant-plaintiff as well as by late Ganda Singh. The evidence led by respondents is more convincing and is in the form of old documents, whereas the appellant would seek support from oral account given by persons, whose evidence is not free from doubts. This evidence is thus insufficient:

(22) When the appellant-plaintiff was confronted with this fact that name of his father is mentioned as Gurbachan Singh in the school and other records, he was seen to be changing his stance a bit by suggesting to the defence witnesses that he was adopted in the year 1936 by Ganda Singh. This would expose him and his stand and bring the falsity thereof. Earlier evidence was led to show that adoption was immediately after birth, which was in 1919. To explain this fact, the appellant introduced another falsehood by saying that he was adopted in 1936. This rather exposed his entire game that he was resorting to one falsehood after another.

(23) The respondents relied upon one Tamliknama (Exh.D1) which was executed in the year 1943. This Tamlik is in favour of Smt. Sham Kaur, wife of Ganda Singh where he gave $\frac{1}{2}$ share of squares No. 18 and 19 to his wife to enjoy the income of this $\frac{1}{2}$ share giving her right to lease out and enjoy the lease money but not to have the right to sell or mortgage the same. It is further mentioned in the Tamlik that in case she pre-deceased Ganda Singh, then the ownership would revert back to him (i.e. Ganda Singh) and after his death, it would pass on to one who was nominated as heir by him. It is rightly urged by the respondents that in case Ganda Singh had validly adopted Shamsher Singh, he was not required to mention in the Tamlik that his property would go to any heir nominated by him and he could have easily recorded therein that it would go to his adopted son. This is another factor which certainly would again go to cast doubt on the adoption deed relied upon by the appellant-plaintiff. As per the counsel for the

appellant, this Tamliknama should not be given much importance as it will not give any indication that Shamsheer Singh was not treated as adopted son. The counsel would explain that Ganda Singh had played safe in giving this right to his wife in Tamliknama and not much significance can be attached to the averment that Ganda Singh had mentioned therein that the property will go to his nominated heir. Describing this to be conjectural and unsustainable, the counsel has attacked the finding in this regard. In my view, this cannot be described as purely conjectural finding. This can be more appropriately termed as inferential finding. In fact an inference can certainly be drawn from the fact the Ganda Singh may not have been treating the appellant as his adopted son. If he had been treating appellant as his adopted son, he could be expected to write in his Tamliknama that the property would go to his adopted son and would not have recorded that it would go to an heir to be nominated by him. From this, it is possible to deduce an inference that Ganda Singh did not treat Shamsheer Singh appellant as his adopted son. No fault can be found in this regard on the part of the court below to so infer. This is not a conjecture but is an inference which is available to be drawn on the basis of material led in evidence. This finding could be termed as conjectural if there had been no material available on record to base the finding. Material and evidence is on record to infer and deduce a finding as is done. Thus, this inference is a possible one and rightly drawn.

(24) There is another very important and significant piece of evidence available on record which would cause serious dent to the case of the appellant-plaintiff. Ganda Singh, who died in the year 1948, held land in Chak No. 130, District Sargodha (Pakistan). His wife Sham Kaur was also having land in District Sargodha in Chak No. 130. The land, which was standing in the name of Ganda Singh, was required to be allotted by the custodian to Sham Kaur and Shamsheer Singh, if indeed Shamsheer Singh had been an adopted son of Ganda Singh. Instead, entire land standing on the name of Ganda Singh was allotted to Sham Kaur, his wife. The appellant-plaintiff thereafter filed a suit in the year 1958 seeking possession of ½ share of the land held by Ganda Singh and allotted to Sham Kaur. In this suit, the appellant-plaintiff had alleged that he was the adopted son of Ganda Singh and

so land of Ganda Singh should have been allotted to him and to Sham Kaur in equal Shares. Copy of the plaint in this regard is on record as Exh.D4. Sham Kaur filed a written statement in this suit which is also on record as Exh.D3. This written statement was filed by Sham Kaur through her attorney Gurbachan Singh, none other than the natural father of appellant-plaintiff Shamsheer Singh. In this written statement, the fact of adoption of Shamsheer Singh or he being adopted son of Ganda Singh is denied. Natural father of Shamsheer Singh, thus, has filed a written statement on record on behalf of Sham Kaur that plaintiff Shamsheer Singh was not the adopted son of Ganda Singh. It is also mentioned that Ganda Singh could not have adopted Shamsheer Singh, son of Karam Kaur as Ganda Singh could not have legally married Karam Kaur, she being daughter of Harnam Singh, a cousin of Ganda Singh. It is, thus, stated that Ganda Singh could not have legally produced Shamsheer Singh because of his relationship with Karam Kaur. This suit filed by plaintiff was dismissed by Sub Judge Ist Class, Kharar on the ground that the jurisdiction of the civil court was barred. Still, Shamsheer Singh never took any action to challenge the said finding or to otherwise make any approach before Rehabilitation Authorities to claim $\frac{1}{2}$ share of the land held by Ganda Singh and which stood allotted to Sham Kaur. If really Shamsheer Singh had been adopted as a son by Ganda Singh, he was bound to pursue his claim, which, he did not and this fact accordingly would stand against him and the plea that he has raised in the present suit. This fact again cannot be easily ignored. If really Shamsheer Singh had been adopted by Ganda Singh, then would his natural father Gurbachan Singh file a written statement to say that he was not the adopted son ? This happened in the year 1958, much after the adoption or the deed being of the year 1936.

(25) How would Gurbachan Singh explain the admission on his part ? This admission is rather categorical. His evidence which has now given in the present suit to say that Shamsheer Singh was adopted by Ganda Singh is also contrary to the admission made by him in the earlier suit filed in the year 1958. At any rate, it can certainly be said that he is not a reliable witness to base the finding as he has chosen to take different stands at different times. In fact, this admission made by Gurbachan Singh is in line with the record where appellant is

described as his son in all the records as referred to above. He has now changed his version which is with interest to favour his natural son. It is not possible for Gurbachan Singh to explain the contradiction. He cannot plead any ignorance on his part. Version of this witness is again contradictory in another suit filed by Baljit Kaur and Basant Kaur in the year 1951. In this suit, Sham Kaur had admitted the fact that Ganda Singh her husband had adopted Shamsheer Singh. This fact has been highlighted by the counsel for the appellant also. Baljit Kaur and Basant Kaur, both daughters of Harnam Singh, had instituted this suit for possession of land against Shamsheer Singh and Sham Kaur. In a joint written statement filed by Sham Kaur and Shamsheer Singh, it was pleaded that Shamsheer Singh was the adopted son of Ganda Singh and on death of Ganda Singh, they both are entitled to inherit the property. The courts below have found this so called admission made by Sham Kaur to be one which was obtained by Gurbachan Singh and Shamsheer Singh exerting undue influence. This aspect cannot be completely ignored from consideration. It is seen that Gurbachan Singh had been an attorney of Sham Kaur and this admission apparently has been obtained by Gurbachan Singh or Shamsheer Singh because of the peculiar situation and circumstances in which Sham Kaur was then placed in a suit filed by Baljit Kaur and Basant Kaur. This is also an admission made in a joint written statement filed by Shamsheer Singh and Sham Kaur. Sham Kaur got a chance to explain this admission in the subsequent suit filed by the appellant in 1958, where she denied the adoption through the natural father of the appellant. This admission, as such, would not be worthy of much credence and this would not have much legal value. Further it can be explained to have been made under some compulsion or duress. Subsequently, same Gurbachan Singh had denied the aspect of adoption while filing a written statement in a suit filed by his own son Shamsheer Singh in the year 1958. Gurbachan Singh could have easily then said that Shamsheer Singh is the adopted son, the stand which Sham Kaur took in this suit filed in the year 1951. The courts had rightly discarded this piece of evidence as an admission, which was wrongly made, besides it being a joint admission and not such an admission which was exclusively made by Sham Kaur. This admission is certainly explained by subsequent conduct of Sham Kaur through Gurbachan Singh. It is settled position of law that admission

is not a conclusive as to the truth of the matter stated therein, though it may operate as estoppel in certain circumstances. Admission can also be explained to be made under duress or on some misconception. It is also required to be appreciated that the adoption was by Ganda Singh and not by Sham Kaur. There is no admission made and brought on record by Ganda Singh about the factum of the having adopted Shamsher Singh. Record rather would show that Ganda Singh denied adoption. He referred the appellant as his 'Dhota' when he admitted him in school. Thus, the record as reflected subsequent to the adoption of Shamsher Singh and which had been referred to above, like school leaving certificate and record in the Army service would clearly fall in the line with the admission made by Gurbachan Singh, wherein he had denied that Shamsher Singh, his natural son, was adopted son of Ganda Singh and Sham Kaur. Gurbachan Singh, while appearing as PW-1 in the present suit was confronted with this fact and it would be relevant to refer to his version in this regard. PW-1 deposed that he cannot say whether Shamsher Singh was ever treated as adopted son by Ganda Singh or not. He further admitted that on asking of Sham Kaur he made an application in Civil Suit No. 3, Shamsher Singh versus Sham Kaur in the Court of Sub-Judge, Kharar on 16th December, 1959 for vacating ex-parte proceeding. Gurbachan Singh further admitted to have sworn affidavit as general power of attorney of Sham Kaur and of having filed a written statement on 25th August, 1959 where on asking of Sham Kaur he had denied the adoption of Shamsher Singh by Ganda Singh (emphasis supplied). His version now given in examination-in-chief, as such, cannot be believed. He is not a reliable witness and can change his stand according to his convenience. This will also go, to an extent, to explain the stand of Sham Kaur taken in the year 1951, because of the compulsion and it not being true statement, which in any case was joint written statement filed by her and the appellant.

(26) The counsel for the appellant-plaintiff then attempted to contend that adoption deed dated 14th November, 1936 is a registered document, duly signed by Ganda Singh. Learned counsel has not been able to appreciate that this document is not exhibited on record having not been properly proved or established. A detailed discussion has been made above to show that the aspect highlighted by the counsel

that it should be treated as an admission also cannot be accepted. Admissibility of a document in evidence and proof of its contents are two different aspects. Even more proof of signature on the document can not lead to proof of its contents. The counsel has made reference to some of the judgments to say that admission of a document would amount to proof of contents. Even then it is no proof of its truthfulness.

(27) Reference has been made to the case of **Life Insurance Corporation of India versus Narmada Agarwalla and others (6)**. This was a case where document was marked on admission and it was observed by the court that the question of admissibility recedes to background. It is further observed that it was open to the plaintiffs not to admit the document and if it was wrongly stated to be marked on admission, plaintiffs could have brought the same to the notice of the court to correct the error. It is in this context observed that once a document is marked on admission, the contents thereof are also treated to be admitted. The court further held that contents may have been admitted but not its truth as the party admitting a document even has a right to explain that though the document contains such a statement but it is not correct or true. The ratio of law as laid down in this case certainly is not attracted to the fact of the present case. In the instant case, there is no admission made by the respondents of the document concerned and rather this document is seriously disputed. The plea of admission by respondents being urged by the counsel for the appellant has been rejected. It cannot, thus, be said that this document was marked on admission and that its contents would also stand admitted. Document has still remained a marked one and not exhibited. Reference is then made to the case of **M/s. Sharda Talkies (Firm) and another versus Smt. Madhulata Vyas and others (7)**, to urge that where an admission is made in the written statement, then the absence of primary evidence would not mitigate against filing of a suit on the ground that primary evidence was missing. This was a case where evidence proving that the amount was paid to the plaintiff under a cheque was admitted in the written statement and it was said that in the absence of primary evidence, i.e., the cheque, no reliance could be placed on the evidence. The court had observed that cheque might have been the primary

(6) AIR 1993 Orissa-103

(7) AIR 1996 Madhya Pradesh - 68

evidence but the issue between the parties was in relation to the payment. Once the defendant had admitted the payment the absence of the cheque was held, would not mitigate against the filing of the suit. The contention as being raised again apparently is not attracted to the facts of the present case. Here it has not been admitted that plaintiff was adopted as is being construed by the learned counsel. In this regard, the absence of adoption deed or the proof in regard thereto would, thus, be material.

(28) Much emphasis was then made by the learned counsel for the appellant that the adoption deed being of the year 1936 is a 30 years old document and as such as per Section 90 of the Evidence Act, presumption in regard to genuineness thereof is required to be made. In this regard, the counsel has placed reliance on **Sri Lakhi Baruah and others versus Sri Pama Kanta Kalita and others (8)**, No doubt, Section 90 of the Evidence Act is founded on necessity and convenience because it is otherwise difficult and sometimes not possible to lead evidence to prove handwriting signature or execution of old documents after lapse of thirty years. The presumption that can be drawn relates to execution of the document that is its signatures, attestation etc. but not to the truth of its contents. Party wishing to rely on this section has also to show that it has come from proper custody. Even when it is so shown, still it is for the court to draw presumption or require the proof of its execution. In other words, the courts have a discretion not to admit document without formal proof. The rule of presumption is to be applied with great caution and where circumstances throw suspicion on genuineness of document, no presumption under Section 90 can be drawn. Court has even a discretion not to admit document without formal proof. There are more than one reason to doubt the genuineness of the document, which may require the appellant to formally prove the document instead of seeking support from Section 90. Even the appellant or his real father has taken a different stand at different times. No such plea was ever raised before the trial court or lower Appellate Court. Mere fact that document is 30 years old would not make it admissible without proof under Section 90 of the Evidence Act. It is to be noted that the presumption under the section is rebuttable presumption. This

presumption of due execution is liable to be rebutted by proof of suspicious circumstances and if these are created on record, the propounder is bound to remove them. Where document contains incorrect and to an extent unnatural details and witnesses are found changing stand from time to time, the document can be doubted to be genuine.

(29) In **Sri Lakhi Baruah's case** (*supra*), it has also been observed by the Hon'ble Supreme Court that presumption that arises under Section 90 does not apply to a copy or a certified copy even though thirty years old though presumption can so arise in regard to a copy or certified copy thereof if foundation is laid for admission of secondary evidence under Section 33 of the Evidence Act. Apart from admission, if any, incorporated in the certificate issued by Registrar, there has to be evidence to corroborate admission. Mere permission to lead secondary evidence would not dispense the appellant to prove the contents thereof, its existence and execution. It is further to be shown that copy has come from proper custody. The question of drawing presumption from a copy, as such, can arise only if it is proved to be executed by the executant. This piece of document has not been exhibited on record as a secondary evidence, which could have then entitled the appellant to ask for any presumption. Even if presumption is drawn, it would not amount to proving the contents of the document to be true. This has been found to be containing details which are contrary to the pleas raised in the suit. In fact, in the absence of the document having been exhibited, the same is not such an evidence which can validly be taken into consideration. Perhaps realising this difficulty only, the counsel for the appellant has made laborious efforts to show that the adoption deed was admitted so that the requirement of the proof of the same or contents thereof are dispensed with on this ground.

(30) The proof of contents of a document may either be proved by primary or secondary evidence. The primary evidence means the document itself produced for inspection of the court, whereas secondary evidence is defined under Section 63 of the Evidence Act. Concededly the document in original has not been produced and as such primary evidence is not forthcoming to prove the contents of the adoption deed. Even mere marking of a document as an exhibit, which is even not the case in hand, does not dispense with its proof. In this regard

Salt Tarajee Khimchand and others versus Yelamarti Satyam and others (9), may be referred. There is, thus, no valid case made out by the appellant for placing reliance on the adoption deed either on the ground that it is proved or admitted or on the ground that it is a secondary evidence and presumption would arise about it under Section 90 of the Evidence Act. Otherwise also, the adoption deed has been analysed on the basis of contents thereof and evidence led in this regard to show that it certainly does not reflect the correct state of affairs. The possibility as such cannot be ruled out that this document had been subsequently prepared or fabricated by the father of the appellant as is the allegation of the respondent-defendants. There is no evidence available on record to prove the contents of the document by proving signatures/thums-mark of Ganda Singh on this document. As such the document was not rightly exhibited. There is no reliable evidence on record to show that this document was ever thum marked by Ganda Singh. This document can not be treated as valid evidence in the eyes of law which would require consideration.

(31) Both the courts on the basis of evidence led and the material placed on record came to conclude that adoption deed was not worthy of acceptance as the contents contained therein were not found to be factually true or proved by the appellant-plaintiff. The trial adoption deed. Concededly, the appellant-plaintiff was born on 19th November, 1919 and as per the version given by the witnesses, he was adopted by Ganda Singh sometimes in early 1920. Reference is then made to the version of Gurbachan Singh (PW-1), father of the appellant-plaintiff, who stated that Shamsher Singh was brought up, educated and married by Ganda Singh. As per PW-1 Shamsher Singh was married before going to Pakistan. There is an evidence through Amar Chand (PW-5) that Shamsher Singh was married 30-35 years before while he appeared as a witness in the court in the year 1997. Thus, the marriage of Shamsher Singh could be fixed to some where 1942. This may not be definite but certainly not anywhere near 1936, which was the date on which this adoption deed was prepared. It is mentioned in the adoption deed, which was executed in the year 1936, that Ganda Singh had already performed the marriage of Shamsher Singh. This fact, as

such, cannot be reconciled in the evidence given by this witness and the fact that Amar Singh died in 1942 and thereafter Ganda Singh allegedly took Shamsher Singh along with him to Pakistan. This would also make the marriage date to be somewhere in the year 1942. As already noticed, Harnam Singh has been referred to as a real brother of Ganda Singh in the adoption deed, which fact is also not correct as he is collateral and cousin of Ganda Singh. As per the evidence, marriage of Karam Kaur daughter of Harnam Singh was performed by him, i.e., Harnam Singh, whereas in the adoption deed it is stated that Karam Kaur was treated like a daughter and was married by Ganda Singh. All these wrong facts, which have been mentioned in the adoption deed, would tend to show that this deed was in fact prepared to show only the adoption which may not be valid.

(32) There apparently was no need to prepare in adoption deed in the year 1936, i.e., when the appellant-plaintiff was married and was 17 years old, whereas adoption had taken place in the year 1920. The trial court has also validly noticed this fact that the person responsible for executing the adoption deed perhaps was aware of the legal position that no stranger could be adopted by Ganda Singh and that is why Karam Kaur has been shown as daughter of Ganda Singh, whose marriage was also statedly performed by Ganda Singh as per the adoption deed, which is factually found inaccurate/incorrect. Even the evidence of PW-8 can be referred to say that the marriage of plaintiff-appellant Shamsher Singh took place somewhere in the year 1940 or thereafter. According to PW-8, plaintiff was married 4-5 years after he stopped his studies and according to Exh. D2, plaintiff was in school upto 31st March, 1936. Thus, his marriage, according to PW-8, was performed somewhere in the year 1940 or thereafter. Obviously, he was not married when the adoption deed was executed in the year 1936. This would cast another doubt in regard to validity of this adoption deed. Finding these infirmities in the recital of the adoption deed, courts below have rightly come to the conclusion that this deed was prepared with a calculated attempt to show the adoption to be valid one. Thus, the evidence of the witnesses while giving oral account about the adoption of appellant-plaintiff, in my view, was rightly disbelieved.

(33) The respondent-defendants also referred to provisions of customary law to urge that a sonless proprietor of a land may appoint one of his kinsman to succeed him as his heir. The trial court had made reference to para 35 of Rattigans Digest of Customary Law, which provides “a sonless proprietor of land in Central and Eastern parts of Punjab may appoint one of his kinsman to succeed him as his heir”. On this basis, it was urged that appellant-plaintiff is not the kinsman of Ganda Singh being son of Karam Kaur daughter of Harnam Singh, who was cousin of Ganda Singh. He was accordingly found stranger to Ganda Singh. The custom, as noticed above, was referred to point out that only a heir could be appointed and no stranger, thus, could be adopted. According to the respondent-defendants, the appellant-plaintiff could not even be appointed as a heir. Instead of meeting this legal position, the counsel for the appellant tried to make a capital out of some observations made by the lower Appellate court in this regard. Reference is invited to para 20 of the judgment where it is recorded by the lower Appellate Court that even if it is assumed that there was an adoption, it was under custom and not under Hindu Law. The counsel would say that this would be enough to allow the appeal as the Appellant Court gave a finding that adoption was there. This approach of relying on some observations which are only made to bring home the correct legal position for argument’s sake cannot be read to hold in favour of the appellant- plaintiff. The lower Appellate Court went on to observe that the adoption even if be there was nothing more than an appointment of an heir by a sonless proprietor and it created no more than personal relationship between the appointor and the appointed heir.

(34) It is to be noted that both the courts below have concurrently held that valid adoption of Shamsher Singh by Ganda Singh is not established. Accordingly, to a custom, adoption of daughter’s son was not permissible and it has been urged that even adoption would be invalid on this count. As held in **Kehar Singh versus Dewan Singh (10)**, a customary adoption in Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only. The general custom negating the right of the appointed heir to succeed collaterally in the family of

(10) AIR 1966 S.C. 1555

adopted father is stated in Art 49 of Rattigan's Digest as per which relationship is purely personal one. In **Keher Singh's case** (*supra*) the Hon'ble Supreme Court has taken note of Riway-i-am recognising the adopted son's right to collateral succession in adoptive father's family should be taken to apply to cases of customary formal adoption and not to cases of adoption by way of customary appointment of heirs. It is a question of fact in each case whether the adoption by a Jat is formal or informal. The adoption is stated to be formal if the parties manifest a clear intention that there should be a complete change of the family of the adopted son, so that he ceases to be a member of his natural family and loses his right of collateral succession in that family and at the same time becomes member of the adoptive father's family and acquires a right of collateral succession in the family. It has been found as fact that the late appellant Shamsheer Singh could not succeed in showing a clear intention that there was a complete change of family. Appellant was continuously shown as son of his natural father in the records which would rather indicate that the parties did not manifest any intention of change in the family of appellant. It is in the background of this legal position that the Appellate Court has observed that even if some adoption is noticed as having been carried out, it will be only informal and would not lead to a position that appellant was transformed to the adoptive family.

(35) The legal position that would emerge from the custom as noticed above, would appear to be so. It has rightly been urged by the counsel for the respondent-defendants that even if it be conceded, only for the sake of argument that adoption of Shamsheer Singh is somehow seen, then it is informal and under customary law and he would not become a son of Sham Kaur and Ganda Singh and it will only create a personal relationship between Ganda Singh and Shamsheer Singh, the latter having been appointed as an heir and nothing more. No efforts were made to show that the adoption was formal and manifested by prior or subsequent intention. Rather the case set up in the plaint is that appellant-plaintiff was adopted as per the customs and as such this would only mean an appointment of an heir by sonless proprietor and

thus it only created a personal relationship between the appointor and the appointed heir. The Appellate Court has thus rightly observed that such an appointment did not bring about transplantation of Shamsheer Singh into the family from the family of his birth to the adopted family. Reliance in this regard is made on **Niranjan Singh versus Kishan Singh alias Kishna** (11). In this case, it was observed that in the absence of cogent evidence relating to observance of formalities of adoption, it is to be presumed that adoption is no more than mere appointment of an heir creating personal relationship between the appointor and the appointee where the parties are governed by the agricultural customs in the State of Punjab. It is further observed that such a position could neither establish the tie of kinship between the appointed heir and the appointor nor has the effect of transplantation of the appointee in the adopted family resulting in complete and absolute severance of appointee's relations with his natural family unless a special custom to the contrary is proved to exist either in the particular tribe in a given district or in the particular family of the parties. Reference in this regard can also be made to **Kehar Singh's case** (*supra*). It was neither shown from the evidence nor was so pleaded before me that this was a case of formal adoption where there was complete transplantation.

(36) The lower Appellate Court has further gone on to observe that the manner of adoption otherwise would not make any material difference in this case. It is noticed as a fact that after death of Ganda Singh, the property devolved upon his widow Sham Kaur. He would be entitled to succeed to the property of Sham Kaur as an heir if he has been transplanted as a son of Ganda Singh and Sham Kaur. As already held, the manner of adoption at the maximum even if taken for the sake of arguments, would prove only to show that appellant-plaintiff was only appointed as an heir and was not and cannot even be treated as an adopted son. It has further been observed that the appellant-plaintiff, being a son of the daughter of the cousin of Ganda Singh, could not be appointed as an heir being not a kinsman, who only could succeed him as per the custom and could be so appointed as an

heir. Legally, thus, there was a doubt in regard to the validity of the appellant being appointed as an heir as per the customary law and even if it was so, it would only go to create a personal relationship and thus he would not be entitled to succeed to the property of Sham Kaur as a son.

(37) The appellant-plaintiff has relied on some entries of mutation made in his name of a land at village Sukhgarh. Some land in this village was mutated in the names of Sham Kaur and Shamsher Singh, both as heirs of Ganda Singh. This has been referred to as an admission which is thus highlighted by the counsel for the appellant to say that the adoption of the appellant-plaintiff would stand established from this fact. Exh. D5 is an extract from the register of mutation, which contains an endorsement by Assistant Collector IInd Grade. It is not understood as to how this is being referred to as an admission by Sham Kaur. It is only an entry containing a mention by revenue official at the time of mutation in his own words. It was rightly observed by both the courts below that an admission can be considered as such when the whole context is before the court so that it can be seen as to under what circumstances such a statement was made. **Ishar Dass versus Arjan Singh and others (12)**, can be referred to in this regard. Moreover, this entry cannot be treated as an admission made by Ganda Singh though he lived for 12 years after the execution of the deed dated 14th November, 1936. The lower Appellate Court has with justification referred to the law laid down in **Kishori Lal versus Mst. Chalti Bai (13)**, to say that the admission made by Hindu widow surrounded by members of family, whose interest it was to foist an adoption on her will necessarily carry very little weight. As observed, when adoption itself is not proved as a fact, no value can be attached to admission contained in mutation or written statement. The pedigree entries showing Shamsher Singh to be adopted son of Ganda Singh is only a record prepared by the revenue authorities without much basis, which can not be considered as a valid evidence. The stand taken by father of appellant-plaintiff Gurbachan Singh which has been noticed in detail

(12) 1996 Current Law Journal-537

(13) AIR 1959 S.C. 504

in the foregoing paragraphs can also not be ignored. As already noticed, Gurbachan Singh (PW-1), natural father of the appellant denied the adoption of Shamsher Singh and in this background the observations of the courts below that Sham Kaur agreed to the so called adoption earlier only when Basant Kaur and Baljit Kaur went into litigation against her and was for herself protection can well be noticed as valid explanation to explain this so called admission. This admission, as such, can easily be ignored as has been done by the courts below.

(38) Before concluding, two aspects of the case would need attention. The counsel for the appellant has pleaded that his application for additional evidence was not considered and this would be sufficient ground to interfere in the order passed by the lower Appellate Court. It may be noticed that the appellant had made an application for permission to adduce additional evidence under Order 41 Rule 27 CPC to produce a copy of the judgment passed by Senior Sub Judge, Ambala on 31st October, 1952 dismissing the suit of Basant Kaur and Baljit Kaur for possession of a land. The lower Appellate Court considered this application and came to the conclusion that this judgment is not relevant for deciding the controversy in the present case. As observed by the lower Appellate Court, the question involved in the instant case was to see as to who would succeed Sham Kaur, i.e., whether plaintiff or Basant Kaur and Baljit Kaur and as such the judgment rendered by Senior Sub Judge, Ambala would not have much relevancy in this regard. The copy of this judgment was otherwise placed before me and perusal thereof would show that the suit was dismissed when the plaintiff therein refused to amend the plaint to restrict their claim to the property situated in District Ambala. There was no adjudication on merits. Even otherwise, the counsel could not show if the plaintiff had made out a case for leading additional evidence at the appellate stage. It can not be said that the application for additional evidence was not considered by the Appellate Court.

(39) Another application has been moved by Gursharan Kaur for being impleaded as a party. At this stage, it is too late for any body

for being impleaded as a party. Even otherwise, the rights of the respondents flow in terms of the provisions contained in the Succession Act. Applicant has not been able to show if she is a necessary or proper party. The applicant would have to seek her right, if any/not through the present litigation, but through a remedy if she otherwise has any. I am, thus, not inclined to accept this application and the same is also dismissed.

(40) It may require a notice that no substantial question of law was mooted by the appellant. Since certain substantial questions of law do arise in this case regarding admissibility of evidence, adoption deed and customary law, the appeal would not be liable to be dismissed on that court.

(41) It is required to be noticed that the appellant-plaintiff asserted his right as an adopted son for the first time when he filed a suit in the year 1958. This was after ten years of the death of Ganda Singh, his alleged adopted father. Why would he wait for ten years and allow the property to be mutated in the name of Sham Kaur cannot easily be explained. He still did not succeed and thereafter did not pursue the matter. Subsequently, he has filed this suit in the year 1976. Why did he wait for 1958 to 1976 to file the present suit? In the initial suit filed by him in the year 1958, his natural father filed a written statement on behalf of Sham Kaur to say that the adoption never took place. All these issues have been properly discussed and adjudicated by the courts below. I do not find any legal infirmity in any of the findings recorded by the lower Appellate Court. Findings of the trial court on issue Nos. 8 and 11 have been correctly reversed. Even otherwise, no submissions were made before me on the remaining issues and accordingly the findings on all these issues as given by the lower appellate Court would stand affirmed.

(42) As a result thereof, the present appeal is found without merit and is dismissed.