A as adopted son on earlier occasion will

A valid adoption made by a person cannot be cancelled by any of parties to the adoption or by any other person, nor can the adopted child give up his or her status as such adopted child and claim rights in the family of his or her birth.

An adoption once made is irrevocable. It is, however, open to the adopted child to give up or modify, his or her rights to properties and inheritance in the adoptive family either before or after adoption. Same was the view prior to the commencement of this Act also. We have already seen above that no writing or execution of any document is necessary on the validity of the adoption.

So the fact of adoption must be proved with cogent evidence, and the burden is on the person who sets an adoption. In Kishore Lal v. Mat. Chalti Bai, the Supreme Court held that the adoption is to be proved as a fact and the burden is on the person who asserts so. The mere fact that the adoptive mother has admitted the adoptived boy as adopted son on earlier occasion will not be of any avail and the alleged adoptive mother cannot be said to be estopped by her conduct to prove by evidence that no adoption has in fact been done. There cannot be any estoppel where the truth is known to both the parties. It is not always necessary to have direct evidence of authority to adopt. But neither the principle that both the factum of adoption and the authority to adopt may be proved by circumstantial evidence alone i.

e., by conduct repute and recognition etc. nor the consideration that evidence naturally gets lost with the passage of time, would justify the

acceptance of an oral testimony which merits rejection on account of its inherent improbability or intrinsic defects....

it is the paucity of direct evidence and not its falsity that may be supplemented or filled up by circumstantial evidence. Further in the case of a Hindu, long recognition as an adopted son raises a strong presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. Where there has been no evidence of consistent pattern of conduct on the part of the adopted son from which inference that adoption must have taken place can be drawn by a court of law, the existence of a document recording the fact of adoption is of no avail.

The same was the position even where the adoption was witnessed by a registered deed. The law as to proof of oral or written adoption is the same as it was before the Act. But now according to Section 16 of the Act an adoption which is witnessed by a registered deed of adoption will be presumed to be valid unless disproved by positive evidence. The burden of proof in such a case is on the person who questions the adoption as will be clear by Section 16 of the Act which runs as follows:— " Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

” The presumption provided by above Section 16, shall not be made unless the following conditions are complied with:— (1) There must be a document. (2) It must be registered under the law in force. (3) It must support to record an adoption. (4) The document must be signed by both the giver and the taker of the child in adoption and not by only one of them. (5) It must be produced before the court. If any of the above ingredients is wanting, the presumption cannot arise.

It has been held by the court that these would be a necessary presumption in favour of the validity of the adoption if it is made through registered deed, unless contrary is proved. Recently in Bishwanath v. Ajay Kumar the Court upheld that, a registered deed of adoption raises a strong presumption that an adoption has been made in accordance with the provisions of the Act and the presumption may, however, be rebutted by the opposite party. In Shakuntala Devi v. Augia Mandalain & others, the High Court held that if in any adoption, no ceremony of giving and taking took place and the alleged adopted child was never transferred from the family of his natural parents to the family of adoptive mother, the court was bound to accept the fact of adoption as proof on the basis of registered deed of adoption dated 16-11-1990, under Section 16 of the Hindu Adoptions and Maintenance Act, 1956. The said Adoptions and Maintenance Act provides that under a registered deed of adoption duly signed by the person giving and the person taking the child in adoption, there is a presumption that adoption was made in compliance with the provisions of the said Act, until and unless it is disproved. Hence in these circumstances the court rightly held the adoption as valid. By Section 30 of the Act, it has been declared that adoptions made

before the commencement of the Act, the provisions of the Act shall not apply and effect of validity of the adoption shall be determined as if the Act had not been passed.

Where an adoption was made before the commencement of the Act, recital of adoption was made in a document registered in 1962 (after the commencement of the Act) it was held, that the presumption of Section 30 will not apply in such case, and burden to prove adoption lies upon the person alleging adoption in view of the application of Section 30 and not Section 16 of the Act.

Prohibition of Certain Payment:

Section 17 of the Act prohibits receipt or agreement to receive, or the giving or agreement to make or give any pecuniary advantage of payment of any kind in consideration of an adoption. Such a rule is apparent from the section which runs as follows— " Section 17—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward, the receipt of which is prohibited by this section. If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both. No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf."

Doctrine of Factum Valet:

In cases where rules were merely directory and not mandatory and the adoption had been made in violation of such rules, the maxim of Factum Valet (i.

e., a fact cannot be altered by a hundred texts) could be usefully and profitably applied. This rules has been explained by Mahmood.

J., as " the application of this doctrine in the case of adoption should be confined to questions of formalities, ceremonies, preference in the matter of selections and similar points of moral religious significance, which relate to what may be termed the modus operandi of adoption but do not affect the essence. Adoption under the Hindu law being in the nature of gift, it contains three elements—capacity to give, capacity to take and capacity to be the subject of adoption which are essential to the validity of the transaction and as such are beyond the scope of the doctrine of factum valet. In the case of adoptions made after the commencement of the Act, it is submitted, the doctrine of factum valet can be properly applied only in two kinds of cases—namely, (1) where a male Hindu has the capacity to take a child in adoption but in doing so he does not obtain the consent of-his wife or wives, as the case may be; and (2) where the father giving the child in adoption fails to obtain the consent of the child's mother before doing so. In the case of a guardian if he gives a child in adoption without the necessary prior permission of the Court, it is submitted, the doctrine of factum valet would not apply, because the right of a guardian to give in adoption is dependent upon the permission, while in the case of a father, acting without the consent

of his wife, it is only the manner of exercising the right and not the origin of the right which is affected by the lack of the wive’s consent.