effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its validity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was 'coram non judice' and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position."

(9) The objection regarding the validity of the decree could be urged in the execution proceedings and the learned counsel for respondent No. 1 could not bring any contrary law to my notice.

(10) Thus, the error being apparent on the face of the record, the order under challenge is set aside in the light of my aforesaid observations and in view of the statement of the learned counsel for respondent No. 1. It is, of course, made clear that respondent No. 1 can proceed against the petitioners/guarantors for enforcing their guarantee under the general law of the land.

(11) The petition is accordingly allowed, but there will be no order as to costs.

S.C.K.

Before G. R. Majithia, J.

BALLU,—*Appellant.*

versus

PARSA AND OTHERS,—*Respondents.*

Regular Second Appeal No. 2051 *of* 1978.

21st November, 1990.

Hindu Adoption and Maintenance Act, 1956—*Ss.* 4 & 15—*Customary adoption—Abrogation of—Overriding effect of act stated—Right of adopted son to challenge alienation.*

Held, that any custom or usage as part of the Hindu law in force prior to the commencement of the Act has ceased to have effect in regard to any matter for which provision has been made in Chapter II except what has been expressly provided in the Act. It follows that in respect of matters for which no provision is made in the Act the old law must continue to remain applicable. After this Act came into force, there is no room for any customary adoption. Customary law of adoption in Punjab ceased to have effect by virtue of the provisions of Section 4 of the Act.

(Para 7)

Held, Section 13 of the Act relates to the right of adoptive parents to dispose of their properties. The power of the adoptive father to dispose of all his self-acquisition in any way he likes either by transfer *inter vivos* or by testamentary disposition is absolute and is not taken away by the mere act of adoption unless the adoptor has agreed that he will not alienate the property. The property envisaged by the section is the property over which the adoptive father or mother had vested power of disposal and not property over which the adoptive parents had no such right.

(Para 7)

Regular Second Appeal from the order of the Court of Shri V. K. Jain, Addl. District Judge Karnal dated 8th September, 1978 reversing that of the Court of Shri S. D. Arora, HCS, Sub Judge II Class Kaithal, dated 16th September, 1974 accepting the appeal and setting aside the decree of the lower Court and ordering that parties will bear their own Costs.

Claim: *Claim for declaration to the effect that the exchange of land measuring* 160 *Kanals effected,*—vide *mutation No.* 1073 *and* 1074 *of village Jadaula and mutation No.* 156 *and* 157 *of village, Pahala are without any necessity and have been effected just to deprive him of his land, which is not an act of good management, and that these mutations are against law and would not be binding upon his reversionery rights and ancestral property after the death of defendant No.* 1 *in respect of land comprised in Khewat No.* 39, *Khatoni No.* 98, *Killa Nos.* 64/25, 65/9/1/2-14-15, 16-17/1/1, 17/2 *Killa No.* 65/24/1, 25 *measuring* 51 *Kanals* 4 *Marlas and* 1/3 *share of Killa Nos.* 64/24 *measuring* 10 *Marlas aggregating to* 51 *Kanals* 14 *Marlas and land comprised in Khewat No.* 69, *Khatoni No.* 98, *Killa Nos.* 61/5/2, 5/3-6/1, 6-2, 15-16-62/1. 2-6-8-9-10-11-12-13-18/2-19-20. *and* 2/3 *share of Khasra No.* 61/26, *gair Mumkin Chah measuring* 13 *Marlas and in all measuring* 109 *Kanals* 13 *Marlas situated in village Jadola, Tehsil Kaithal according to Jamabandi* 1966-67, *by which the suit of the plaintiff for declaration to the effect that the two exchanges,*—vide *mutation Nos.* 1073 *and* 1074 *in question to the extent of* 11/12, *share* 1 *which is proved to be ancestral as hold under issue No.* 3 *are without legal necessity, illegal, ineffective and will not be binding on the reversionary right of the*

plaintiff after the death of Parsa has been decreed with costs by Shri S. D. Arora, Sub Judge II Class, Kaithal on 16th September, 1974.

Claim in Appeal: *For reversal of the order of the Lower Appellate Court.*

V. K. Bali, Senior Advocate with Anil Khetarpal, Advocate, *for the Appellants.*

R. S. Mittal, Sr. Advocate with R. K. Sharma, & Narotam Kaushal, Advocate, *for the Respondents.*

JUDGMENT

G. R. Majithia, J.

(1) Plaintiff has come up in regular second appeal against the judgment and decree of the first appellate Court reversing on appeal those of the trial Court and dismissing his suit for a declaration that the exchange in dispute was invalid.

The facts:—

(2) The appellant/plaintiff claimed that he was the adopted son of respondent/defendant No. 1 and deed of adoption was duly registered on July 8, 1969. The suit land is ancestral *qua* the plaintiff and are defendant No. 1 the parties are Ror by caste and are dependant upon agriculture; according to the agricultural custom, the ancestral property cannot be sold or exchanged without legal necessity or otherwise justified as an act of good management. Defendant No. 1 was owner of land situate in village Jandaula. Some part of the land was *Nehri* and the other was *Chahi;* defendant No. 1 was under the influence of defendants No. 2 to 4 and they put pressure on the former and under their pressure he exchanged good land situate in the revenue estate of village Jandaula with that of defendant No. 2 to 4 situate at village Pabala which is 2½ miles away from village Jandaula and is mostly *barani*; the mutations exchange were attested on September 6, 1969; the land given in exchange is of the value of Rs. 1.25 lakhs, whereas the land received in exchange by defendant No. 1 cannot be valued more than Rs. 20,000. He is not bound by the exchange since it was neither effected for legal necessity nor was an act of good management.

(3) Defendants No. 2 to 4 contested the suit and took a preliminary objection that the suit was not maintainable under law and

that the exchange was otherwise valid. They further pleaded that defendant No. 1 was having strained relations with his neighbour and he fearing danger to his life from his neighbour thought it proper to exchange his land with those of defendants No. 2 to 4 and shift there; hence for this reason, the exchange was for legal necessity and also an act of good management.

(4) On the pleadings of the parties, the following issues were framed:—

1. Whether the plaintiff is the adoptive son of Parsa ?
2. Whether the exchange of the land in suit was for consideration, legal necessity and an act of good management ?
3. Whether the land in dispute is ancestral *qua* the plaintiff and the alienors ?
4. Whether the plaintiff and the alienors are governed by custom ? If so, what that custom is ?
5. Whether the suit is not maintainable as alleged ?
6. Whether the next friend of the plaintiff is not a proper and fit person to file the suit ?
7. Whether the suit is collusive ?
8. Whether the suit is *benami* ?
9. Whether the plaint needs amended as alleged ?
10. Relief.

(5) The trial Judge disposed of issues No. 1 and 5 together and held that the plaintiff was proved to be the adopted son of defendant No. 1 and was competent to challenge the transaction of exchange; under issue No. 2 it was found that under the custom, the ancestral land could not be exchanged without legal necessity or without being an act of good management. Issues Nos. 6 to 9 were not pressed. In view of the findings under issues No. 1, 2 and 5, the suit of the plaintiff was decreed.

(6) Defendants No. 2 to 4 challenged the judgment and decree of the trial Judge in first appeal. The first appellate Court, after

reference to the pleadings found that it was not pleaded that the adoption of the plaintiff was a formal adoption or it was only an appointment of an heir under customary law. No evidence was led that the adoption of the plaintiff was formal and that the adopted son stood transplanted into the family of the adoptive father. In the alternative, he also considered the adoption under the provisions of Hindu Adoption and Maintenance Act and held that even under this Act, the adopted son cannot challenge the alienation made by the adoptive father. Consequently, he set aside the judgment and decree of the trial Judge and dismissed the suit of the plaintiff.

(7) The view taken by the first appellate Court cannot be sustained. Hindu Adoptions and Maintenance Act, 1956 (for short, the Act) came into operation on December 21, 1956. This Act applies to wide categories of persons and applies to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj. The persons who are Hindus have also been described in the Act. Section 4 of the Act provides that in respect of matters provided in this Act, this Act prevails despite any provision relating thereto in any other Act previously existing or incident of any custom of Hindu Law which previously governed such matters. By reason of this section, any custom or usage as part of the Hindu law in force prior to the commencement of the Act has ceased to have effect in regard to any matter for which provision has been made in Chapter II except what has been expressly provided in the Act. It follows that in respect of matters for which no provision is made in the Act the old law must continue to remain applicable. After this Act came into force, there is no room for any customary adoption. Customary law of adoption in Punjab ceased to have effect by virtue of the provisions of section 4 of the Act. In *Kartar Singh (minor) through Guardian Bachan Singh* v. *Surjan Singh (dead) and others*, (1), the apex Court held thus:—

> "After the Hindu Adoptions and Maintenance Act, 1956 came into force there is no room for any customary adoption. Section 4 of the Act specifically provides that 'any text' rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of that Act shall cease to have effect with

(1) A.I.R. 1974 S.C. 2161.

respect to any matter for which provision is made in that Act'. Therefore, the question of any customary adoption, as was in force in Punjab before that Act came into force, does not any longer arise."

Adoptions made after the commencement of the Act are to be regulated by the provisions of the Act. Section 8 in terms states that no adoption shall be made after the commencement of the Act by or to a Hindu except in accordance with the provisions contained, in Chapter II (Sections 5 to 17), and that any adoption made in contravention of the said provisions shall be void. Section 12 of the Act deals with the effects of adoption. It says that adoption takes effect from the date of the adoption, and from such date an adopted child shall be deemed to be the child of his or adoptive father or mother for all purposes and from such date all the ties of the child in the family of his or her birth shall be considered to have been severed and replaced by those created by the adoption in the adoptive family. The idea underlying the adoption is that the child adopted should be considered as a child born in the adoptive family and not in the family in which it was actually born. If the adoptive father happens to be a member of a coparcenary and the child adopted is a male, the child also becomes a member of that coparcenary. Thus, on adoption transplantation of the adopted child from the natural family to the adoptive family takes place. Section 13 of the Act relates to the right of adoptive parents to dispose of their properties. The power of the adoptive father to dispose of all his self-acquisition in any way he likes either by transfer *inter vivos* or by testamentary disposition is absolute and is not taken away by the mere act of adoption unless the adoptor has agreed that he will not alienate the property. The property envisaged by the section is the property over which the adoptive father or mother had vested power of disposal and not property over which the adoptive parents had no such right. If the property is one over which the adoptive parents had no absolute power of disposal, the adopted son has a right to challenge it under Hindu Law. The trial Court had found that the property in dispute was ancestral. The adopted son has the power to challenge the same. The lower appellate Court has disposed of the appeal only on the ground that the plaintiff has no *locus standi* to challenge the exchange. This finding having been reversed by him, I am left with no other alternative but to remit the case to the first appellate Court to decide the appeal on merits in accordance with law and the observations made above.

(8) For the reasons aforesaid, the appeal is allowed, the judgment and decree of the first appellate Court are set aside and the case is remanded to the first appellate Court for deciding the appeal on merits expeditiously. There will be no order as to costs.

S.C.K.

1317/HC—Govt. Press, U.T., Chd.