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ADDRESS

Coimbatore Office

#49, West Club Road, Near
Vilvam Apartments, Race Course,
Coimbatore - 641 018.

High Court Office

#103, I - Floor,
Armenian Street,
Parrys,Chennai - 600 001.

Tiruppur Office

544, Room No.2, I-Floor,
Opp. to TKT Motors, Palladam
Main Road, Tirupur - 641604

DOCTRINE OF FACTUM VALET

+91 75400 75411

mail@wallcliffs.com

www.wallcliffslawfirm.com

EVOLUTION

The doctrine of factum valet is dealt with by the author of Dayabhaga and recognized by the followers of the Mitakshara. It is originated from the Roman maxim "Factum Valet Quod Fieri Dabuit". This theory was introduced to justify the girl's marriage who was given away by her parents. The doctrine of factum valet is ineffective in curing the act done in contravention of the mandatory things. Therefore, if the marriage was once performed and solemnized, it is valid even though if it is done without consent. While enforcing Hindu Law, the British Courts enforced the doctrine of factum valet is applied to equity, justice, and good conscience.

MEANING

The factum valet means the act which should not be done is valid when it is done. The hundreds of text does not deny the fact. This doctrine is applicable when there is obligation and not the legal prohibition for a thing. In other words, if the act is accomplished and eventually completed, the action will be considered lawful and binding. The doctrine is also applied to validity of the marriages which has been performed irregularly or disregard to the Hindu Law which are directory.

BEFORE THE HINDU MARRIAGE ACT, 1955

Before the Hindu Marriage Act, 1955 there was no codifying Act, and was governed by the Dharmasastras. If there is any contravention in the text, it was excused by applying the principle of factum valet and any breach of the guidelines in the ancient text could be resolved.

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CASE LAWS

Case 1

Venkatacharyulu v. Rangacharyulu And Anr., (1891) ILR 14 Mad 316.

Held - when an adoption cannot be upheld owing to a legal defect, the adopted boy does not forfeit his status as son in his natural family, and in the same way, it might be held that when a marriage rite is set aside on the ground that it is forbidden by the very law which prescribes the rite, the girl's prior legal status remains without taint, the rite being defiled and being inefficacious on that ground. But the religious theory mentioned above and the social difficulty which may arise from the marriage being set aside is a legitimate ground for recognizing the doctrine of factum valet except in cases of clear fraud or force when the religious ceremony may be presumed to be defiled by fraud upon its policy.

Case 2

Deivanai Achi And Another v. R.M.Al.Ct Chidambaram Chettiar And Others, 1954 AIR MAD 657.

Held - The doctrine of factum valet was also invoked to validate the marriage. The doctrine, it must be remembered, enables to cure the violation of a directory provision or a mere matter of form but does not cure the violation of the fundamental principles or the essence of the transaction. As in the present case, no ceremonies have been observed; the doctrine of factum valet cannot help the plaintiffs. Besides, in this case, as we have already pointed out, the first plaintiff and the third defendant deliberately chose to deviate from law and usage and adopted a marriage ceremony not recognised by either. The doctrine of factum valet cannot, in our opinion, apply to such a case of deliberate transgression. We must, therefore, hold that no valid marriage has been established between the first plaintiff and the third defendant and that the issue of that union are illegitimate.

Case 3

Hem Singh And Mula Singh v. Harnam Singh And Another, 1954 AIR SC 581.

Held - The deed of adoption Exhibit D-1 recites that Harnam Singh had no male issue who could perform his kirya karam ceremony after his death that Gurmej Singh had been brought up while he was an infant by his wife and that he had adopted him according to the prevailing custom. The recital continues that since the adoption he had been treating and calling Gurmej Singh as his adopted son.

This fact was well known in the village and the adoptee was enjoying all rights of a son. He had executed a formal document in his favour in order to put an end to any dispute which might be raised about his adoption. As adopted son he made him the owner of all of his property. There is ample evidence to sustain the finding on the factum of adoption.

In cases such as the above, were the texts are merely directory, the principle of factum valet applies, and the act done is valid and binding."

Case 4

Parvathy Ammal v. Gopala Gounder And Another, 1956 MLJ 2 468.

Held - There is no decision which says that merely because of the omission to do the Sapthapathi, when another equally essential thing like tying the thali has been done, the marriage between the parties should be held invalid.

If there is any case to which the doctrine of factum valet will apply it, seems to me that this is a case in which such a doctrine will apply.

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Case 5

Muthupillai v. A. Thirumalai And Another, 1996 MLJ 1 504.

Held - The proof requires strict and almost severe scrutiny and the longer the time goes back from the date when the power was given to the time when it comes to be examined, the more necessary it is having regard to the falibility of human memory and the uncertainty of evidence given after the lapse of such time to see that the evidence is sufficent and strong. It is also argued that there is no presumption as regards adoption, as in the case of marriage the long cohabitation is proved.

My attention is also drawn to a passage in Mulla's Hindu Law, 16th Edn. page 532 Para 513A, according to which, the principles of factum Valet is ineffectual in the case of an adoption in contravention of the provisions of the texts relating to the capacity to give, capacity to take and the capacity to be the subject of adoption, which are mandatory.

Case 6

Padmavathi V. Smt. Jayamma, RFA 916/2014

Held - In fact, the doctrine factum valet quod fieri non debuit, which means a fact cannot be altered by a hundred texts, would apply in such a situation. Though, a Hindu marriage is a sacrament and has great importance in Indian Society, yet, when two parties who are in a domestic relationship and cohabit together and conduct themselves in a manner which are as per the guidelines enunciated by the Honble Supreme Court in Indra Sarma, then the relationship is in the nature of marriage.

Thus, if the parties are in a domestic relationship involving the attributes which have been set out above, then it must be held to be a relationship in the nature of marriage. Whether off-spring of such relationship would have to be protected under Section 16 of the Act is the next issue which required elaboration.

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Case 7

Salekh Chand (Dead) By Lrs. v. Satya Gupta And Others, 2008 SCC 13 119.

Held - the texts relating to the capacity to give, the capacity to take, and the capacity to be the subject of adoption are mandatory. Hence the principle of factum valet is ineffectual in the case of an adoption in contravention of the provisions of those texts."

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