

(2017) 06 BOM CK 0092

In the Bombay High Court

Case No : 437 of 2015 IN SUIT NO 824 of 2014

Shahid S. Sarkar and others

APPELLANT

Vs

Mangala Shivdas Dandekar and others

RESPONDENT

Date of Decision : 23-06-2017

Acts Referred:

Constitution of India, Article 141 - Law declared by Supreme Court to be binding on all courts
Code of Civil Procedure, 1908, Order 2Rule 2, <a href=3859-Orde

Citation : (2017) 06 BOM CK 0092

Hon'ble Judges : B.P. Colabawalla

Bench : SINGLE BENCH

Advocate : Amey Patil, Mohand Shetty, Cyrus Ardes Shir, Utsav Ghosh, Rachit Thakur, Kshitij Kadam, Hemangi N. Modi, Farhan Dubhash, Nilesh Modi, Rustomji, Ginwala

Judgement

1. This Notice of Motion has been filed on behalf of Defendant Nos.3, 6 and 7 seeking a prayer for rejection of the plaint under the provisions of Order VII Rule 11(d) of the Civil Procedure Code, 1908 (for short "the C.P.C.").

2. The Suit has been filed by the Plaintiff inter alia seeking a declaration that she is the adopted daughter of the late Laxman Shegaonkar (for short "the said Laxman") and the late Yamunabai Shegaonkar (for short "the said Yamunabai") and on the basis of this, she claims a share in the estate of the deceased Laxman. The reliefs claimed in the Suit are as under :-

"(a) that this Hon"ble Court be pleased to declare that the Plaintiff is the adopted daughter of the deceased Laxman Ukardaje Shegaonkar and of the deceased Yamunabai Laxman Shegaonkar;

(b) that this Hon"ble Court be pleased to declare that the Plaintiff is one of the heir of the deceased Laxman Ukardaje Shegaonkar and is entitled one-half i.e. 50% share in the suit property described in Exh."A" annexed to the plaint;

(c) that this Hon''ble Court may be pleased to decree the suit property thereby ordering partition of the suit property described in Exh."A" annexed to the plaint by metes and bounds and the Defendants be ordered to handover and deliver the possession of one-half share of the suit property;

(d) that this Hon''ble Court be pleased to pass an order ordering the Defendants to restore the peaceful physical possession of the suit property described in Exh."A" annexed to the plaint;

(e) that this Hon''ble Court be pleased to call for the document executed by the Defendant No.1 in favour of the Defendant No.2 and deceased Shaukat Nazar Hussein Sarkar and documents executed by the Defendant Nos.2 and 3 in favour of Defendant Nos.4 and 5 and document executed by Defendant No.3 in favour of Defendant No.6 and document executed by the Defendant Nos.4 and 5 in favour of Defendant No.7 and same be cancelled as it is forged, fabricated and illegal document.

(f) that this Hon''ble Court be pleased to grant leave under Order II Rule 2 of the C.P.C. to file a substantive suit for partition against the Defendant No.1;

(g) that this Hon''ble Court be pleased to pass a permanent order and injunction restraining the Defendants, their servants and agents from in any manner selling, transferring, alienating, encumbering or creating third party rights of any nature whatsoever, of handing over possession or altering the status-quo of the suit property described in Exh."A" annexed to the plaint;"

3. In paragraph 2 of the plaint, it is specifically averred by the Plaintiff that she is the adopted daughter of the said Laxman and the said Yamunabai, which adoption took place on 27th September, 1950 under the provisions of the Hindu Adoptions and Maintenance Act, 1956. In fact, if one peruses the prayers in the plaint which are reproduced hereinabove, what is clear is that the main prayer in the Suit is for a declaration that the Plaintiff is the adopted daughter of the said Laxman and the said Yamunabai. It is on the basis of this declaration that the Plaintiff claims to be an heir of the said Laxman and therefore claims the other reliefs as more particularly set out hereinabove.

4. Mr Dubhash, learned counsel appearing on behalf of Defendant Nos.3, 6 and 7, submitted that on the basis of this very averment, the plaint ought to be rejected since there could not have been any valid adoption of a girl child prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956. He submitted that as per the averments in the plaint, it is the Plaintiff's own case that she was adopted on 27th September, 1950. It is on this basis that she seeks a declaration that she is the adopted daughter of the said Laxman. Mr Dubhash submitted that it is now well settled by several decisions, not only of our Court but also of the Supreme Court and the Calcutta High Court that adoption of a female child prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956 was invalid. This being the position in law, Mr Dubhash submitted that the declaration sought for by the Plaintiff in prayer clause (a) of the plaint can never be granted and

clearly the Suit filed by the Plaintiff is barred by law as contemplated under Order VII Rule 11(d) of the C.P.C. To further this argument, Mr Dubhash relied upon the following three decisions:-

1) Sandhya alias Supriya Kulkarni and others v/s Union of India and another; AIR 1998 Bombay 228

2) M. Gurudas and others v/s Rasranjan and others; (2006) 8 SCC 367

3) Binapani Samanta v/s Sambhu Mondal and others. Unreported decision of the Calcutta High Court passed in First Appeal No.198 of 1991, decided on 22nd December 2009.

5. Placing reliance on these decisions, Mr Dubhash contended that the adoption of the Plaintiff, and the basis on which the Suit has been filed, is clearly invalid and therefore, the Suit was barred as contemplated under Order VII Rule 11(d) of the C.P.C. He therefore submitted that the plaint be rejected under the provisions of Order VII Rule 11(d) of the C.P.C. and the Notice of Motion be allowed in terms of prayer clause (a).

6. On the other hand, Mr Patil, learned counsel appearing on behalf of the Plaintiff, submitted that this Notice of Motion is not maintainable and ought to be dismissed with compensatory costs. He submitted that since the adoption of the Plaintiff was prior to the Hindu Adoptions and Maintenance Act, 1956 it was as per the customs and usage prevalent at that time and therefore, the Plaintiff's adoption is not barred by any law as contemplated under Order VII Rule 11(d) of C.P.C. Mr Patil, thereafter placed reliance on section 4 of the Hindu Adoptions and Maintenance Act, 1956 to contend that the Act has an overriding effect and therefore, any adoption done prior thereto as per the customs and usage prevalent at that time, would be now recognised under the Hindu Adoptions and Maintenance Act, 1956. He submitted that in any event, this is a mixed question of fact and law and when such a situation arises, there is no question of rejecting the plaint under Order VII Rule 11(d) of the C.P.C. In support of this proposition, Mr Patil relied upon a decision of the Supreme Court in the case of Kamala and others v/s K.T. Eshwara Sa and others., AIR 2008 SC 3174.

7. Additionally, Mr Patil submitted that under Order VII Rule 11(d) a plaint can be rejected only when the Suit, on the basis of the averments in the plaint, would be "barred by any law". It was Mr Patil's submission that the words "barred by any law" would only mean a codified law or statute law and not the law laid down by judicial precedents. In other words, it was the submission of the learned counsel that even if the Courts have held that the adoption of the Plaintiff would be rendered invalid by virtue of the fact that she was adopted prior to the enactment of the Hindu Adoptions and Maintenance Act 1956, the same could not be a ground on which the plaint could be rejected under Order VII Rule 11(d) of the C.P.C. He therefore submitted that this Notice of Motion has no merit and ought to be dismissed.

8. To counter to this specific argument, Mr Ardeshir, learned counsel appearing on behalf of Defendant Nos.1,2,4 & 5 relied upon an unreported decision of the Gujarat High Court in the case of Hermes Marines Limited Vs. Capeshore Maritime Partners FZC, unreported decision in Civil Application (OJ) No.144 of 2016 in Admiralty Suit No.10 of 2016 decided on 22nd April, 2016 to submit that the exact same argument was made before the Gujarat High Court and which was negated by it by expressly holding that the words "barred by any law" would also include judge made law. Additionally, Mr. Ardeshir, reiterated the arguments canvassed by Mr. Dubash and submitted that the Plaintiff is liable to be rejected under Order VII Rule 11(d) of the C.P.C.

9. I have heard learned counsel for the parties at length and I have gone through the papers and proceedings in the Suit as well as in the Notice of Motion. In the plaint, it is specifically averred by the Plaintiff that the Plaintiff and Defendant No.1 are the only heirs and legal representatives of the late said Laxman. Defendant No.1 is the biological daughter of the said Laxman. In the plaint, it is specifically averred in paragraph 2 that the Plaintiff is the adopted daughter of the said Laxman and the said Yamunabai as per the Hindu Adoptions and Maintenance Act, 1956 and that she was adopted on 27th September, 1950 after performing the necessary ceremonies. According to the Plaintiff, she was actually given by her biological parents (who were the brother and sister-in-law of the said Laxman) to the said Laxman and the said Yamunabai and the adoption ceremony was performed at the residence of the said Laxman. This ceremony was conducted in the presence of family members and relatives and in the presence of the said deceased Laxman's wife, Yamunabai. Thereafter the Plaintiff was residing with her adopted family till her marriage. To substantiate this claim, the Plaintiff has relied upon several documents annexed to the plaint to show that she was adopted by the said Laxman and that thereafter she was residing with him. It is on the basis of these averments that the Plaintiff claims a declaration that she is the adopted daughter of the said Laxman and the said Yamunabai. Thereafter, a declaration is also sought that the Plaintiff is one of the heirs of the said Laxman and the said Yamunabai and is therefore entitled to 1/2 i.e. 50 % share in the suit property described in Exh."A" to the plaint. Thereafter, partition is sought in prayer clause (c) and other consequential reliefs in prayer clauses (d) to (g) of the plaint.

10. As can be seen from the averments in the plaint itself, it is the case of the Plaintiff that she was adopted by the said Laxman and the said Yamunabai on 27th September, 1950. This is approximately six years prior to coming into force of the Hindu Adoptions and Maintenance Act, 1956. This Act was brought into force on 21st December, 1956. This being the factual position, I fail to understand how the Plaintiff could aver that her adoption which took place on 27th September, 1950, was as per the provisions of the Hindu Adoptions and Maintenance Act, 1956. Section 4 of the Act gives an overriding effect to the provisions but it does not have the effect of validating an adoption that was done prior to the Act coming into force. Section 4 reads thus:-

"4. Overriding effect of Act.-Save as otherwise expressly provided in this Act,-

(a) 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 this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act."

11. What is ex-facie clear from this section is that (i) any text, rule or interpretation of Hindu law or any custom or usage as part of Hindu law in force immediately before the commencement of the Act would cease to have effect with respect to any matter for which a provision is made in the Act; and (ii) any other law in force immediately before the commencement of the Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in the Act. For our purposes, what this means is that even though prior to the Act, an adoption of a female child was invalid as per Hindu law, the same has now been done away with by virtue of this Act. In other words, now, after the enactment of the Hindu Adoptions and Maintenance Act, 1956, the adoption of a female child is legally valid. Section 4 certainly does not validate something done before the Act came into force, which was otherwise held to be invalid.

12. Be that as it may, considering the fact that she was adopted in the year 1950, what I now have to examine is whether such adoption was valid in law. In this regard, I find considerable force in the arguments canvassed by Mr Dubhash and Mr Ardeshir that a female child, prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956 could not be validly adopted. The first decision on this subject would be a decision of the Division Bench of the Bombay High Court in the case of Sandhya alias Supriya Kulkarni and others v/s Union of India and another., AIR 1998 Bombay 228 In paragraph 4 of the decision, the Division Bench summarizes the ancient law relating to adoption. The Division Bench opines that ancient Hindu Law alone rendered recognition for adoption and that too for a limited purpose for adopting a male child by issueless parents. The predominant mythological design was to have a son, even by adoption, to perform the last rites so that the deceased could avail Moksha i.e. eternal bliss and also to continue the generation of the adoptive parent. Paragraphs 4, 5 and 9 of this decision read thus :-

"4. To deal with the submissions, we propose to trace and summarize the Ancient Law relating to adoption. Unanimous statement at the Bar is that Christianity, Islam or Zoroastrian did not recognize adoption. Ancient Hindu Law alone rendered recognition therefor. That too was limited to as male child by an issueless parent. During one's lifetime, there could not be adoption of another male child. Adoption of a female child was not at all recognised. Predominant mythological design was to have a son, even by adoption, to perform last rites so that deceased could avail Moksha i.e. Eternal Bliss and also to continue the

generation of adoptive parent. In some part of the country, the dancing girl could adopt a female child. This was more a customary and perhaps with a view to perpetuate the traditional avocation of dancing. This could not, however, be a part of Hindu Law. The Orissa High Court in *Krushna Kahali v. Narana Kahali*, AIR 1991 Orissa 134 (para 4) held such custom as invalid.

5. The Act of 1956 codified the practices as prevailing under Ancient Hindu Law in relation to adoption. By way of an amendment, the act incorporated a significant feature of adoption of a female child which was unknown to the Ancient law. This being the personal law, the adoption was confined by and to Hindu parents and that too of a Hindu child. The Amending Act 45 of 1962 brought a revolution. The statement (sic).

A. To provide adoption and congenial home for an abandoned child.

B. To authorize manage of Fording of Remand Homes to give abandoned children in adoption, with the permission of the Court.

C. To include a child, legitimate or illegitimate, who has been abandoned by both of his parents or whose parentage is not known, but who, in either case is brought up as Hindu to be a Hindu by religion.

9. Even under Ancient Hindu Law, the parents had a right to adopt only one male child. The amending Act extended that right to adoption of a female child. As such, the privilege of adoption cannot logically be further extended to more than one female child. The Act with its mythological and secular mission has stood the test of time for around four decades and has conveniently withstood the assaults as attempted from time to time. We, therefore, refrain from examining validity of the impugned provisions on the touchstone of Arts. 14 and 21."

(emphasis supplied)

13. What is clear from this decision is that prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956 the adoption of a female child was not at all recognized under Hindu law. This being the case, and admittedly the Plaintiff being adopted on 27th September 1950, her adoption was clearly invalid in law. Clearly, adoption of a female child was given recognition under Hindu Law after the enactment of the Hindu Adoptions and Maintenance Act, 1956. Consequently, for the Plaintiff to get a declaration that she is the adopted daughter of the said Laxman and the said Yamunabai (as prayed for in the plaint) can never arise because a division bench of this Court has clearly held that in Ancient Hindu law and before the enactment of the Hindu Adoptions and Maintenance Act, 1956, adoption of a female child was not at all recognized. If the law of the land clearly stipulates that the adoption of a female child prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956 was not at all recognized, there is no question of the Plaintiff succeeding in the Suit as framed and filed in this Court.

14. I have come to this finding not only on the basis of the decision of the Division Bench in *Sandhya alias Supriya Kulkarni and others*, AIR 1998 Bombay

228 (referred to above), but I also find that the same view has been reiterated by the Supreme Court in the case of M. Gurudas and others v/s Rasaranjan and others., (2006) 8 SCC 367 The facts of this case would reveal that one M. Obalappa was the owner of the property. He had three sons viz. Nagappa, Obalappa and Kadarappa. M. Obalappa died in 1889. Nagappa separated himself in the year 1913. Obalappa and Kadarappa were, thus, in joint possession of the properties in the suit. Obalappa died in 1949. He had no issue. The respondentplaintiffs are said to be the heirs of the natural daughter of Kadarappa viz. Nirmala. Allegedly, she was adopted by Obalappa during his lifetime. Kadarappa died in 1961 leaving seven sons and one daughter Nirmala, whose heirs and legal representatives as the Plaintiffs claimed themselves; she died in the year 1999. The children of Kadarappa, Gurudas and others, and their sons, Sagunarthi and Shivarthi, were the appellants in the civil appeals arising out of SLPs (C) Nos.12 of 2006 and 843-44 of 2006 respectively. The question before the Supreme Court was the purported adoption of Nirmala by Obalappa and one of the issues raised was whether the adoption of Nirmala was permissible in law. In this regard, the observations of the Supreme Court in paragraphs 22, 23, 24, 27, 28 and 29 are extremely vital and read thus:-

"22. Mr Mahabir Singh may not be right in contending that the adoption of Nirmala was never in question. In fact, the trial court in its judgment noticed:

"... Hence, if the family of Obalappa had followed Brahmo Samaj, Kadarappa could not have got any property by survivorship and the adoption of Nirmala Dhari is valid under law. Under the circumstances, the issue as to the ancient Hindu adoption has to be investigated during the trial. The plaintiffs have established a trivial case i.e. prima facie case in my opinion."

23. While arriving at the said finding, the court referred the following passage from Mayne's Treatise on Hindu Law and Usage, 13th Edn., pp. 429-30:

"Adoption of daughters.-Nandapandita in his Dattaka Mimamsa would construe "putra" (or son) as including a daughter and he draws the inference that on failure of a daughter, a daughter of another could be adopted. He supports his conclusion by referring to ancient precedents, such as the adoption of Shanta, the daughter of King Dasaratha by King Lomapada and the adoption of Pritha or Kunti, the daughter of Sura by Kunti Bhoja. This view is sharply criticised by Nilakantha in the Vyavahara Mayukha. It is now settled that the adoption of a daughter is invalid under the Hindu law."

(underlining [Ed.: Herein italicised.] is ours for emphasis)

24. However, it appears that the learned Judge missed the last sentence of the said passage i.e. "It is now settled that the adoption of a daughter is invalid under the Hindu law".

27. In Mulla's Principles of Hindu Law, 17th Edn., p. 710, it is stated:

"488. Ceremonies relating to adoption.-(1) The ceremonies relating to an adoption are-

(a) the physical act of giving and receiving, with intent to transfer the boy from one family into another;

(b) the datta homam, that is, oblations of clarified butter to fire; and

(c) other minor ceremonies, such as putresti jag (sacrifice for male issue).

(2) The physical act of giving and receiving is essential to the validity of an adoption.

As to datta homam it is not settled whether its performance is essential to the validity of an adoption in every case.

As to the other ceremonies, their performance is not necessary to the validity of an adoption.

(3) No religious ceremonies, not even datta homam, are necessary in the case of shudras. Nor are religious ceremonies necessary amongst Jains or in the Punjab."

28. In Section 480 of the said treatise, it is categorically stated that the person to be adopted must be a male.

29. Prima facie, therefore, Nirmala was not a validly adopted daughter of Obalappa. If that be so, she would inherit only the property which fell to the share of Kadarappa on partition. Nirmala as a daughter of Kadarappa can claim interest in his share in the properties only. In terms of Section 8 of the Hindu Succession Act, as Kadarappa died in the year 1961, she will have 1/8th share but what was the extent of Kadarappa's property would inevitably depend upon the effect of deed of partition executed by the parties in the year 1954. However, as the matter is required to be dealt with by the trial court finally, we do not intend to say anything further at this stage lest we may be understood to have expressed our views one way or the other."

(emphasis supplied)

15. The Supreme Court has clearly stated that it is now settled that adoption of a daughter is invalid under ancient Hindu law. This is obviously prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956.

16. This decision of the Supreme Court was thereafter considered by the Calcutta High Court in the case of Binapani Samanta v/s Sambhu Mondal and others., Unreported decision of the Calcutta High Court passed in First Appeal No.198 of 1991, decided on 22nd December 2009. The Calcutta High Court, whilst relying upon the aforesaid decision of the Supreme Court opined thus :-

"Apart from that, under the old Hindu Law, the adoption of a daughter was not permissible at all. It is now settled that the adoption of a daughter was invalid under the old Hindu Law except dancing girls as customary in Madras, Pandichery

and Western India. Our such view gets support from the decision in the case of M. Gurudas and others Vs. Rasaranjan and others, reported in (2006) 8 SCC 367. The Hon''ble Apex Court has come to such a finding on the basis of a well-recognized book of Treatise on Hindu Law and Usage by Mayne and the Principles of Hindu Law by Mulla. For convenience, we are quoting the paragraph nos.23 and 28 of the said decision :-

"23. While arriving at the said finding, the Court referred the following passage from Mayne's Treatise on Hindu Law and Usage, 13th Edn., pp. 429-30;

"Adoption of daughters - Nandpandita in his Dattaka Mimansa would construe "putra" (or son) as including a daughter and he draws the inference that on failure of a daughter, a daughter of another could be adopted. He supports his conclusion by referring to ancient precedents, such as the adoption of Shanta, the daughter of King Dasaratha by King Lomapada and the adoption of Pritha or Kunti, the daughter of Sura by Kunti Bhoja. This view is sharply criticised by Nilakantha in the Vyavahara Mayukha. It is now settled that the adoption of a daughter is invalid under the Hindu Law."

28. In section 480 of the said treatise (i.e. Principles on Hindu Law and Usage by Mulla), it is categorically stated that the person to be adopted must be a male." (emphasis is supplied by us)

In view of such decisions of the Hon''ble Apex Court the adoption of a girl under the old Hindu Law, as in the instant case, was not valid at all. For that reason only, the application for revocation of Probate filed by the appellant before the learned Trial Court is liable to be dismissed."

17. In view of these authoritative pronouncements, it is clear that the adoption of the Plaintiff on 27th September, 1950 was clearly invalid and was barred as laid down in the judicial pronouncements referred to by me.

18. Faced with this situation, Mr Patil would contend that merely because the Courts have laid down that the adoption of the Plaintiff would be invalid, the same would not amount to the Suit filed by the Plaintiff as one being "barred by any law" as contemplated under Order VII Rule 11(d). He submitted that "barred by any law" as contemplated under the said provision would have to be a codified or statute law. One cannot say that the Suit of the Plaintiff was barred by virtue of judicial pronouncements, was the submission of Mr Patil. I am unable to agree with Mr Patil on this point. The law laid down by the highest court of a state as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all Courts within the territories of India. There is nothing even in the C.P.C. to restrict the meaning of the words "barred by any law" to mean only codified law or statute law as sought to be contended by Mr Patil. In the view that I have taken, I am supported by a decision of the Gujarat High Court in the case of Hermes Marines Limited Vs. Capeshore Maritime Partners FZC. unreported decision in Civil Application (OJ) No.144 of 2016 in Admiralty Suit

No.10 of 2016 decided on 22nd April, 2016. In that case also, it was argued for the Plaintiff that the plaint could not be rejected under Order VII Rule 11(d) as being barred by any law because the words "law" meant a statute law and not the law laid down by the Court in a judgment of judicial interpretation. This argument was specifically negated by the Gujarat High Court. Paragraphs 49 to 54 of this decision read thus :-

"49. It has been vehemently argued by Mr Bharat T. Rao, learned counsel for the Plaintiff that the submission on behalf of the Applicant, that the plaint is liable to be rejected under Order 7 Rule 11(d) may not be accepted, as clause (d) of Rule 11 refers to the plaint being barred by any "law". According to him, this means only the law laid down by a statute and not by the Court in a judgment, as a result of judicial interpretation.

50. In this regard, reference may be made to Black's Law Dictionary, wherein the meaning of "Law" is given as below :

"law" : "..... The aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp., the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them the law of the land"

51. In the view of this Court, "law" cannot be confined only to mean the enacted law contained in a statute, framed by the legislature. The scope and amplitude of the word "law" is much wider than that and takes within its sweep the binding precedents of the Supreme Court, being the highest court in the country. When one speaks to law, one refers to all that is legally binding upon the courts and citizens. Judgments of the courts have interpreted various provisions of the statutes and the result of the interpretation is the law laid down by judicial precedent. The word "law" connotes judge-made law as much as statute-law. The final judicial interpretation of any provision of a statute by a Court, especially the Apex Court or the final determination of any issue arising before it is very much "law". The law expounded by the Supreme Court is binding on all courts of the country under Article 141 of the Constitution of India. A pronouncement or determination on any legal issue decided by the Supreme Court becomes the law of the land.

52. A Division Bench of the High Court of Allahabad has, in the case of Virender Kumar Dixit, v.s State of U.P. - 2014 (9) ADJ 1506, succinctly and aptly stated thus:

"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the courts including higher judiciary is also law."

53. In light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause (d) of Rule 11 of Order 7 of the Code, ought to be read to mean only the law codified in a

legislative enactment and not the law laid down by the courts in judicial precedents. The judicial precedent of the Supreme Court in *Liverpool & London* (supra) has been followed by the decision of the Division Bench in *Croft Sales* (supra). It is, therefore the law, as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word "law" as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action, that would be the law.

54. Seen from this angle, it is clear that the claim of the Plaintiff is barred by the decision of the Supreme Court in *Liverpool & London* (supra) and that of the Division Bench in *Croft Sales* (supra). As a consequence thereof, the Plaintiff does not have a maritime claim, so as to be entitled to invoke the Admiralty jurisdiction of this Court, as its claim is barred by law and the Geneva Convention of 1999, on which the entire claim rests, is not applicable. The plaint of the suit is, therefore, liable to be rejected under Order 7 Rule 11(d)."

19. One must also not lose sight of the purpose and intention behind VII Rule 11(d). The intention appears to be that when the suit appears from the statement in the plaint to be barred by any law, the Courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a Defendant is able to establish that the Plaint ought to be rejected on any of the grounds set out in the said Rule, the Court would be duty bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a Defendant. In the view that I have taken, I find support from a decision of the Supreme Court in the case of *Liverpool and London S.P. & I. Association Ltd. Vs M.V. Sea Success I and another.*, (2004) 9 SCC 512 Though the aforesaid decision was rendered in relation to Order VII Rule 11(a), to my mind, the observations made by the Supreme Court would equally apply even to Order VII Rule 11(d) of the C.P.C. The following paragraphs of the aforesaid decision are relevant for our purposes :-

"132. It is trite that a party should not be unnecessarily harassed in a suit. An order refusing to reject a plaint will finally determine his right in terms of Order 7 Rule 11 of the Code of Civil Procedure.

133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed

to fail would not further be allowed to be used as a device to harass a litigant. (See Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315] SCC at pp. 324-35.)

135. Yet again in Samar Singh v. Kedar Nath [1987 Supp SCC 663] it has been held: (SCC p. 665, para 4)

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent."

(emphasis supplied)

20. Applying this principle to the facts of the present case, I am clearly of the view that in light of the law laid down by this Court, the Supreme Court as well as the Calcutta High Court, the Suit filed by the Plaintiff is doomed to fail and would serve no useful purpose if the Suit went to trial. In other words, purely on the basis of the averments made in the plaint itself and nothing more, the Plaintiff, in my opinion cannot succeed in this Suit in view of the fact that she was adopted prior to the enactment of the Hindu Adoptions and Maintenance Act, 1956, and which adoption, as laid down by several judicial decisions, is clearly invalid. This being the case, I have no hesitation in holding that the Plaint is liable to be rejected under Order VII Rule 11(d) of the C.P.C.

21. This now only leaves me to deal with the decision of the Supreme Court cited by Mr Patil in the case of Kamala and others v/s K.T. Eshwara Sa and others., AIR 2008 SC 3174 This decision deals in quite detail with the scope and ambit of Order VII Rule 11. The propositions laid down in this decision inter alia are that Order VII Rule 11(d) of the C.P.C. has limited application and it must be shown that the Suit is barred by any law. Such a conclusion must be arrived at from the averments made in the plaint. For the purpose of invoking Order VII Rule 11(d) no amount of evidence can be looked into. The issue on merits would not be within the realm of the Court at that stage. To my mind, there cannot be any dispute with reference to the aforesaid propositions. However, I fail to see how the same would apply to the facts and circumstances in the present case. In the facts and circumstances of the present case, the averments in the plaint itself show that the adoption of the Plaintiff was done on 27th September, 1950 which was more than six years prior to coming into force of the Hindu Adoptions and Maintenance Act, 1956. As per Hindu law and prior to the enactment of the said Act, a female child could never be adopted. Such an adoption, even if done, was held to be invalid in law. This being the case, I fail to see how this decision of the

Supreme Court in the case of Kamala and others, AIR 2008 SC 3174 can be of any assistance to the Plaintiff.

22. For all the foregoing reasons, Notice of Motion is allowed in terms of prayer clause (a) and the plaint is rejected under the provisions of Order VII Rule 11(d) of the Code of Civil Procedure, 1908. However, in the facts and circumstances of the case, there shall be no order as to costs.