

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 22.11.2012

Date of Decision : 24.01.2013

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FAO (OS) Nos. 444-445 of 2012

SAHIB SINGH

... .. Appellant
Through : Mr. J.P. Sengh, Sr. Adv. with
Mr. J.S. Bhasin, Ms. Rashmi Priya
and Ms. Ankita Gupta, Advocates.

VERSUS

ARVINDER KAUR & ORS. Respondents

Through : Mr. Jagjit Singh and
Mr. Bhagat Singh,
Advs. for R - 1 to R - 4.
Mr. Jagbir Singh, Adv. for R - 5.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

SANJAY KISHAN KAUL, J.

The appellant filed a suit, being CS (OS) No. 2622/2008, for partition, mandatory injunction, declaration and rendition of accounts against the respondents. The appellant claimed that he was the son of late Sardar Amarjeet Singh. Respondent No. 1 is his natural mother, while respondent No. 2 is his brother and respondent No. 3 the sister. Late Amarjeet Singh is stated to have passed away on 23.03.2007 *intestate* leaving behind movable and immovable properties in which the appellant had undivided interest. The

amounts being realized from the properties are stated to have been personally appropriated by respondents No. 2 to 4.

2. Respondent No. 5, namely, Sardar Jagbir Singh, is the real brother of late Amarjeet Singh. He is stated to have had no issue from his wedlock which resulted in a mutual understanding / settlement between late Amarjeet Singh and him that late Amarjeet Singh would give the custody of his child to his brother / respondent No. 5, who shall look after him and in case a child is born from the wedlock of Sd. Jagbir Singh and his wife within 7 years, then the custody of the child (appellant herein) would revert back to late Amarjeet Singh for all intents and purposes. An Adoption Deed / Settlement dated 01.12.1984 is stated to have been executed between the parties. Sd. Jagbir Singh was blessed with the child on 04.04.1990 and, thus, the custody of the appellant is stated to have reverted back to late Amarjeet Singh and a document called "*Cancellation of Adoption Deed Dated 01.12.1984*" was also executed between the parties on 11.08.1991. It is in view thereof that the appellant claims that he has all right, title and interest in the estate of late Amarjeet Singh.
3. Insofar as respondent No. 4 is concerned, the allegation is that he was brought up by respondent No. 1 (his mother) alleging him to be her brother, but later transpired that respondent No. 4 was actually her son from a marriage with one Sd. Jagbir Singh Walia. This, in fact, resulted in late Amarjeet Singh, during his lifetime, instituting a petition for declaration of his marriage null and void on the ground that his spouse had a subsisting earlier marriage, but that issue was resolved between respondent No. 1 and late Amarjeet Singh. Respondent No. 4 is alleged to have never been adopted by late Amarjeet Singh and, thus, it is pleaded that he had no right, title or interest in the suit properties.

4. The appellant has alleged that he came to know in October, 2008 that respondent No. 4 had filed a suit for declaration and mandatory injunction against the legal heirs of late Amarjeet Singh excluding the appellant alleging that he was the son of late Amarjeet Singh. The suit is stated to be collusive and in the suit, some oral Family Settlement dated 23.04.2007 was pleaded. The name of the appellant did not figure in the said Family Settlement alleged to have been executed between respondent No. 4 on the one hand and respondents No. 1 to 3 on the other. The objective is alleged to be to deprive the appellant of his due share and, thus, he has claimed that the Memorandum of Oral Family Settlement dated 23.04.2007 be declared null and void and not enforceable against the appellant. However, no relief is claimed against respondent No. 5.
5. Respondents No. 1 to 4 filed a common written statement alleging that the whole cause of action of the appellant was based on the premise of the adoption being cancelled in the year 1991 and the appellant reverting back to his natural parents. The cancellation was denied though giving in adoption was accepted. The appellant is stated to have become a child of his adoptive father / respondent No. 5 with severance of relationship with his natural family. Thus, no adoption, which has been validly made, could be cancelled in law by the adoptive father or mother.
6. The estate of late Amarjeet Singh, on his passing away on 23.03.2007, is stated to have been distributed amongst all his legal heirs in accordance with law, which have received the imprimatur of judicial proceedings and have been accordingly enjoyed. It is also specifically denied that Sardar Navdeep Singh was not the son of late Amarjeet Singh. The allegations are stated to be defamatory of respondent No. 1.

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7. The written statement separately filed by respondent No. 5 alleges that the adoption was really an agreement with the intention that the wife of respondent No. 5 may conceive and was not to transfer the appellant permanently to the family of respondent No. 5. Respondent No. 5 did not insist on carrying out changes in the official record and the appellant continued to reside with the grandmother in the house of respondent No. 5 even after the death of late Amarjeet Singh.
8. The appellant, at the stage of institution of the suit, had also filed an application, being IA No. 15524/2008, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'the said Code'). However, no ad interim ex-parte order was granted and notice was issued in the application while issuing summons in the suit.
9. Respondents No. 1 to 4 moved an application, being IA No. 130/2009, under Order VII Rule 11 read with Section 151 of the said Code for rejection of plaint on the ground that the plaint as framed was barred by law as there could not be any reversion of adoption. This application was decided by the learned Single Judge vide Order dated 11.12.2009. This application was opposed by the appellant on the ground that clause 2 of the Adoption Deed dated 01.12.1984 referred to the reversion of adoption on the birth of a child out of the wedlock of respondent No. 5 and his wife, which reads as under:

"2. That the first party assured the second party that in future if any child will be born out of the wedlock of the first party, the first party will hand over the custody of the said adopted child to the second party, i.e., Natural parents without delay and first party will cancel the said adoption deed immediately."

10. This was followed up with the Memorandum of Settlement dated 01.11.1988, which once again reiterates the said assurance. Reliance is also placed on the document dated 11.08.1991 styled as '*Cancellation of Adoption Deed Dated 01.12.1984*' on account of respondent No. 5 and his wife giving birth to a son on 04.04.1990 and consequently cancelling the said Adoption Deed.
11. Learned Single Judge opined in the last paragraph, i.e., paragraph 7 of the Order dated 11.12.2009 that while the stand in law of respondents No. 1 to 4 of their being no reversion possible of an adoption is correct, but the Court cannot be oblivious to the conduct of parties and while adjudicating an application under Order VII Rule 11 of the said Code confines itself to the averments made in the suit and the list of documents. Learned Single Judge opined that those documents do not unambiguously suggest that there is clear and valid adoption as is understood in law (without reference to any document particularly), but that ultimately it is possible that the Court might agree with the respondents on interpretation placed on clause (1) that the subsequent stipulation in the Adoption Deed must be disregarded. The application was consequently rejected. Respondents No. 1 to 4 laid a further challenge by filing FAO (OS) No. 51/2010, which was, however, dismissed as withdrawn on 19.01.2010.
12. The hearing on the application for interim relief being IA No. 15524/2008 was subsequently taken up and the said application as well as another unnumbered application under Order XL Rule 1 of the said Code have been dismissed vide the impugned Order dated 03.12.2010. Learned Single Judge in the impugned Order has observed that there were two questions arising for consideration, i.e.,
- (i) the validity of the adoption of the plaintiff on 01.12.1984; and

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(ii) the validity of the cancellation of the adoption on 11.08.1991.

It has also been noticed that the validity of the adoption was never assailed in the plaint, but the objection has been raised, for the first time, only in the replication.

13. Learned Single Judge has opined that *prima facie* the objection to the Adoption Deed dated 01.12.1984 was unsustainable as the condition contained in the Adoption Deed was contrary to law and could not invalidate the valid adoption. The law is stated to be well settled qua the second issue by Sections 12 and 15 of The Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as, 'the said Act') – Section 12 providing that the child would be a child of the adoptive father or mother, while Section 15 providing that no adoption can be cancelled by the adoptive father or mother.
14. The basic contention raised at the stage of admission of the appeal was that there have been two distinct opinions rendered by two learned Single Judges qua the Adoption Deed – one while examining application under Order VII Rule 11 of the said Code favouring the appellant, while the other was vide the impugned Order dated 03.12.2010 while deciding the applications for interim relief.
15. Learned senior counsel for the appellant has assailed the impugned Order dated 03.12.2010 on the ground that the Adoption Deed dated 01.12.1984 does not meet the requisite parameters of a valid adoption deed as it is not signed by the two mothers. It is stated to be a conditional adoption followed by the Family Settlement labeled as a Memorandum of Settlement dated 01.11.1988 and since the natural child was born out of the wedlock of respondent No. 5 and his wife, the Adoption Deed was cancelled on 11.08.1991 in terms whereof the adoptive parents have no right over the adoptive child being their child. It is, however, not disputed that the name of

respondent No. 5 continued to be used as the father due to love and affection even after the appellant reverted back to his family of birth, especially as the brothers had very cordial relationship. The Adoption Deed is pleaded to be in the nature of a Family Settlement not meeting the essential requirements of an Adoption Deed and, thus, was capable of being cancelled as was done.

16. Learned senior counsel for the appellant submitted that as per Section 11(vi) of the said Act, the child to be adopted must actually be given and taken in adoption with intent to transfer the child from the family of his birth to the family of his adoption. In the facts of the present case, it was submitted, since respondent No. 5 was issueless, the appellant had to revert back to the natural family in case the child was born. Learned senior counsel has placed reliance on the judgment of the Supreme Court in Ghisalal v. Dhapubai (Dead) By L.R.s and Others, 2011 (1) SCALE 325 to support his arguments that while dealing with the requisites of a valid adoption, the Court cannot presume consent of the wife simply because she was present at the time of adoption.
17. Lastly, learned senior counsel for the appellant has sought to draw strength from the observations made by learned Single Judge while deciding the application under Order VII Rule 11 of the said Code vide Order dated 11.12.2009 casting doubts on the validity of the adoption and the appeal thereby having been withdrawn on 19.01.2010.
18. Learned counsel for respondents No. 1 to 4, on the other hand, emphasized that the appellant was only one and a half months old when he was adopted by respondent No. 5 and his wife in the presence of relatives and other persons. The entire school records of the appellant show that the appellant was the son of his adoptive

parents and continued to reside with the adoptive parents in the same house (this is not in dispute though it has been pleaded by respondent No. 5 that the appellant continued to stay with the mother of respondent No. 5, who was residing with him). The appellant is alleged to have acquired the partnership business of his adoptive mother and the appellant acknowledged, affirmed and reiterated, at that stage, that he was the son of his adoptive parents. Respondent No. 2 is stated to have filed a petition being OMP No. 192/2008 pleading that the appellant was the son of his adoptive parents and the appellant was a party to those proceedings where this fact was not disputed as no reply was filed by the appellant and the OMP was disposed of on 24.04.2008. A similar plea was taken by respondent No. 2 in a suit being CS (OS) No. 1707/2008 filed on the Original Side of this Court where the appellant filed the written statement without disputing the fact of being adopted.

19. Learned counsel for respondents No. 1 to 4 submitted that post-filing of the present suit in question in the present appeal on, 11.12.2008 the appellant had filed the written statement in CS (OS) No. 1707/2008 on 06.11.2009 declaring himself to be the son of his adoptive parents. Not only that, the appellant in his own handwriting made a complaint to the SHO, P.S. Karol Bagh on 16.05.2011 declaring him to be the son of his adoptive parents with respondent No. 1 alleged to be as his aunt and respondent No. 2 as his cousin brother.
20. It was the submission of learned counsel for respondents No. 1 to 4 that the aforesaid conduct of the appellant pre and post-suit clearly showed that the appellant was claiming to be the son of his adoptive parents and, for the first time, the validity of the adoption was

assailed in the replication contrary to various admissions made in judicial proceedings or otherwise.

21. In law, it has been pleaded that there cannot be any reversion of adoption in view of various legal pronouncements.
22. Learned counsel referred to the judgment in Daniraiji Vrajilaji Junagadh v. Maharaj Vahuji Shri Chandraprabha, AIR 1975 SC 784 = (1975) 1 SCC 612 where it was held that any adoption would have to be governed by the provisions of the said Act and it does not envisage cancellation of a valid adoption. The customary law was held to have been superseded by the statutory law as contained in Chapter II of the said Act.
23. Learned counsel for respondents No. 1 to 4 pleaded that the Adoption Deed has two distinct parts, i.e., firstly, the adoption and secondly, the reversion. These two parts are clearly severable and the fact that the second part is unenforceable in law in view of the provisions of Sections 12 and 15 of the said Act, which negate the adoption made and, thus, no reliance can be placed on the second part.
24. To support his contention, learned counsel relied upon the judgment in Shin Satellite Public Co. Ltd. v. Jain Studios Ltd., (2006) 2 SCC 628 where while dealing with the provisions of the Arbitration and Conciliation Act, 1996 and keeping in view the doctrine of severability, it was held that if the court holds the agreement severable, it should implement and enforce that part which is legal, valid and in consonance with law.
25. Learned counsel also relied upon the judgment in Tarsem Singh v. Sukhminder Singh, (1998) 3 SCC 471. In the said case, it was held that where the clause of any agreement is treated to constitute a

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separate and independent agreement, severable from the main agreement, the same can be enforced separately and independently.

26. Learned counsel for respondents No. 1 to 4 emphasized that there can be no injunction granted qua the estate which already stood divided under a decree of a civil court more particularly when that decree had not been assailed. Merely because the appellant has filed a partition suit does not imply that he is entitled to interim relief, unless the triple test is satisfied for grant of interim injunction.
27. In Baldev Raj v. Man Mohan, 92 (2001) DLT 274 (DB), a Division Bench of this Court, of which one of us (Sanjay Kishan Kaul, J.) was a member, held as under:

"7. The mere fact that a suit for partition is filed cannot imply that an injunction must follow as a matter of course in respect of the suit property. In deciding an interim application under Order 39 Rules 1 and 2 read with Section 151, CPC, the three essential ingredients of existence of prima facie case, balance of convenience and irreparable loss and injury must be met before a plaintiff in the suit becomes entitled to an interim order. The learned Single Judge has, on the facts and circumstances of the case, not found such a case for grant of an interim order. There cannot be any hard and fast rule in this behalf and each case will turn on its own facts for grant of injunction keeping in mind the principles of the grant of such an injunction order."

(emphasis supplied)

28. Insofar as the reliance placed by learned senior counsel for the appellant on the Order dated 11.12.2009 passed on the application of respondents No. 1 to 4 under Order VII Rule 11 of the said Code is concerned, it was submitted that when the said Order was passed, neither was the written statement nor any admitted documents on record nor could they have been taken cognizance of.

29. We are of the view that in order to appreciate the rival submissions, first the scheme of the said Act has to be seen.
30. The said Act was enacted to amend and codify the law relating to adoption and maintenance amongst Hindus. It, thus, superseded the traditional Hindu law of adoption with its religious basis and sacramental elements, which had earlier remained in force.
31. Chapter II deals with the aspect of adoption. Section 5 makes it clear that no adoption can be made after commencement of the said Act by or to a Hindu except in accordance with the provisions contained in Chapter II thereof. An adoption made in contravention of the said provisions is to be void.
32. Section 6 of the said Act prescribes the requisites of a valid adoption and no adoption is valid as per sub-section (iv) thereof, unless *inter alia* the adoption is made in compliance with the other conditions mentioned in Chapter II.
33. Section 7 deals with the capacity of a male Hindu to take in adoption and reads as under:

“7. Capacity of a male Hindu to take in adoption. –
Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.”

(emphasis supplied)

However, no particular methodology has been prescribed for obtaining such a consent

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34. Similarly, Section 9 of the said Act deals with persons capable of giving in adoption, which again requires the consent of the wife. The relevant portion of Section 9 reads as under:

"9. Persons capable of giving in adoption. – (1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(emphasis supplied)

35. Apart from specifying as to who is capable of taking in or giving in adoption (Sections 7 to 9) and who can or is capable of being adopted (Section 10), Section 11 prescribes other conditions of valid adoption. Section 11(vi) of the said Act, which has been relied upon, reads as under:

"11. Other conditions for a valid adoption. –

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of the adoption.

(emphasis supplied)

36. Section 12 prescribes the effect of adoption and reads as under:

"12. Effects of adoption. – An adopted child shall be deemed to be the child of his or her adoptive father or

mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
- (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

37. Section 15 proscribes the cancellation of a valid adoption and reads as under:

"15. Valid adoption not to be cancelled. – No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth."

(emphasis supplied)

38. We may notice that under Section 16, there is a presumption as to registered documents relating to adoption. The said provision reads as under:

"16. Presumption as to registered documents relating to adoption. – 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."

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39. The aforesaid Section only clarifies that there is a presumption that the adoption has to be made in compliance with the provisions of the said Act and if it is registered, the proof of giving in and taking the child would not be necessary. Thus, if the adoption is disputed, it will be for such a claimant to prove that the ceremony of giving in and taking has not taken place. However, such a presumption would operate so long as there is no rebuttal by the procedures known to law. Thus, registration itself would not be mandatory.
40. Now, applying the aforesaid scheme of the said Act to the facts of the present case, it is not in dispute that an Adoption Deed was executed on 01.12.1984. It is also not in dispute that both the parents giving in adoption and persons taking in adoption had the legal capacity nor was the appellant suffering from any disability to be given in adoption. It is not necessary that the Adoption Deed must be registered. In the present case, the Adoption Deed is duly notarized and signed by the father giving in adoption and the adoptive father. From this Adoption Deed, two questions arise:
- (i) The effect of the two mothers not having signed the Adoption Deed dated 01.12.1984.
 - (ii) The Adoption Deed having clause (2) giving an assurance for reversion of adoption, were a natural child to be born from the wedlock of the adoptive parents.
41. The requirements of consent of the mothers to the adoption again cannot be disputed in view of the statutory provisions more specifically the proviso to Section 7 and the proviso to Section 9(2) of the said Act. It is also true that there is no particular method set out for giving such consent. No doubt, in view of the judgment in Ghisalal v. Dhapubai's case (supra), such a consent cannot be presumed merely by presence at the time of adoption and the wife's

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silence or lack of protest on her part cannot give rise to an inference that she has consented to adoption. However, in the present case, the adoption was acted upon. It is not even in question that the appellant stayed with his adoptive parents from the date of adoption. He was treated as a child post-adoption for all purposes. It was only when the natural child was born to the adoptive parents on 04.04.1990, i.e., almost five and a half years after the appellant had been adopted that the question arose of reversion of the adoption on account of clause (2) contained in the Adoption Deed dated 01.12.1984. Thus, the adoption has been acted upon. Not only that, it is a common case that the appellant continued to stay in the house of his adoptive parents even post the so-called cancellation of adoption and the only explanation given is that since his grand-mother was residing in that house, it was so done. It is further not in dispute that the adoptive parents' name continued to be reflected in all records qua the appellant.

42. We may also notice that respondents No. 1 to 4 have given illustrations of how pre and post-filing of the suit in question in the present appeal, the appellant continued to show himself as the child of his adoptive parents. Some of these illustrations are as under:

- (i) The appellant acquiring partnership business of his adoptive mother on 01.10.2007 and, at that stage, acknowledging, affirming and reiterating that he was the son of his adoptive parents.
- (ii) The appellant choosing not to deny the allegation of his being son of adoptive parents in OMP No. 192/2008 where he kept silent and did not file any response.

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- (iii) The appellant in his written statement to CS (OS) No. 1707/2008 filed by respondent No. 2 herein did not dispute this fact.
 - (iv) The appellant, post-filing of the suit in question in the present appeal, filed the written statement in CS (OS) No. 1707/2008 along with an affidavit duly sworn on oath declaring himself to be the son of his adoptive parents.
 - (v) The appellant in his own hand-writing made a complaint to the SHO, P.S. Karol Bagh on 16.05.2011 where respondent No. 1, his natural mother, is stated to be his aunt and respondent No. 2 his cousin brother.

43. In Ghisalal v. Dhapubai's case (supra), while dealing with the aspect of consent of the wife, it has been observed that it may be either in writing or reflected by an affirmative or positive act voluntarily and willingly done by her. No doubt, her presence cannot be a presumption, but in the facts of the present case, there is affirmative and positive acts both by the adoptive parents including the mother and the appellant affirming to the adoption. The interesting part is that even in the suit, the factum of having been validly adopted was never questioned. It is only when the defence has been disclosed by respondents No. 1 to 4 that the appellant appears to have woken up to the legal infirmity in the plea of reversion of adoption and thereafter seeks to assail the adoption in replication. The subsequent facts, thus, establish that the appellant was given and taken in adoption thereby meeting the parameters of Section 11(vi) of the said Act.

44. We may usefully refer to the observations of the learned Single Judge (as he then was) of this Court in Anant Construction (P) Ltd. v. Ram Niwas, 1994 IV AD (Delhi) 185 = 1994 (31) DRJ 205

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relying upon the observations of the Supreme Court in *M.S.M. Sharma v. Krishna Sharma*, AIR 1959 SC 395, it was observed in para 20 as under:

"20. A plea inconsistent with the case set out by the plaintiff in the plaint can never be permitted to be raised in replication. So also a plea in rejoinder cannot be inconsistent with the case set out by the defendant in his written statement. Any subsequent pleading inconsistent with the original pleading shall be refused to be taken on record and if taken shall be liable to be struck off and taken off the file."

(emphasis supplied)

While acknowledging that if replication is permitted to be filed, it forms part of the pleadings, it has been observed that subsequent pleadings are not substitute for amendment in the original pleadings. In fact, a Full Bench of this Court in *Kedar Nath v. Ram Parkash* and other connected matters, 1998 VII AD (Delhi) 409 = 1999 (48) DRJ 589 has held that even while amending pleadings, there cannot be additional pleadings at variance or inconsistent with original pleadings.

45. In view of the aforesaid discussion, we find no merit in the plea of the appellant assailing the adoption.
46. The second limb, which is the basic plea in the suit, is that the adoption stood cancelled. This is claimed on the basis of clause (2) of the Adoption Deed dated 01.12.1984, the Memorandum of Settlement dated 01.11.1988 and ultimately the document dated 11.08.1991 purporting to be a Cancellation of Adoption. The question of interpreting these documents qua reversion would apply only if the reversion of adoption in law is permissible. Such a reversion post-valid adoption is clearly barred by Section 15 of the

said Act and it is, thus, not even open to plead that such a reversion can take place or that a valid adoption can be cancelled.

47. The document evidencing adoption being the Adoption Deed dated 01.12.1984 itself does not become invalid, i.e., the adoption is valid, but clause (2) contained in the said Adoption Deed would become invalid being hit by Section 15 of the said Act. The said clause is clearly severable from the aspect of adoption. To come to this conclusion, we draw strength from the authoritative pronouncements of the Apex Court in Shin Satellite Public Co. Ltd.'s case (supra) and Tarsem Singh's case (supra).
48. In Hindu Law of Adoption, Maintenance, Minority and Guardianship (1970) by S.V. Gupte, it has been observed at page 323 that an agreement providing that on the happening of an event, the adoption shall be invalid or shall be deemed to have not been made is void and is of no effect. This is an aspect completely apposite to the facts of the present case!
49. Similarly, in Law of Adoption, Minority, Guardianship and Custody (3rd Edn.) by Paras Diwan at page 131, it has been observed that it is not permissible for natural parents and adoptive parents to enter into agreements stipulating circumstances in which an adoption may be cancelled. Such agreement will be void. The acquired status of the child, thus, cannot be altered by the adoptive father or mother or any other person.
50. There is, thus, no merit even in the second plea.
51. We agree with the submissions of learned counsel for respondents No. 1 to 4 that injunction cannot be as a matter of right merely because the claim is qua immovable properties and the suit being a partition suit. Mere filing of suit does not amount to an entitlement to get interim injunction unless the triple test of *prima facie* case,

balance of convenience and irreparable loss and injury is established. We have already noticed hereinabove that the appellant has failed to establish a *prima facie* case in view of the clear legal impediments.

52. The facts set out in the pleadings show that the estate of late Amarjeet Singh, in fact, stands divided amongst the legal heirs and is enjoyed by them separately post-severance. The only aspect pleaded by the appellant in this behalf is that the same was at his back even though it has a judicial imprimatur. The appellant has gone to the extent of even casting doubt on the character of his natural mother, respondent No. 1 by alleging that respondent No. 4 is not even the child of late Amarjeet Singh and his natural mother.
53. The other aspect emphasized by learned senior counsel for the appellant was the findings arrived at by learned Single Judge in the Order dated 11.12.2009 while deciding the application of respondents No. 1 to 4 under Order VII Rule 11 of the said Code. We find no force in this argument too because of two reasons. Firstly, the parameters while deciding an application under Order VII Rule 11 of the said Code are distinct from one deciding an application under Order XXXIX Rules 1 and 2 of the said Code and under Order XL Rule 1 of the said Code. For deciding an application under Order VII Rule 11 of the said Code, the plaint alone can be relied upon as well as the documents filed with the plaint. The occasion to peruse the written statement did not even arise nor the subsequent documents filed in support of the written statement, as only the averments made in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. (See Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137 and Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557). Secondly, all that the learned

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Single Judge observed in the Order dated 11.12.2009 was that the list of documents does not unambiguously suggest that there was a clear and valid adoption as is understood in law. There is no further discussion on this aspect. In fact, there could not be much of a discussion because the affirmative and positive actions post-adoption were not before the Court at that stage. The appeal against the same was withdrawn. Merely because a plaint cannot be rejected under Order VII Rule 11 of the said Code will not imply that post-completion of pleadings, the plaintiff would be entitled to interim injunction. We, thus, find no merit even in this plea.

54. We are, thus, of the view that the appeal is completely meritless and is accordingly dismissed with costs quantified at Rs.20,000/-.
55. Interim orders stand vacated.
56. Needless to say, any expression of views, as aforesaid, is only for purposes of decision of the interim application and would not prejudice the final decision in the suit post trial.


SANJAY KISHAN KAUL, J.


VIPIN SANGHI, J.

JANUARY 24, 2013
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