2019 INSC 1344

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5740-5741 OF 2015

TRIJUGI NARAIN (DEAD) THROUGH
LEGAL REPRESENTATIVES AND OTHERS ..... APPELLANT(S)

VERSUS

SANKOO (DEAD) THROUGH LEGAL
REPRESENTATIVES AND OTHERS ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

These civil appeals arise out of common judgment and decree dated 12th September 2008 passed by the High Court of Judicature at Allahabad in Second Appeal No. 1930 of 1983 {*Chandra Nath Kala (D) through LRs.* v. *Trijugi Narain (D) through LRs. and Others*} and Second Appeal No. 2017 of 1983 {*Sankoo and Another* v. *Trijugi Narain (D) through LRs and Others*}.

2. The issue raised in the present appeals relates to the nature of the property, that is, whether the perpetual leasehold rights in plot No. 16 (Old Plot No. 9), Chaukhandi Kydganj, Allahabad – Nazul Plot

('the property' for short) was coparcenary joint Hindu family property or being a part of impartible estate of the State of Maihar, was clothed with the incidence of self-acquired and separate property.

3. In order to decide the controversy, we would record the facts in brief.

(a) One Bachchu Lonia had acquired the property by means of perpetual lease deed dated 12th September 1873 executed by the Government. After the death of Bachchu Lonia, his son Ram Bharose by means of a registered sale deed dated 12th August 1896 had transferred the perpetual lease rights to Raghubir Singh, the then Maharaja of the State of Maihar.

(b) Subsequently, Brij Nath Singh had succeeded to the throne/*gaddi* of the State of Maihar. Brij Nath Singh vide registered will dated 11th February 1966 had bequeathed the palace of Maihar and privy purse to Govind Singh, elder son of his first wife Surendra Kumari and rest of the properties including the property to his second wife Rani Tej Kumari for her son after making provisions for her maintenance during her lifetime. Brij Nath Singh had died on 13th October 1968.

(c) Notwithstanding this will, Govind Singh, elder son of Brij Nath Singh from his first wife, as peshwa and karta of the joint

Hindu family, had sold the property vide registered sale deed dated 18th November 1968 to Trijugi Narain Dubey and Surendra Nath Prayagwal.

(d) On 20th November 1968, Chandra Nath Kala and Sankoo had instituted Original Suit No. 194 of 1968 for permanent injunction against Trijugi Narain and Surendra Nath claiming right in the property by adverse possession for last thirty years. Later on, they had filed an application for amendment of the plaint as Vimal Kumar Singh, power of attorney holder of Rani Tej Kumari, had executed sale deed dated 6th June 1969 of the property in favour of Chandra Nath Kala, which application for amendment claiming title based on the sale deed was allowed by the trial court. However, this order allowing the amendment was set aside by the High Court vide order dated 10th December 1971.

(e) Chandra Nath Kala had then on 7th March 1972 instituted Original Suit No. 64 of 1972 for declaration and injunction against Trijugi Narain and Surendra Nath, impleading Sankoo as the third defendant predicating his right on the sale deed dated 6th June 1969 executed in his favour by Rani Tej Kumari. Sankoo admitted the claim of Chandra Nath Kala, while Trijugi Narain and Surendra Nath had filed written statement, *inter alia*, stating that Brij Nath Singh had no right to execute the will

in favour of Rani Tej Kumari inasmuch as the property was coparcenary property of the joint Hindu family. Further, Govind Singh being the karta of the family, had validly executed the sale deed dated 18th November 1968 in favour of Trijugi Narain and Surendra Nath.

4. The trial court dismissed the two suits by separate judgments, both dated 25th March 1983, deciding several issues reference to which is not required in view of the limited challenge raised by the appellants, *albeit* it was held that Brij Nath Singh could not have by a will bequeathed the property that belonged to the joint Hindu family and, therefore, the sale deed dated 6th June 1969 executed by Rani Tej Kumari was void as she had no title. Further, the transfer by Govind Singh as the karta of the joint Hindu family in favour of Trijugi Narain and Surendra Nath was for benefit of the estate and absolutely legal. Suit No. 194 of 1968 was dismissed on the ground that Chandra Nath Kala and Sankoo had failed to prove acquisition of any right by adverse possession.

5. Civil Appeal No. 476 of 1983 filed against the judgment and decree in Suit No. 194 of 1968 was dismissed by the Additional District Judge, Allahabad by judgment dated 25th August 1983. By a separate judgment of the same date, Civil Appeal No. 517 of 1983 preferred against the judgment and decree in Suit No. 64 of

1972 was dismissed, *inter alia*, recording that Maihar State had ceased to exist in the year 1948 and, therefore, the rule of primogeniture governing impartible estates had ceased to apply. Consequently, Govind Singh's legal right to the property inherited from his father could not have been taken away by Brij Nath Singh by executing a will giving only the palace and privy purse to Govind Singh and rest of the properties to Rani Tej Kumari.

6. The High Court, by the impugned common judgment dated 12th September 2008, in the two connected appeals, has reversed the findings of the trial court and the appellate court, *inter alia*, holding that the property was a part of the impartible estate governed by the rule of primogeniture. Accordingly, no member of the joint Hindu family including Govind Singh had a right in the property by birth. Brij Nath Singh was fully entitled to bequeath the property by will, which he had done vide will dated 11th February 1966 in favour of Rani Tej Kumari.

7. We would like to divide the question raised, though interconnected, into two parts. First, we are required to examine the customary law relating to impartibility of an estate and succession under the rule of primogeniture, and whether it was applicable to the property. The second aspect relates to the legal effect of the lapse of the sovereign paramountcy with the signing

of the covenant and merger agreement by Brij Nath Singh with the Dominion of India and the enactment of the Hindu Succession Act, 1956 ('Succession Act' for short). In other words, whether the impartible properties of the former Ruler post the merger agreement or the enactment of the Succession Act had ceased to continue as impartible estate and were converted into coparcenary property of the joint Hindu family. While deciding the question, we would also examine the contention of the appellants that the perpetual leasehold rights being Nazul land were held as personal property of the Ruler and were not part of the sovereign or state properties of Raghubir Singh and Brij Nath Singh.

8. In order to decide the question, we must first notice the difference between the joint Hindu family and coparcenary. Coparcenary, as observed in ***Surjit Lal Chhabda*** v. ***Commissioner of Income Tax, Bombay***[1], is a narrower body than the joint Hindu family. Under the Mitakshara Hindu Law, any property inherited by a male Hindu from his father, father's father or father's father's father is ancestral property. The male descendant who inherits the property in the above manner did not inherit the property absolutely as a separate property, but as coparcenary property. Coparcenary consists of only those persons who acquire by birth an interest in the coparcenary property. Succession in coparcenary property is

[1] (1976) 3 SCC 142

by survivorship. No coparcener can dispose of his undivided coparcenary interest by way of gift except with the consent of the other coparceners. There are restrictions on alienation of the coparcenary property, which would be legally valid only when made by the whole body of coparceners where they are adults, by manager/Karta, or father subject to limits/conditions, and by a sole surviving coparcener in some circumstances (see Mulla Hindu Law 22nd Edition, 2016 at page 397, § 253 – *'Who may alienate coparcenary property'*).

9. Outside the limits of coparcenary, there is a fringe of persons, both male and female, who constitute the undivided or joint family which consists of lineal descendants from a former ancestor and includes their wives and unmarried daughters. Joint Hindu family is, thus, a larger body consisting of group of persons who are united by the tie of *sapindaship* arising by birth, marriage or adoption. An individual who is a member of the joint Hindu family can hold separate or individual property and in addition, if he is a coparcener, have an interest in the coparcenary property of the joint Hindu family.

10. However, with the enforcement of the Succession Act with effect from 17th June 1956, any property inherited by an heir vide intestate succession in the event of death occurring after 17th June

1956 is absolute or individual property and not ancestral property. In the present case, we are not concerned with the concept of deemed partition of existing coparcenary property on death of a coparcener, execution of a will by coparcener of his undivided interest vide Section 30 of the Succession Act or the amendments made in the Succession Act vide Act No. 39 of 2005 applicable with effect from 9th September 2005.

11. An estate even if inherited and ancestral, partition of which is prohibited by custom and succession whereto is generally by the rule of primogeniture is referred to as an 'impartible estate'. An impartible estate is essentially a creature of custom, though could also owe its origin to the term of a grant, a statute or a family settlement. By virtue of the rule of primogeniture, the eldest or the first son succeeds to the property of the last holder to the exclusion of his younger brothers. Succession can also be under the rule of lineal male primogeniture which means that the descendant would be a continual descendant of the eldest male member of the eldest branch. The distinction between the impartible estate, to which the rule of primogeniture applies, and coparcenary property has been explained in ***Shiba Prasad Singh*** v. ***Rani Prayag Kumari Debi and Others***[2] in the following words:

[2] AIR 1932 PC 216

> "Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have: (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility as laid down in *Sartaj Kuari's* case and *Rama Krishnan vs. Venkata Kumara*, and so also the third as held in *Gangadhara vs. Rajah of Pittapur*. To this extent the general law of the Mitakshara has been superseded by custom, and the impartible estate, though ancestral, is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right therefore still remains, and this is what was held in *Baijnath's* case. To this extent the estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birthright of the senior member to take by survivorship still remains. Nor is this right a mere *spes successionis* similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate."

12. The aforesaid passage in ***Shiba Prasad Singh*** (supra) has been quoted with approval in a number of judgments of this Court, including ***Thakore Shri Vinayasinhji (Dead) By LRs.*** v. ***Kumar Shri Natwarsinhji and Others***[3], wherein it has been observed as under:

> "The impartible estate, though ancestral, is clothed with the incidents of self-acquired and separate property, except as regards the right of survivorship which is not inconsistent with the custom of impartibility…"

[3] (1988) Supp. SCC 133

13. It is, therefore, well established that an impartible estate is clothed with the incidents of self-acquired and separate property. Impartible estate even if inherited and ancestral, is not held by the coparcenary as a part of the coparcenary property, as the coparceners or members of the joint Hindu family do not have the right to partition or right to restrain alienation. Though the right to survivorship is not inconsistent with the custom of impartible estate, *albeit* it is different from the ordinary rule of succession under the Mitakshara Hindu law where all sons of the father are entitled to equal share in his estate, for the law of succession when the rule of primogeniture applies, is that the first-born son succeeds to the entire estate to the exclusion of the other sons.

14. As observed above, impartibility of an estate and primogeniture can have its origin in four forms, including custom. There are judicial precedents acknowledging and accepting the custom of impartible estate and that the rule of primogeniture was a general rule of succession in all the princely states. We must take judicial notice of this custom as applicable to princely states vide Section 48 of the Evidence Act,1872. Lieutenant Colonel James Tod, in his work titled *'Annals and Antiquities of* Rajasthan'[4], at page 307 states:

[4] Oxford University Press, 1920. Reprinted in 1978 by M.N. Publishers, New Delhi

> "...The law of primogeniture prevails in all Rajpoot sovereignties; the rare instance in which it has been set aside, are only exceptions to the rule."

G.K. Mitter, J. in his judgment in ***Madhav Rao Jivaji Rao Scindia*** v. ***Union of India and Another***[5] had observed:

> "It would appear that invariably the rule of lineal male primogeniture coupled with the custom of adopting a son prevailed in the case of Hindu Rulers who composed of the bulk of the body."

In ***Baboo Gunesh Dutt Singh*** v. ***Maharaja Moheshur Singh***[6], it was stated as follows:

> "We apprehend that the principle upon which we are about to proceed in this case admits of no doubt or question whatever. By the general law prevailing in this District, and indeed generally under the Hindoo law, estates are divisible amongst the sons, when there are more than one son; they do not descend to the eldest son, but are divisible amongst all. With respect to a Raj as a Principality, the general rule is otherwise, and must be so. It is a Sovereignty, a Principality, a subordinate Sovereignty and Principality no doubt, but still a limited Sovereignty and Principality, which, in its very nature excludes the idea of division in the sense in which that term is used in the present case."

15. In ***Pratap Singh*** v. ***Sarojini Devi and Others***[7] reference was made to the decision in ***Baboo Ganesh Dutt Singh*** (supra) and Mitter, J.'s opinion in ***Madhav Rao Jivaji Rao Scindia*** (supra) to hold that:

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[5] (1971) 1 SCC 85
[6] (1854-7) 6 MIA 164: 1 Sar PCJ 521
[7] (1994) Supp 1 SCC 734

> "65. Though impartibility and primogeniture, in relation to zamindari estates or other impartible estates are to be established by custom, in the case of a sovereign Ruler, they are presumed to exist."

This Court in ***Pratap Singh*** (supra) has reiterated the above principles and also observed that impartible estate and the application of the rule of primogeniture in the case of the sovereign Ruler must be presumed to exist, whereas in the case of zamindari estate or another impartible estate, the rule of primogeniture must be established by way of custom.

16. Any property belonging to the Ruler as a sovereign, which would devolve on succession by survivorship by application of the rule of the primogeniture, would not bear an incidence of a coparcenary property. The property belonged to one person, that is, the sovereign Ruler as the very concept of sovereignty implies absolute authority, power and ownership that cannot be subjected to legal action of partition or injunction by another person. Consequently, estates/properties of the sovereign Ruler were impartible even though the property was ancestral. The male members who had the right of survivorship, could not claim the right to partition or the right to restrain alienation by the sovereign Ruler as they had no enforceable right that could be legally remedied. In short, the right or interest of sons or other members of the coparcenary was inconsistent with sovereignty as a

sovereign Ruler could not be subjected to the municipal law and the municipal courts. In an unreported decision in Civil Appeal No. 226 of 1965 titled ***Mahant Hardial Singh*** v. ***Ajmer Singh*** decided on 20th November 1968 with regard to the powers of the Maharaja of Patiala, this Court had observed:

> "We think that this appeal must fail on the short ground that the sale in favour of Seth Banarsi Das cannot be impugned in view of the orders made by His Highness the Maharaja of Patiala. It must be remembered that at the time the transaction took place, Patiala was a native State and the Maharaja enjoyed uncontrolled sovereign powers. At that time he was the supreme legislature, the supreme judiciary and the supreme head of the executive. There was no constitutional limitation on his authority to act in any of the capacities. His orders were expressions of the sovereign will and they were binding in the same way as any other law, nay, they would override all other laws which were in conflict with them. So long as his order held the field that alone would govern or regulate the rights of the parties concerned though it could have been annulled or modified by him at any time he willed."

Thus, as per the custom relating to impartible estates and the rule of primogeniture, the Raja or Ruler of a princely state would not hold the estate as the karta or coparcener, but as the absolute owner and the estate would be impartible. The son(s) would not acquire any interest in the impartible estate by birth nor could they seek partition or restrain alienation. On the death of the Ruler, the succession to the rulership, as also the impartible estate, was not under the Mitakshara law of survivorship but governed by the rule of primogeniture. There was, however,

moral liability for providing maintenance to others, be it the younger brothers or family members, which later on, by way of custom, virtually became an obligation.

17. The Privy Council in ***Venkata Surya Mahipati Rama Krishna Rao Bahadur*** v. ***Court of Wards and Others***[8] after referring to the earlier case law had held that a holder of an impartible estate can alienate the estate by way of a gift *inter-vivos*, or even by a will, though the family is undivided; the only limitation on his power would flow from the family custom to the contrary, or from the condition of the tenure which has the same effect. The above dictum has been approved by this Court in ***Sri Rajah Velugoti Kumara Krishna Yachendra Varu and Others*** v. ***Sri Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu and Others***[9]; ***Bhaiya Ramanuj Pratap Deo*** v. ***Lalu Maheshanuj Pratap Deo and Others***[10]; ***Pratap Singh*** (supra) and other cases.

18. In ***Advocate General of Bombay*** v. ***Amerchund***[11], Lord Tenterden had during the course of discussion asked:

> "What is the distinction between the public and private property of an absolute sovereign? You mean by public property, generally speaking, the property of the State, but in the property of an absolute sovereign, who

[8] (1899) LR 26 Ind App 83
[9] (1969) 3 SCC 281
[10] (1981) 4 SCC 613
[11] 12 ER 340, 345: (1830) 1 Knapp 316,329-30

> may dispose of everything at any time, and in any way he pleases, is there any distinction?" [...]

Lord Tenterden went on to observe in his judgement:

> "another point made, which applies itself only to a part of the information, is, that the property was not proved to have been the public property of the Peishwa. Upon that point I have already intimated my opinion, and I have the concurrence of the other Lords of the Council with me in its, that when you are speaking of the property of an absolute sovereign there is no pretence for drawing a distinction, the whole of it belongs to him as sovereign, and he may dispose of it for his public or private purposes in whatever manner he may think proper."

19. The legal incidents of sovereign and State property were explained by the Gujarat High Court in ***D.S. Meramwala Bhayawala*** v. ***Bai Shri Amarba Jethsurbhai***[12] in the following words:

> "5. […] As a sovereign ruler he would be the full and complete owner of the Estate entitled to do what he likes with the Estate. During his lifetime no one else can claim an interest in the Estate. Such an interest would be inconsistent with his sovereignty. To grant that the sons acquire an interest by birth or adoption in the Estate which is a consequence arising under the municipal law would be to make the Chief who is the sovereign Ruler of the Estate subject to the municipal law. Besides, if the sons acquire an interest in the Estate by birth or adoption, they would be entitled to claim the rights enumerated above but those rights cannot exist in a sovereign Estate. None of these rights can be enforced against the Chief by a remedy in the Municipal Courts. The Chief being the sovereign Ruler, there can be no legal sanction for enforcement of these rights. The remedy for enforcement of these rights would not be a remedy at law but resort would

[12] (1968) 9 GLR 609

> have to be taken to force, for the Chief as the sovereign Ruler would not be subject to municipal law and his actions would not be controlled by the municipal Courts. Now it is impossible to conceive of a legal right which has no legal remedy. If a claim is not legally enforceable, it would not constitute a legal right and, therefore, by the very nature of a sovereign Estate, the sons, cannot have these rights and if these rights cannot exist in the sons, it must follow as a necessary corollary that the sons do not acquire an interest in the Estate by birth or adoption."

The legal position as explained in paragraphs 14 to 16 (supra) was highlighted in ***D.S. Meramwala*** (supra) stating that there was not even a single instance where the son(s) were recognized to have an interest in the estate for partitioning the estate during the lifetime of the Chief. It is, therefore, clear that when the rule of primogeniture is applicable, the principles of ancestral coparcenary property would not apply. In the case of an impartible estate, the son(s) would not get any interest by birth, as a son of Hindu has interest by birth in coparcenary property.

20. Opinion of Lord Tenterden was one of the cases cited with approval in ***Revathinnal Balagopala Varma*** v. ***Shri Padmanabha Dasa Bala Rama Varma (since deceased) and Others***[13]. This aspect was further elucidated by N.D. Ojha, J. in ***Revathinnal Balagopala Varma*** (supra) (see paragraph 30).

[13] (1993) Supp 1 SCC 233

21. With passage of the Indian Independence Act, 1947, the British bid farewell to the Indian empire and transferred the political power. India was also partitioned. Question would arise whether the legal position had changed post 15th August 1947 on independence in light of the fact that the Rulers of the princely states had joined the Indian Union after lapse of the British paramountcy. Pre-partition India comprised of about 4095852 sq. kms. The British Crown had direct control over 2241505 sq. kms., and the princely or native states, about 565 in number, had rights on 1854346 sq. kms. Apart from the transfer of power and administration, integration of the princely states in the independent Indian Union was a complex and difficult task. In July 1947, several Rulers of princely states and state ministers had met Sardar Vallabhbhai Patel, Home Minister in the interim Government, to discuss and to determine their future status. Mr. V.P. Menon in his work *'Integration of the Indian States'*[14] states that the princely states to participate in the Constituent Assembly, were required to give up their powers and accede to the Indian Union on three subjects, namely, defence, foreign affairs and communications, which they agreed after a series of informal meetings and discussions with the Rulers of the princely states and their advisors who had realised the public sentiments and

[14] Orient Longman 1985, 107.

impact of transfer of political power. Accordingly, instruments of accession were signed under which external affairs, defence and communications were ceded to the Dominion by the Rulers of most of the princely states with the exception of Junagarh, Hyderabad and Kashmir.

22. The next step was the integration of the princely states, which happened in 1948-49, with the Rulers/Rajas signing merger agreements and covenants. Thereupon, the princely states merged in the States or into the Unions in the administered areas, thereby ensuring transfer of absolute power from the individual Rulers to the masses i.e. the citizens of free India. Merger agreements ensured integration of the former princely states into the Union of India. In return of surrender of absolute power and sovereignty, the Rulers were assured of fair allocation of assets, properties and fixed personal income by way of a privy purse. The merger agreements had also granted privileges and concessions to the former princes who had enjoyed the status of a Ruler. At this stage, it became necessary to demarcate personal properties of the Rulers and the State properties. The former remained the property of the erstwhile princes while the latter became property of the State.

23. The principles followed by the Government of India in this process, are enunciated by Mr. V.P. Menon in his work in the following manner:

> "The broad principles evolved at this conference were as follows. Immovable properties were to be allotted to the Rulers on the basis of previous use, having regard to their actual needs and the needs of the administration. Farms, gardens and grazing areas were allowed to be retained by some of the Rulers, but the position of the Ruler in respect of these would be the same as that of a private landholder and he would be subject to the revenue laws and assessments. With regard to investments and cash balance, only those to which the State could lay no claim, were to be recognized as the private property of the Ruler. Though we laid no claim to the personal jewellery of the ruling family, such ancestral jewellery as was 'heirloom' was to be preserved for the ruling family; and valuable regalia would remain in the custody of the Ruler for use on ceremonial occasion…"

24. The principles followed by the Government of India are clearly reflected in the White Paper on the Indian States, the relevant portion of which reads:

> "157. In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned by their respective States. With the integration of the States, it became necessary to define and demarcate clearly the private property of the Ruler."

25. There is no doubt that erstwhile Rulers ceased to be sovereign post the merger agreements. However, they were entitled to benefits in terms of concessions which were granted under the merger agreements which had postulated as under:

" xx xx xx

Article III: The Ruler of each of the States specified in the Schedule to this agreement (hereinafter referred to as "the Covenanting States") hereby cedes to the Government of India, with effect from the aforesaid day, fuII and exclusive authority, jurisdiction and powers for, and in relation to, the governance of that State; and thereafter the Government of India shall be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit.

Article IV: (1) The Ruler of each Covenanting State shall be entitled to receive annually from the Government of India for his privy purse the amount specified against that Covenanting State in the Schedule to this Agreement.

(2) The said amount is intended to cover all the expenses of the Ruler and his family including expenses on account of personal staff, maintenance of his residences, marriages and other ceremonies, etc., and shall neither be increased nor reduced for any reason whatsoever.

(3) The said amount shall be free of all taxes and shall be paid in four equal instalments in advance at the beginning of each quarter.

Article V: The Ruler of each Covenanting State, as also the members of his family shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of that State, immediately before the 15th day of August 1947.

Article VI: The Government of India guarantees the succession, according to law and custom, to the gaddi of each Covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler thereof.

Article VII: (1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh in pursuance of the Covenant.

(2) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to a judicial officer to be nominated by

the Government of India, and the decision of that officer shall be final and binding on all parties concerned.

Article VIII: No inquiry shall be made by or under the authority of the Government of India, and no proceedings shall lie in any Court, against the Ruler of any Covenanting State, whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by him or under his authority during the period of his administration of that State.

xx xx xx ”

26. The Constitution of India as enacted, vide clause 2 in Article 363, had defined the expression ‘Indian State’ as any territory recognised before the commencement of the Constitution by his Majesty or the Government of the Dominion of India as being a State and the ‘Ruler’ as were recognised before such commencement by his Majesty or the Government of Dominion of India as the Ruler of Indian State. The ‘ruler’ as defined meant the Prince, Chief or any other person by whom any such covenant or agreement as is referred to in clause (1) of Article 291 was entered into and who for the time being was recognised by the President as Ruler of the princely state.

27. It is, therefore, clear that upon signing the merger agreement, the Rulers had lost their sovereignty and, in a way, had become ordinary citizens with certain special rights and privileges as mentioned in the Constitution.

28. The legal effect of the merger agreements and whether the customary rule of impartible estate would cease to be applicable by applying the doctrine of *'cessante ratione legis, cessat ipsa lex'* has been examined in several decisions. The argument against continuation of the customary rule is predicated on the plea that primogeniture and impartibility, though not attributes of sovereignty, were customs which existed because the rulership existed, and therefore when there was loss of rulership, there was no need for the custom to exist. This contention was examined in ***Revathinnal Balagopala Varma*** (supra) and squarely rejected by S. Ranganathan, J., in the following words:

> "5. Before discussing the principal contentions urged on behalf of the appellant, it may be convenient to clear up a ground put up on behalf of the first respondent purporting to be a complete answer to the claim of the appellant ... It settled the issue as between the Ruler and the Government of India and allowed the said properties to be retained by the Ruler without being surrendered to the Government of India. It did not, however, affect or prejudice the rights, if any, of third parties in the properties so declared. It created no title in the Ruler to any properties other or higher than what belonged to him *immediately before the appointed day ...* It did not affect in any way the nature of any property in his hands or the claims, if any, which others might have had against the Ruler *qua* those properties. These propositions are clear form the decisions in *Visweswar Rao* v. *State of M.P.* (1952 SCR 1020), *Dalmia Dadri Cement Co. Ltd.* v. *CIT* (1959 SCR 729) and *Rajendra Singh* v. *Union of India* (1970-2 SCR 631) as well as the clarification contained in para 4 of the Government of India's memorandum dated 18.05.51 (Ex. A-4)."

29. N.D. Ojha, J. in the same judgment referred to and approved the judgment of the Gujarat High Court in ***D.S. Meramwala*** (supra) wherein it has been held as under:

> "57. ... Now it was not disputed on behalf of Meramwala that if prior to merger the Estate did not partake of the character of ancestral coparcenary property, the properties left with Bhayawala under the merger agreement would not be ancestral coparcenary properties : if Meramvala did not have any interest in the Estate prior to merger, he would have no interest in the properties which remained with Bhayawala under the merger agreement. It was not the case of Meravala and it could not be the case since the merger agreement would be an act of State that as a result of the merger agreement any interest was acquired by him in the properties held by Bhayawala. Bhayawala was, therefore, the full owner of the properties held by him and was competent to dispose of the same by will. ...
> ... The argument of Mr. I.M. Nanavati however was that the effect of applicability of the rule of primogeniture by the paramount power was that the rights of coparceners under the ordinary Hindu law were eclipsed: these rights were not destroyed but they remained dormant and on the lapse of paramountcy, the shadow of the eclipse being removed, the rights sprang into full force and effect. This argument is wholly unsustainable on principle..."

The ratio was accepted by S. Ranganathan, J. (see paragraph 11), wherein he observed that if the issue dealt with had been an ordinary impartible estate the matter would have been different but, in case of a sovereign state whose Chief was earlier a sovereign Ruler, the acquisition by a sovereign Ruler cannot be claimed to be joint family property.

30. In ***Revathinnal Balagopala Varma*** (supra), N.D. Ojha, J. had thereafter proceeded to observe:

> "63. In this connection it has to be kept in mind that the mode of succession of a sovereign ruler and the powers of such a ruler are two different concepts. Mode of succession regulates the process whereby one sovereign ruler is succeeded by the other. It may inter alia be governed by the rule of general primogeniture or lineal primogeniture or any other established rule governing succession. This process ends with one sovereign succeeding another. Thereafter what powers, privileges and prerogatives are to be exercised by the sovereign is a question which is not relatable to the process of succession but relates to the legal incidents of sovereignty.
>
> 64. If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him that the said property was held by the sovereign not as sovereign but in some other capacity. In the instant case apart from asserting that the properties in suit belonged to a joint family and respondent 1 even though a sovereign ruler, held them as the head of the family to which the property belonged, the appellant has neither specifically pleaded nor produced any convincing evidence in support of such an assertion. It has been urged on behalf of the appellant that only the eldest male offspring of the Attingal Ranis could, by custom, be the ruler and all the heirs of the Ranis who constituted joint Hindu family would be entitled to a share in the properties of the Ranis and the properties in suit were held by respondent 1 as head of the tarwad even though impartible in his hands. This plea has been repelled by the trial court as well as by the High Court and nothing convincing has been brought to our notice on the basis of which the presumption canvassed on behalf of the appellant could be drawn and the findings of the courts below reversed. We are dealing with an appeal and as has been pointed out by this Court in *Thakur Sukhpal Singh* v. *Thakur Kalyan*

Singh it is the duty of the appellant to show that the judgment under appeal is erroneous."

31. Even earlier, in ***Mirza Raja Pushpavathi Vijayaram Gajapathi Raj Manne Sultan Bahadur etc.*** v. ***Sri Pushavathi Visweswar Gajapathiraj Rajkumar of Vizianagaram and Others***[15], this Court had observed that custom outlives condition of things that gave birth to it, with the following observations:

> "The argument that the abolition of Zamindari estate must automatically terminate the customary impartibility of the jewels which were treated as regalia by the family, overlooks the fact that many times custom outlives its condition of things which gave it birth. As was observed by Lord Atkinson in delivering the opinion of the Board in *Rao Kishore Singh vs Mst Gahenabai*, AIR 1919 P.C.100, "it is difficult to see why a family should not similarly agree expressly or impliedly to continue to observe a custom necessitated by the condition of things existing in primitive times after that condition had completely altered. Therefore, the principle embodied in the expression *'cessat ratio cessat lex'* does not apply where the custom outlives the condition of things which gave it birth." That is why we think, the contention raised on the ground that there was no justification for regalia in early times at all and that if initially there was any justification, it ceased after the abolition of the Zamindari Estates, cannot be upheld.
>
> In the matter of proof of family custom, it is not the technicalities of the law that would prevail but the evidence of conduct which unambiguously proves that the parties wanted to continue the old custom."

32. Any doubt or debate on whether the custom of impartibility and the rule of primogeniture had continued post the covenants and

[15] AIR 1964 SC 118

merger was set at rest by this Court in ***Pratap Singh*** (supra) wherein specific reference was made to Section 5(ii) of the Succession Act and the debates when the Bill was introduced in the Rajya Sabha. The relevant portion of this decision reads as under:

> "71. Section 5 of the Hindu Succession Act, 1956 (Central Act 30 of 1956) states as follows:
>
> "This Act shall not apply to —
>
> (*i*) * * *
>
> (*ii*) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;
>
> (*iii*) * * *"
>
> 72. In *Mulla's Hindu Law*, 16th Edn. at page 766 it is stated:
>
> "The exception is limited to the impartible estates of Rulers of Indian States succession to which is regulated by special covenants or agreements and to estates, succession to which is regulated by any previous legislation, and the Estate and Palace Funds mentioned in sub-section (*iii*)."
>
> 73. At the stage of Bill, in 1954 it was clearly brought out in the *Rajya Sabha Debates* at pages 7115 and 7116 as under:
>
> "Then there is another clause, sub-clause (*ii*) which says:
>
> 'any estate which descends to a single heir by the terms of any covenant or agreement entered

into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;'

This clause has been put in because, as we know, it is only after the attainment of independence that on a large scale there has been integration of States, and there are certain agreements and covenants which have been entered into between the Government and those Rulers of States, and some arrangements have been made only very recently with respect to their line of succession. It is a special thing. What it says is: 'any covenant or agreement entered into by the Ruler'. Naturally, if we have entered into any such agreement only as recently as 1947 or 1948 and much time has not elapsed, it is not proper that by an enactment of a general nature like this we should do something which will set at nought the agreements and the covenants which the Government of India has solemnly entered into with those people and on the strength of which they had consented to allow their States to be integrated with India. Of course, I agree that probably it is not entirely a socialist pattern or whatever you call it, but as I have been always saying, I hold the opinion that we have to proceed by the process of evolution. I do not mince matters."

74. Therefore, it can be said with certainty that this rule continued even after 1947-48."

33. The Hindu Succession Bill was introduced in the Rajya Sabha on 22nd December 1954 and clause (iv) thereof reads as under:

"(iv) Any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment"

However, the Bill was referred to a Joint Committee of Parliament, which in its Report[16] observed as under:

> "The Joint Committee is further of opinion that the exception in sub clause (iv) should be limited to the impartible estates of Rulers of Indian States succession to which is regulated by special covenants or agreements and …"

Section 5(ii), in its present form, was recommended by the Joint Committee in pursuance of its opinion quoted above, which means that the Rulers had impartible estates and succession to these was regulated by special covenants or agreements. Thus, after discussion, the (iv) exception in the Bill was deleted and was not enacted as law. The effect thereof was that the custom of primogeniture and impartible estate in the case of zamindars or those holding jagirs would not be applicable post enforcement of the Succession Act with effect from 17th June 1956. This is an aspect which is often disregarded and not taken into consideration while examining the ratio as expounded by this Court in ***N. Padmamma and Others*** v. ***S. Ramakrishna Reddy and Others***[17] in which it is observed that law of primogeniture is no longer applicable in India and such a provision may be held to be unconstitutional being hit by Article 14 of the Constitution. ***N. Padmamma*** (supra) refers to a judgment of the Supreme Court of

[16] Gazette of India Extraordinary dated 28.9.1955 Part II Sec.2, page 365, '8
[17] (2008) 15 SCC 517

South Africa. It may be relevant to state that by this decision, the matter and issue was referred to a larger Bench, which reference was decided vide judgment dated 23rd September 2014 by a three Judge Bench, authored by T.S. Thakur, J. in ***N. Padmamma and Others*** v. ***S. Ramakrishna Reddy and Others***[18]. This judgment in ***N. Padmamma*** (supra) does not specifically refer to the law of primogeniture as that issue was not raised. Neither was the custom of impartibility of estate considered by the larger Bench.

34. The Delhi High Court in ***Tikka Shatrujit Singh & Others*** v. ***Brig Sukhjit Singh & Another***[19], has lucidly, in a tabulated form, drawn distinction between the rule of primogeniture and impartible estate as applicable to Rulers of princely states and zamindars/jagidars in the following manner:

S.No.	Ruler of an Indian State	The holder of a Zamindari
1.	The Ruler (Sovereign) would be the absolute owner of the State and its properties. None else would have any interest or share in his property.	The holder of a Zamindari, as distinct from the Ruler of an Indian State, may hold it as an impartible estate. If it is ancestral, he holds it on behalf of the family and although there would be no right of partition, his interest will not be that of an absolute owner, which a sovereign Ruler had. It would have been family property and of the type understood by the series of decisions in that regard.
2.	Primogeniture would be presumed to apply as a Rule for succession.	Primogeniture would not, repeat not, be Presumed to apply, but will have to be proved as a Custom.

[18] (2015) 1 SCC 417
[19] ILR 2011 (1) Del 704

3.	He would have been signatory to a Covenant/agreement ceding his State first (15.8.1947) to the Dominion of India on three subjects, external affairs, communication & defence. And thereafter – by the Covenant or the Merger Agreement ceding the administration of his State to the Union or other Government prior to 26.01.1950.	He would not have been a party to any of the items 3 to 5 in the first column. This establishes the difference in status between a former Ruler on the one side and a Zamindari on the other. This in turn, makes all the difference to the applicable law.
4.	After 26th January, 1950, he would be recognised as a Ruler of a former Indian State by the President of India under Article 366 of the Constitution.	----
5.	He would be receiving an annual privy purse for the amount fixed by the Ministry of States.	----
6.	On his death, succession (properties) would be covered by the first part of the exception under Section 5(ii) and therefore not affected by the 1956 Act. If he dies after 17.6.1956, it would make no difference to the succession which will still be by primogeniture.	If he dies after 17.6.1956, succession to his estate shall not be by primogeniture. It will be as per Section 8 of Hindu Succession Act.
7.	He would be De-recognised as a Ruler by the 26th Amendment.	Since he was never recognised as a Ruler, there is no question of 'Derecognition'.

35. Preamble of the Succession Act states that it is an Act to amend and codify the law relating to intestate succession amongst Hindus and as originally enacted did not profess to amend and codify the law relating to the nature of all the properties held by

Hindus, with the exception of Section 14 of the Succession Act. Section 4 of the Succession Act provides that the text, rule, interpretation, custom or usage of Hindu law will cease to have effect with respect to any matter for which provision is made in the Act and further any other law in force, which is inconsistent with the provisions of the Act, will cease to apply. Section 6 of the Succession Act deals with devolution of interest of a Hindu male (and daughter of a coparcener after amendment vide the Hindu Succession (Amendment) Act 2005) having interest in a Mitakshara coparcenary as distinct from a joint Hindu family. Sections 8 and 9 of the Succession Act relating to the general rules of succession in case of males and females, respectively, do not apply to a living person but apply on the succession opening on the death. Similarly, Section 30 of the Succession Act which deals with testamentary succession and empowers a Hindu to dispose of any property by will in accordance with the provisions of the Indian Succession Act, 1925, does not *ipso facto* apply to a living person and applies in the event of the holder's death. Section 5(ii) is an exception to Section 4 and protects application of terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or the terms of any enactment passed before commencement of the Succession Act as per which the estate would descend to a single heir. The

provisions of the Succession Act, with the possible exception of Section 14 and some amendments vide the Hindu Succession (Amendment) Act 2005, do not apply unless the succession opens and, therefore, no legal rights of a living person would get affected. This is clearly stated by S. Ranganathan, J. in ***Revathinnal Balagopala Varma*** (supra), wherein with reference to the effect of the Succession Act, it was observed:

> "19. ...Section 4 the Act, in the words of *Sundari* v. *Laxm*i (supra), "gives overriding application to the provisions of the Act and lays down that *in respect of any of the matters dealt with in the Act* all existing laws whether in the shape of enactment or otherwise which are inconsistent with the Act are repealed. Any other law in force immediately before the commencement of this Act ceases to apply to Hindus *insofar as it is inconsistent with the provisions contained in the Act*." In other words, while the Act may have immediate impact on some matters such as, for e.g., that covered by s.14 of the Act, its impact in matters of succession is different. There the Act only provides that, in the case of any person dying after the commencement of the Act, succession to him will be governed not by customary law but only by the provisions of the Act. This is, indeed, clear if we refer to the terms of s.7(3) which get attracted only when a *sthanamdar* dies after the commencement of the Act. There is, therefore, no reason to hold that the appellant's entitlement to sue for the partition of the properties arose on June 17, 1956."

36. Legal effect of Section 5(ii) was examined earlier by a three Judge Bench of this Court in ***Bhaiya Ramanuj Pratap Deo*** (supra) wherein after referring to Section 5(ii), it was observed:

> "15. … This section protects an estate which descends to a single heir by the terms of any covenant or

agreement entered into or by the terms of any enactment inasmuch as Hindu Succession Act is not applicable to such an estate. This section stands as an exception to Section 4 of the Act referred to above."

37. After referring to the above articles/covenants in ***Pratap Singh*** (supra), it was observed:

> "78. A careful reading of Article XII shows that there is a clear distinction between the private properties and the State properties. Such private properties must be belonging to the Ruler and must be in his use and enjoyment even earlier. Therefore, properties which were recognised even earlier as such private properties alone were to be left out and submitted for the recognition as such. As stated in White Paper (para 157, page 23 supra), the demarcation and the settlement of the list was carried out for the purposes of Integration. If this be the correct position of law, the contrary observations of the learned Single Judge are not correct."

38. A Constitution Bench of five judges in ***Kunwar Shri Vir Rajendra Singh*** v. ***The Union of India and Others***[20] had referred to clause (22) of Article 366 of the Constitution to observe that it was not a mere definition clause, but a clause that empowered the President to recognise a Ruler "for the time being" which indicates that the President has power not only to recognise but also to withdraw recognition whenever occasion arises. This recognition was for the purpose of the right to privy purse under Article 291 of the Constitution which was a charge on and paid out of the Consolidated Fund of India. However, it was held that the privy

[20] (1969) 3 SCC 150

purse was not a private property to which the Ruler succeeded. It was also clarified that the right to private property of a Ruler is not embraced within clause (22) of Article 366 of the Constitution. Accordingly, recognition of rulership by the President does not recognize any right to private property of the Ruler because recognition of rulership is an exercise of the political power of the President. Thus, recognition of rulership is not an indicia of property, instead it conferred and entitled the Ruler to enjoyment of the privy purse and personal rights, privileges and dignities of the Ruler. Equally, the recognition of rulership did not delegitimize the right to property and claim of the Ruler to any property, which he would have to establish in the court of law. Even more important in the present context are the observations of this Court with reference to Article XIV of the Covenant for the United State of Rajasthan, which the erstwhile "sovereign" Ruler had entered into and thereby was guaranteed succession or the right to claim succession with respect to the private property according to the personal law. This Court held that with the coming into effect of the Constitution, the rulership or the States had ceased to exist as separate entities. Even the Covenants would cease to exist after the enactment of the Constitution in so far as they were inconsistent with the Constitution. However, the personal law of succession in view of Article XIV of the Covenant was protected

and preserved. The Court had accordingly clarified the legal position on the claim to succession, by observing:

> "8. … The meaning of Article XIV of the Covenant is that the claim to succession on the basis of custom and law is preserved. Article XIV of the Covenant by itself is not evidence of any custom or law. If the petitioner relied on Article XIV, the petitioner has to establish such right based on custom or law before the appropriate authority".

The ratio of the Constitution Bench in ***Vir Rajendra Singh*** (supra) is a binding precedent for it recognizes the personal law of succession of the Rulers and therefore, the rule/custom of primogeniture applicable to impartible estates belonging to erstwhile Rulers of the princely states. This custom/rule was not abrogated with the loss of sovereignty that the Rulers had forgone with the signing of the merger agreement.

39. In ***Thakore Shri Vinayasinhji*** (supra), ***Pratap Singh*** (supra), ***Revathinnal Balagopala Varma*** (supra), ***Madhav Rao Jivaji Rao Scindia*** (supra), this Court has applied the rule of primogeniture to the estates of such Rulers by giving effect and protection to the personal law, that is, the rule of primogeniture as provided vide the covenant and merger agreement. Consequently, even after the erstwhile Rulers had surrendered their sovereign rights and their kingdoms/estates had merged with the Dominion of India, the succession and all its concomitant rights to their

erstwhile sovereign property now held as private property, would devolve vide the merger agreement and the Constitution as per the customs applicable to the erstwhile Rulers. Relying on the Constitution, and sub-section (ii) to Section 5 of the Succession Act, this Court has, time and again, held that the law of the land is pervious to the rule of primogeniture. The recent decision of this Court in ***Talat Fatima Hasan Through Her Constituted Attorney Sh. Syed Mehdi Husain*** v. ***Nawab Syed Murtaza Ali Khan (D) By LRs. And Others*** in Civil Appeal No. 1773 of 2002 decided on July 31, 2019 pertains to the Muslim Personal Law (Shariat) Application Act, 1937 applicable to the State of Rampur. This is clear from paragraph 12 of the judgment in ***Talat Fatima Hasan*** (supra), which records that the only issue to be decided was whether the properties held by the Nawab would devolve on his eldest son by applying the rule of primogeniture or would be governed by the Muslim Personal Law (Shariat) Application Act, 1937 and devolve on all his legal heirs.

40. It may be pertinent to state here that the succession on death of Brij Nath Singh had opened on 13th October 1968, which is before Article 362 relating to the rights and privileges of the Indian Rulers was repealed by the Constitution (26th Amendment) Act, 1971. Article 362, before it was repealed, stated that in exercise of the

power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or a State, due regard shall be had to the guarantee or the assurance given under any such covenant or agreement referred to in Article 291 with respect to the personal rights, privileges or dignities of the Ruler of an Indian State.

41. Faced with the aforesaid position, learned counsel for the appellants had submitted that the property being a leasehold Nazul plot located in Allahabad and owned by the superior lessor, i.e. State of Uttar Pradesh, it could not be treated as a sovereign property in the hands of Raghubir Singh and also in the hands of Brij Nath Singh. The property should be treated as coparcenary property belonging to the joint Hindu family and not as impartible property to which the rule of primogeniture would be applicable. This contention must be rejected. Brij Nath Singh had taken over as a Ruler of the State of Maihar in the pre-independence era when the Rulers, though subject to British supremacy, were treated as absolute sovereign Rulers within their own territories. There was no distinction between public and private property of the Rulers since the distinction would be counter to the basic attribute of sovereignty. In ***Pratap Singh*** (supra), the subject matter included properties held by the ruling Chief of Nabha estate

in the British territory, i.e. territory outside the Home State. One such property known as Sterling Castle in Shimla, was purchased in the name of the friend of the ruling Chief in view of the restriction put by the Britishers on acquisition, whether direct or indirect, by a sovereign or Feudatory Princes of lands in the British territory. After the Britishers had left, the friend of the ruling Chief had relinquished his title and conferred it upon the three sons and widow of the late ruling Chief. The ruling Chief had also acquired a property in Delhi. The contention that these two properties were private properties and not State properties was rejected by this Court.

42. In ***Draupadi Devi and Others*** v. ***Union of India and Others***,[21] the dispute pertained to perpetual leasehold rights of a property in Delhi called Kapurthala House which was purchased by Jagatjit Singh, the then Maharaja of Kapurthala by a registered sale deed 19th January 1935. The question whether it was personal or State/sovereign property was decided in favour of the Union of India holding that it was a State or sovereign property, notwithstanding the alleged command of the Maharaja in 1940 purportedly declaring Kapurthala House as his personal and private property. Reference was made to *aide-memoire* dated 1st March 1937 by Lieutenant Colonel Fisher declaring the Kapurthala

[21] (2004) 11 SCC 425.

House as a State property. Thus, leasehold properties situated outside the princely states have been held to be State or sovereign property. Therefore, the contention of the appellants that the property being leasehold Nazul land situated outside the princely state was personal property must be rejected in the absence of any other evidence or material to rebut the presumption that the property was a part of the impartible estate belonging to the sovereign Ruler. On the other hand, inheritance of the property post the death of Raghubir Singh by the new Ruler including Brij Nath Singh by application of the rule of primogeniture to the exclusion of others son(s) would indicate that it was treated as a State or sovereign property.

43. In view of the aforesaid discussion, it has to be held that the property was a part of the impartible property i.e., the property though ancestral was not a part of the coparcenary property, but was a part of the estate of the sovereign Ruler, Brij Nath Singh. Further, Brij Nath Singh could transfer the property *inter-vivos* or make a bequest by way of a will. The contention that the property was a separate or personal property and, therefore, not a part of the impartible property has not been established and has not been proved by the appellants by leading evidence and material to dispel the presumption.

44. For the aforesaid reasons, we do not find any merit in the present appeals and the same are dismissed affirming the final findings of the High Court. There would be no order as to costs.

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

NEW DELHI;
DECEMBER 10, 2019.