REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1773 OF 2002

TALAT FATIMA HASAN THROUGH HER CONSTITUTED ATTORNEY SH. SYED MEHDI HUSAIN …APPELLANT(S)

Versus

NAWAB SYED MURTAZA ALI KHAN (D) BY LRS. & ORS. …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4012 OF 2002

CONTEMPT PETITION (CIVIL) NO. 1079 OF 2018
IN
CIVIL APPEAL NO. 1773 OF 2002

J U D G M E N T

Deepak Gupta, J.

1. "Whether succession to the properties declared by an erstwhile ruler to be his private properties in the agreement of accession with the Dominion of India will be governed by the

rule of succession applicable to the "*Gaddi*" (rulership) or by the personal law applicable to the ruler", is the question for consideration in the present appeals.

2. The British Government decided to withdraw from the Indian sub-continent and the plan in this regard was published on 03.06.1947 which envisaged the formation of two countries, India and Pakistan. As per the Indian Independence Act, 1947 two independent Dominions – India and Pakistan were created. The ruling princes had the right to decide to which Dominion, India or Pakistan, they were to cede to. Section 6 of the Government of India Act, 1935 provided that an instrument of accession was to be executed by the ruler of the State. Various rulers signed instruments of accession on various dates. Some immediately on 15.08.1947 and some much later. Some rulers voluntarily ceded their territories to the Indian Union and some had to be cajoled to do so. In the various talks held by the Indian Government and the princely States it was decided to give some privileges and perquisites to the rulers. The privileges which were to be granted to the rulers included exemption from the operation of certain laws, the enjoyment of

Jagirs and personal properties of the rulers, and members of their families, the payment by the States of the marriage expenses of the brothers and sisters of the rulers, immunity from some processes of courts of law, distinctive number plates, gun salutes, etc.

3. Nawab Raza Ali Khan was the ruler of Rampur. The State of Rampur merged into the Union of India. Merger Agreement was signed by the Nawab on 15.05.1949. As per the terms of merger agreement, the Nawab was entitled to full ownership, use and enjoyment of all private properties (as distinguished from State properties) belonging to him and he was required to furnish to the Dominion Government an inventory of such immovable properties etc. The Nawab vide orders (*robkars*) dated 31.05.1949 and 27.06.1949 declared a number of properties to be his personal properties. In terms of the merger agreement, Rampur ceded to the Dominion of India on 01.07.1949 and became a centrally administered Chief Commissioner's Province. Nawab Raza Ali Khan was declared to be a ruler in terms of clause (22) of Article 366 of the

Constitution of India, 1950. He expired on 06.03.1966. It is not disputed that Nawab Raza Ali Khan died intestate.

4. The relevant provisions of the instrument of accession executed on 15.05.1949 between the Governor General of India and the Nawab of Rampur read as follows:

> "ARTICLE 2
>
> The Nawab shall continue to enjoy the same personal rights, privileges, immunities, dignities and titles which he would have enjoyed had this agreement not been made.
>
> xxx xxx xxx
>
> ARTICLE 4
>
> The Nawab 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 this agreement.
>
> The Nawab will furnish to the Dominion Government before the 30th June 1949 an inventory of all the immovable property, securities and cash balances held by him as such private property.
>
> If any dispute arises as to whether any item of property is the private property of the Nawab or State property, it shall be referred to a judicial officer nominated by the Government of India and the decision of that officer shall be final and binding on both parties.
>
> xxx xxx xxx
>
> ARTICLE 6
>
> The Dominion Government guarantees the succession according to law and custom to the gaddi of the State and to Nawab's personal rights, privileges, immunities, dignities and titles."

5. It may also be pertinent to mention that as per Article 1, the Nawab ceded full executive authority, jurisdiction and powers for and in relation to the governance of the State of Rampur and transferred all his powers to the Dominion Government with effect from 01.07.1949. Article 3 entitled the Nawab to receive a privy purse of Rs.7,00,000/- free from taxes. Under Article 5 all members of the Nawab's family were entitled to privileges, dignities and titles as they enjoyed before 15.08.1947. Articles 8 and 9 are not relevant for the purpose of deciding this case.

6. It would also be pertinent to mention that after the instrument of merger was executed, the Constitution of India was adopted on 26.11.1949 and came into force on 26.01.1950. Article 291 of the Constitution of India, as it stood at the relevant time, provided that the ruler of an Indian State would be entitled to privy purse sums as assured by the Government of the Dominion of India. Article 362 provided that whenever Parliament or Legislature in exercise of their power make laws or where the Union or States exercise the executive power, due regard would be had to the guarantees or

assurances given under any such covenant or agreement, which the ruler had entered into with Dominion of India in respect to the personal rights, privileges and dignities of the ruler of an Indian State. Article 363 barred the jurisdiction of the Courts to entertain disputes arising out of such treaties, agreements, covenants, etc. entered into or executed before the commencement of the Constitution by any ruler of an Indian State to which the Government of the Dominion of India or any of its predecessor government was a party. In clause (22) of Article 366, Ruler was defined as follows:-

> "**366**. **Definitions**.- In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx
>
> (3) xxx xxx xxx
>
> (22) "Ruler" in relation to an Indian State means the Prince, Chief or 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 is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;"

7. After the death of Nawab Raza Ali Khan, the President of India in terms of clause (22) of Article 366 recognised his eldest son Nawab Syed Murtaza Ali Khan, defendant no. 1

(since deceased) to be the ruler. None of the other parties challenged this declaration recognising defendant no.1 to be the ruler. On 01.04.1966 a certificate was issued in which defendant no. 1 was not only recognised as ruler of Rampur but it was also certified that he was the sole successor to all private properties – movable and immovable – held by Late Nawab Raza Ali Khan. The certificate was challenged by Syed Zulfiquar Ali Khan, defendant no. 3 (since deceased), the second son of Nawab Raza Ali Khan, by filing a writ petition before the High Court of Delhi. Three other similar petitions were filed by the daughters of Nawab Raza Ali Khan. The High Court of Delhi quashed the certificate vide judgment dated 18.12.1969. The defendant no. 1 challenged the said judgment in this Court.

8. After the decision of the Delhi High Court dated 18.12.1969, the plaintiff who is the granddaughter of Nawab Raza Ali Khan filed a suit for partition, accounts, mesne profits in respect to the suit properties left by Nawab Raza Ali Khan. On 28.12.1971, by the 26th Constitution amendment, the Constitution of India was amended. Articles 291 and 362 were

repealed. Article 363A was added and the definition of ruler in clause (22) of Article 366 was amended. In view of the amendments so made, the plaintiff on 07.01.1972 withdrew the suit filed in the year 1970 with liberty to file a fresh suit and, in fact, filed a fresh suit on the same date. This suit was filed before the District Judge, Rampur and the present proceedings arise out of the said suit. It would also be pertinent to mention that both in the suit filed in the year 1970 and in the suit filed in the year 1972, the District Judge, Rampur had ordered that the defendant no. 1 would not transfer or otherwise dispose of the properties till further orders of the court.

9. This Court, in the appeal filed by the defendant No. 1 against the judgment of the Delhi High Court, declined to interfere with the order quashing the certificate due to the pendency of civil litigation between the parties for the same property. It further directed that the certificate which had been quashed would not be set up by either party in support of the claim of the plaintiff or the defendants in the suit which had been filed in the meantime. Therefore, this certificate cannot be taken into consideration while deciding these proceedings.

10. In January 1995, the said suit being O.S. No. 4 of 1972 was withdrawn by the High Court of Allahabad and tried by itself. The learned Single Judge dismissed the suit on 31.07.1996. An appeal therefrom was heard by a Division Bench of the Allahabad High Court which vide two separate concurring judgments dismissed the appeal. Hence, the present appeals.

11. From a perusal of the pleadings before the Trial Court, it is apparent that the case of the plaintiff was that the properties declared by Nawab Raza Ali Khan to be his private properties in terms of the merger agreement were his private properties and all legal heirs were entitled to a share in the property as per personal law. The plaintiff also asserted that the Muslim Personal Law (Shariat) Application Act, 1937 was extended to the State of Rampur on 01.01.1950 and after ceding the property to the Dominion of India and especially after the enforcement of the Constitution of India, Nawab Raza Ali Khan was a ruler only for the purposes of enjoying the privy purse and some personal rights, privileges, immunities, dignities and titles, but for all other purposes including

succession, he was an ordinary citizen of the country. On the other hand, the case of the defendants was that the property was not, strictly speaking, the personal property of the Nawab. According to the contesting defendants, the property was attached to the *'Gaddi'* of the State of Rampur and, therefore, it was governed by the law of succession which was admittedly applicable to the rulership of Rampur which was the rule of male lineal primogeniture which basically means that the senior most male heir takes everything to the exclusion of all other heirs. It was also urged that the property was an impartible estate and, therefore, the rule of primogeniture would govern the same.

12. The facts are not in dispute. It is also not disputed that the Muslim Personal Law (Shariat) Application Act, 1937 was applicable to the State of Rampur. The only issue to be decided is whether the properties held by Nawab Raza Ali Khan would devolve on his eldest son by applying the rule of primogeniture or would be governed by Muslim Personal Law (Shariat) Application Act, 1937 and devolve on all his legal heirs.

13. Mr. Sudhir Chandra, learned senior counsel appearing on behalf of the original plaintiff submits that the High Court erred in coming to the conclusion that the personal law was not applicable and the property of the Nawab had to be governed by the rule of primogeniture, in view of the fact that he was a ruler recognised by the Constitution. In support of his contention, Mr. Chandra relied upon various judgments, on the interpretation of the merger agreement and also on the various provisions of the Constitution.

14. The first Constitution Bench judgment relied upon by Mr. Chandra is ***Visweshwar Rao*** v. ***The State of Madhya Pradesh***[1]. In that case, some portion of the properties belonging to the ruler and declared as private properties in the covenant of merger were sought to be taken over by the State under the Central Provinces & Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, 1949. One of the challenges was that the property of the Maharaja declared to be his private property could not be taken over by the State as it contravened the provision of Article 362 of the

1 [1952] S.C.R. 1020

Constitution. Justice M.C. Mahajan, dealing with the said contention held as follows:

> "It is true that by the covenant of merger the properties of the petitioner became his private properties as distinguished from properties of the State but in respect of them he is in no better position than any other owner possessing private property. Article 362 does not prohibit the acquisition of properties declared as private properties by the covenant of merger and does not guarantee their perpetual existence. The guarantee contained in the article is of a limited extent only. It assures that the Rulers' properties declared as their private properties will not be claimed as State properties. The guarantee has no greater scope than this. That guarantee has been fully respected by the impugned statue, as it treats those properties as their private properties and seeks to acquire them on that assumption……."

Justice Das in his concurring judgment held as follows:-

> "The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler *qua* a Ruler. It does not extend to personal property which is different from personal rights."

15. The next judgment relied upon is ***Sudhansu Shekhar Singh Deo*** v. ***State of Orissa***[2]. The facts of this case were that the ruler of the erstwhile State of Sonepur, executed a merger agreement with the Dominion of India, the terms of which were identical to the Rampur merger agreement. Agricultural income in the State of Orissa was subjected to

2 (1961) 1 SCR 779

taxation under the provisions of the Orissa Agricultural Income Tax Act, 1947. The ruler of Sonepur filed a petition and contended that as ruler of the State, before merger of the State, he was immune from liability of taxation in respect of his private properties both within his territory and outside. It was claimed that as far as the properties within his State were concerned, he being the Sovereign was not liable to pay any tax and as far as the properties outside the State were concerned, he was not liable to pay tax in view of the provisions of the International Law. According to him, since his privileges and immunities were protected by the merger agreement, he could not be asked to pay tax. Repelling his contention, the Constitution Bench of this Court held as follows:

> ".....The privileges guaranteed by Arts. 4 and 5 are personal privileges of the appellant as an ex-Ruler and those privileges do not extend to his personal property....."

16. Mr. Sudhir Chandra, learned senior counsel for the appellant placed strong reliance on the judgment of this Court in ***K. S. V. R. Singh*** v. ***Union of India & Ors.***[3], hereinafter referred to as 'the Dholpur case'. The facts were that when the Dholpur State merged in the Union of India, Maharaja

3 (1969) 3 SCC 150

Udaibhan Singh was the recognised ruler of the State. He executed the covenant of merger and there was a provision in the covenant permitting him to declare his private properties and to enjoy them as his private properties. Raja Udaibhan Singh died on 22.10.1954. He did not leave behind him any direct male heir. He left behind a widow and a daughter who was married to the Maharaja of Nabha. His widow adopted his grandson i.e. daughter's son who was declared to be the successor of the Maharaja. On the other hand, the petitioners claimed that they were the sons of the younger brother of the Maharaja and, thus, entitled to inherit his property by applying the rule of male lineal primogeniture. The dispute, as to who should be declared to be the ruler of Dholpur, was referred to a Committee headed by the then Chief Justice of the Rajasthan High Court (Hon'ble Mr. Justice K. N. Wanchoo). This Committee recommended that the adopted son of the widow of late ruler, Maharaja Rana Shri Hemant Singh be declared as the ruler of Dholpur. This recommendation was accepted by the Union Government and the President of India, in terms of clause (22) of Article 366, declared Maharaja Rana Shri Hemant Singh as the ruler of Dholpur.

17. Thereafter, the nephews of the late ruler filed a petition in which it was urged that the estate left behind by Rana Udaibhan Singh, the ruler of Dholpur was an impartible estate and was to be governed by the rule of male lineal primogeniture. It was contended that as per the terms of the merger agreement, the Dominion Government had guaranteed succession according to the law of succession of the '*Gaddi*' of the State and, therefore, the petitioners were entitled to be declared rulers and also entitled to the property. The Constitution Bench held as follows:

> "**6.**.....It is manifest that the right to private properties of the last Ruler depends upon the personal law of succession to the said private properties. The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political power vested in the President and is thus an instance of purely executive jurisdiction of the President. The act of recognition of Rulership is not, as far as the President is concerned, associated with any act of recognition of right to private properties....."

The Court also held as follows:

> "**9**. The recognition of Rulership is one of personal status. It cannot be said that claim to recognition of Rulership is either purely a matter of inheritance or a matter of descent by devolution. Nor can claim to recognition of Rulership be based only on covenants and treaties. That is why Article 363 of the Constitution constitutes a bar to interference by Courts in a dispute arising out of treaties and agreements. No claim to recognition of Rulership by virtue of a Covenant is justiciable in a Court of law. The Constitution, therefore, provided for the

act of recognition of the Rulership by the President as a political power.

10. It has to be recognised that the right to private properties of the Ruler is not embraced within clause (22) of Article 366 of the Constitution which speaks of recognition of a Ruler by the President.

11. Counsel on behalf of the petitioner contended that the recognition of a Ruler itself instantaneously invested the Ruler with property and that Rulership and property were blended together. An illustration of combination of office and property in the case of Mathadhapati was cited as an analogy. The property is an appendage to the office in the case of Maths. The example of the office of a trustee furnishes the answer where office and properties are vested in the trustee. It cannot be said that recognition of Rulership is bound up with recognition of private properties of the Ruler because the former is within the political power of the President and the latter is governed by the personal law of succession. Recognition of Rulership by the President is not recognising any right to private properties of the Ruler because recognition of Rulership is an exercise of the political power of the President. The distinction between recognition of Rulership and succession to private properties of the Ruler has to be kept in the forefront. The rights to private properties of Rulers are not the matters of recognition of Rulership. The recognition of Rulership is not an indicia of property but it entitles the Ruler to the enjoyment of the Privy Purse contemplated in Article 291 and the personal rights, privileges and dignities of the Ruler of an Indian State mentioned in Article 362 of the Constitution. Therefore, recognition of Rulership is not a deprivation of right to property. If the petitioner has any claim to any private property said to belong to the last Ruler, the petitioner has not established any such claim in any court of law. It was said on behalf of the petitioner that the Ruler after recognition by the President came to possess private properties said to belong to the last Ruler. If the petitioner has any competing rights with the Ruler in relation to such private properties such a claim is neither a fundamental right nor is it comprised in the act of recognition of a Ruler by the President."

18. A decision of three-Judge Bench of this Court in the case of ***Revathinnal B. Varma*** v. ***H. H. Padmanabha Dasa***[4], hereinafter referred to as 'the Travancore case', has been relied upon by both the sides. The facts of this case are that Shri Padmanabha Dasa Bala Rama Verma was the Maharaja of Travancore and the sovereign ruler thereof. The State of Travancore merged with the erstwhile Cochin State and became a part of the territory of the Dominion of India w.e.f. 01.07.1949. A covenant was entered into by the Maharaja with the Union of India, the terms of which are similar and the properties which were subject matter of the dispute were declared to be the private properties of the Maharaja. A suit was filed by Revathinnal Balagopala Varma, one of the family members of the Maharaja in which it was claimed that the Maharaja was not the sole owner of these properties even though they were declared to be the private properties of the ruler. It was urged that the ruler held these properties as *Karnavan* of an undivided *marumakkathayam tarwad* or a *sthanee* of an impartible estate. The argument raised was that the properties comprised an impartible estate. Though

4 (1993) Supp. 1 SCC 233

succession to the estate was earlier governed by the rule of primogeniture, in view of the fact that the Maharaja had ceased to be the ruler on 01.07.1949, the properties became properties of the family or *tarwad* to which the ruler belonged and, therefore, the impartible estate became a partible estate when the Hindu Succession Act, 1956 came into force on 17.06.1956.

19. It was not disputed that as far as the position before accession was concerned the properties devolved from ruler to ruler by applying the rule of primogeniture. This Court negated the argument holding that after signing of the merger agreement, the properties became the private properties of the Maharaja and did not belong to an undivided family. It was held that when the Maharaja was the sovereign of the State of Travancore, he could exercise his sovereign rights of ownership on all the properties and there was no distinction between private properties and properties of the State. No distinction could be drawn between private properties and properties of the State on the principle that a sovereign never dies and the succession to the next ruler takes place without there being a

hiatus. However, keeping in view the fact that the Maharaja had declared the properties in dispute to be his private properties, the claim of the plaintiffs that the suit property was joint family property, was rejected. It was held that the properties were the private properties of Maharaja, as asserted by him.

20. On this issue, Mr. A. K. Ganguli, learned senior counsel appearing for the legal heirs of contesting defendant no. 1, has placed strong reliance on the judgment of this Court in ***Pratap Singh*** v. ***Sarojini Devi***[5], hereinafter referred to as 'the Nabha case'. In this case, this Court was dealing with two different proceedings though decided by the same judgment. Nabha was a princely State and Maharaja Ripudaman Singh was the ruling chief of Nabha State in the early 20s of the 20th century. The British Government withdrew his powers as ruler in the year, 1923. In 1928, the Maharaja was formally deposed from the *Gaddi* and exiled. He, thereafter, resided in Kodaikanal in Tamil Nadu till his death in 1942. He left behind his wife Sarojini Devi, three sons - Pratap Singh, Kharagh Singh, Gurbaksh Singh and two daughters Kamla Devi and

5 (1994) Supp. 1 SCC 734

Vimla Devi. The eldest son Pratap Singh was recognised by the British Government as the ruler of Nabha and he later entered into an agreement of merger with the Dominion of India. Sterling Castle was mentioned in the list of his private properties.

21. It would be pertinent to mention here that the British Government had placed restrictions on the rulers with regard to the purchase of properties outside their own State. A property known as 'Sterling Castle' situated in Shimla was purchased by Maharaja Ripudaman Singh in the name of his friend Dr. Tehl Singh on 21.12.1921 when he was still the Maharaja. On 30.04.1952, Dr. Tehl Singh executed a relinquishment deed and conferred title of the property upon the three sons and widow of Maharaja Ripudaman Singh. Pratap Singh as the recognised ruler claimed absolute rights on the property and denied the title of the other heirs of Maharaja Ripudaman Singh. It was alleged that this property was purchased out of the funds of Nabha State and the properties were the properties of Maharaja Ripudaman Singh and, therefore, governed by the rule of primogeniture. Sarojini Devi,

Kharagh Singh and minor children of Gurbaksh Singh filed a suit for partition, etc. with regard to the property. The suit was tried on the original side of the High Court of Himachal Pradesh. It was held that the property was purchased benami by Maharaja Ripudaman Singh. The learned Single Judge held that the rule of primogeniture would not be applicable to the personal property of the Maharaja and would only be applicable to the property of the State. In appeal filed by Pratap Singh, the Division Bench of the High Court held that it had not been established that the property was purchased out of the personal funds of Maharaja Ripudaman Singh and, therefore, was not the personal property and hence, the suit was dismissed and the appeal was allowed.

22. The other appeal decided by the same judgment relates to a property situate in Civil Lines, Delhi. A suit was filed by Pratap Singh against his mother, two brothers and two sisters. This property was purchased in 1922 in the name of one Gurnarain Singh Gill, but was managed by the officials of Nabha State. This property was declared to be the personal property of Pratap Singh, when he signed the instrument of

accession and on the basis, that this was his private property, suit for possession was filed. The learned Single Judge held that the property was of Nabha State and was not the personal property of Maharaja Ripudaman Singh and the suit was decreed. The Division Bench set aside the judgment of the learned Single Judge holding that the property was the personal property of Maharaja Ripudaman Singh and on his death, devolved as per personal law, upon his sons. The widow was held entitled to some share under the Hindu Women's Right to Property Act, 1937. The suit was accordingly dismissed.

23. Dealing with the issue as to who was the original owner of the properties, this Court held that when Maharaja Ripudaman Singh was the ruler, he was the sovereign and exercised paramount power over the entire State of Nabha. All properties vested in him and there was no distinction between State and personal properties. Reliance was placed upon Para 157 of the White Paper on Indian States which reads as follows:

> "**57**.....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 States it became necessary to define and

> demarcate clearly the private property of the Ruler. The settlement was a difficult and delicate task calling for detailed and patient examination of each case. As conditions and customs differed from State to State, there were no precedents to guide and no clear principles to follow. Each case, therefore, had to be decided on its merits."

This Court further held that the rule of impartibility and primogeniture in relation to the zamindari or other impartible estates must be established by proving the custom, but in the case of a sovereign ruler, they are presumed to exist. It was also observed that no distinction could be drawn between the public and private property of the ruler. This Court further went on to hold that there was no rulership in India after India became a Republic on 26.01.1950 *"but if the estate is impartible in nature it would continue to be governed by the rule of primogeniture*".

24. Article 12 of the instrument of merger of Nabha State is virtually identical to Article 4 of Exhibit 4. This Court in ***the Nabha case*** held as follows:

> "**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."

25. We are of the view that the observations made above run counter to what was held in the earlier part of the judgment where in the same judgment it was held that no distinction could be drawn between the public and private properties of the ruler. If no such distinction could be drawn, the question of any properties being recognised as the private properties of the ruler prior to the State ceding to the Dominion of India does not arise.

26. This Court held that both the properties at Shimla and Delhi were State properties and not the personal properties of Maharaja Ripudaman Singh and, therefore, governed by the rule of primogeniture.

27. At the outset, we may note that both in ***the Travancore case*** and ***the Nabha case***, the suits had been filed in the lifetime of the rulers, who had ceded the State to the Indian Union. The collaterals of the rulers filed suits trying to establish their right on the property contending that the property had become a partible estate in the hands of the ruler.

As far as ***the Travancore case*** is concerned, we find that the contesting defendants can get no benefit from this decision. It, in fact, supports the case of the appellants inasmuch as it held that the property in question was the personal property of the Maharaja of Travancore and, therefore, not subject to partition.

As far as ***the Nabha case*** is concerned, we have given the facts of that case in detail to show that the main dispute was whether the properties were purchased by Maharaja Ripudaman Singh out of his own personal funds or from the funds of Nabha State. This Court held that there could be no distinction between the private or personal properties when the Maharaja was the sole sovereign. As Maharaja Ripudaman Singh was the Sovereign till his powers were taken away in 1923, and before he was finally deposed in 1928, both the properties at Shimla and Delhi were purchased when he was the Maharaja and it was a finding of fact that these properties were purchased out of the State funds. These properties also found mention in the list of properties declared to be the private properties of Maharaja Pratap Singh in the instrument of merger. The disputes arose when Maharaja Pratap Singh was still the ruler and was alive. The question of succession

had not opened. The court held that the properties being the personal properties of the Maharaja, could not be subjected to partition. We may, however, observe that there is a fleeting remark that the property formed part of an impartible estate and therefore, would be governed by the rule of primogeniture. In our view, this question did not arise for consideration and this Court did not decide the question as to whether the impartible estate continued to exist after the ruler ceased to be a ruler.

28. The other two judgments relate to issues not of succession, but in both the judgments it was held that after 1950 'ruler' for all purposes would own these properties like any other common citizen. In ***Visweshwar Rao case (supra)*** it was clearly held that the guarantees or assurances were limited to the personal rights, privileges and dignities of the ruler *qua* a ruler and do not extend to his personal property. Similar observations were made in the case of ***Sudhansu Shekhar Singh Deo (supra)***.

29. The High Court relied on certain observations in the case of ***Madhav Rao Scindia, Etc.*** v. ***Union of India***[6], which is commonly referred to as 'the Princes Privy Purses case'. This case mainly dealt with the issue as to what are the executive powers of the State and whether the Union by executive directions could withdraw the privy purses and other privileges which had been guaranteed to the rulers. The Court held that the executive had no power to flout the mandate of the Constitution and since the guarantees given by the agreements had been recognised in the Constitution, they could not be taken away by the executive orders.

30. The High Court held that the judgment in ***the Dholpur case*** had been reversed in ***the Princes Privy Purses case***. We are unable to agree with this finding of the High Court. In ***the Dholpur case,*** this Court held that recognition of rulership by the President is an exercise of "political" power vested in the President. It was urged in ***the Princes Privy Purses case*** that even the notification issued withdrawing the privy purses was in exercise of the "political" power and,

6 (1971) 1 SCC 85

therefore, the court could not interfere in the same. What was held in ***the Princes Privy Purses case*** with regard to these observations was that in ***the Dholpur case***, the Court had improperly used the words "political power". Justice J.C. Shah in the ***Princes Privy Purses case***, dealing with ***the Dholpur case*** held as follows:

> "**98**……In *Kunvar Shri Vir Rajendra Singh* v. *Union of India and Others, 1969 (3) SCC 150,* this Court negatived the claim of an applicant that his right to property was violated because the President accepted another claimant to the Gaddi of Dholpur as Ruler, observing that the recognition of Rulership by the President, in exercise of his political power, did not amount to recognition of any right to private properties of the Ruler. The Court did not attempt to classify the exercise of the Presidential function under Article 366(22) as distinct from executive functions; that is clear from the dictum that the exercise of the President's power was "an instance of purely executive function"

Justice Shah, dealing with this argument held as follows:

> "**141**….It is difficult to regard a word or a clause occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not fall to be answered in that judgment."

Justice K.S. Hegde, who was also a Member of the Bench which decided ***the Dholpur case***, dealing with this contention, held as follows:

> "**178**. What is said in that case is that the President while acting under Article 366(22) is exercising his executive jurisdiction and that jurisdiction was described as "political power". That expression may be inappropriate but that is not the ratio of the decision. It was a casual observation. There is nothing like political power under our Constitution in the matter of relationship between the executive and the citizens. Our Constitution recognises only three powers, *viz.* the legislative power, the judicial power and the executive power. It does not recognise any other power. In our country the executive cannot exercise any sovereignty over the citizens. The legal sovereignty in this country vests with the Constitution and the political sovereignty is with the people of this country. The executive possesses no sovereignty……"

Justice G.K. Mitter, dealing with the same contention, held that though some observations support the contention of the Attorney General, but they must be limited to the facts of that case. The appellant in ***the Dholpur case*** did not claim any right to the *Gaddi* but only to the private properties of the deceased ruler and the notification issued under clause (22) of Article 366 of the Constitution did not deal with the private properties.

31. In our view, the judgment in ***the Dholpur case*** cannot be said to have been set aside or upset in ***the Princes Privy Purses case***. What was held was that use of the expression 'political power' in ***the Dholpur case*** was inappropriate and

the appropriate words should have been 'executive power'. In fact, in ***the Dholpur case***, the very next part of the sentence reads *"and is thus an instance of purely executive jurisdiction of the President"*. This clearly shows that the observations in ***the Princes Privy Purses case*** would have no impact on the *ratio* of the judgment in ***the Dholpur case.***

32. The issue is whether the rulers continued to be rulers after executing the instruments of merger. They had agreed to merge their States with the Indian Union because they were to be paid privy purses and would enjoy certain privileges. They were also entitled to declare some properties to be their private properties. In case of disputes whether the property is private or State property, the Union could refer the dispute for decision to a committee headed by a judicial officer. The rulers were no longer sovereign. There was no paramountcy vested in the rulers. They had no land other than the private properties. They had no subjects. They were rulers only in name, left only with the recognition of their original title, a privy purse, some privileges, etc.

Chief Justice M. Hidayatullah (as he then was) in his inimitable way in ***the Princes Privy Purses case*** pithily held as follows:-

> "**40**.....Paramountcy as such was no more as there was no paramount power and no vassal. The Rulers had lost their territories and their right to rule and administer them. They were left only a recognition of their original title, a Privy Purse, their private properties and a few privileges. These rights were the only indicia of their former sovereignty but they enjoyed them by the force of the Constitution although in every respect they were ordinary citizens and not potentates....."

33. It is apparent that the rulers were rulers only in name. They held no land except the personal properties. There were no subjects. They were Maharajas or Rajas without a *Praja;* without any sovereignty; and without any territory.

34. The definition of ruler in clause (22) of Article 366 of the Constitution itself shows that the person who is defined as ruler is a former prince, chief or other person, who was, on or after 26.01.1950 recognised as a ruler having signed the covenant of accession. Necessarily, the ruler was a person who was recognised before independence by the British Crown and was the sovereign of his State. Such person, though defined as a 'Ruler', has no territory and exercises no sovereignty over any

subjects. He has no attributes of a potentate nor does he enjoy all the powers and privileges which are normally exercised by a potentate. As Justice Shah in ***the Princes Privy Purses case*** judgment held, *"he is a citizen of India with certain privileges accorded to him because he or his predecessor had surrendered his territory, his powers and his sovereignty".*

35. The President while exercising his powers under Article 366 (22) could not notify a ruler at his whims and fancy. As held in ***the Princes Privy Purses case***:-

> "**288**.....The choice of a person as a Ruler to succeed another on his death was certainly not left to the mere caprice of the President. He had to find out the successor and this he could do not by applying the ordinary rules of Hindu Law or Mohamadan Law but by the law and custom attaching to the Gaddi of a particular State....."

36. Examples were also given where in cases of disputes, the same were referred to committees comprising of the Chief Justices of the States and erstwhile rulers. However, it is clear that the declaration under clause (22) of Article 366 relates only to the *Gaddi* or the rulership and not to the properties which were declared to be private properties by the ruler.

37. It was contended by Mr. Ganguli that there could be no *Gaddi* without a property and the properties which were declared to be the private properties were, in fact, attached to the *Gaddi* and the properties would be of the ruler so declared. We find no force in this submission. These were rulers without any subjects. These were rulers without any territory. These were so called rulers enjoying certain privileges and privy purses. They had been given the choice of declaring certain properties to be their private properties and these private properties could not be said to be attached to the *Gaddi*. When they were actual sovereigns, their entire State was attached to the *Gaddi* and not any particular property. There are no specific properties which can be attached to the *Gaddi*. It has to be the entire 'State' or nothing. Since, we have held that they were rulers only as a matter of courtesy, to protect their erstwhile titles, the properties which were declared to be their personal properties had to be treated as their personal properties and could not be treated as properties attached to the *Gaddi*.

38. Mr. Chandra has drawn our attention to the Rajpal Hindi Shabdkosh[7] in which *Gaddi* has been given various meanings including small mattress, seat of an exalted person, title of a ruler. In the Oxford Hindi-English Dictionary[8], the meanings given are cushion, throne, royal seat, etc. Property is not mentioned as one of the attributes of a *Gaddi*.

39. A *Gaddi* or rulership and private property have two different connotations even in the merger agreement/instrument of accession. In Article 2 of the agreement, it is clearly mentioned that Nawab would continue to enjoy the same personal rights, privileges, immunities and dignities and other titles which he would have enjoyed prior to the agreement. Conspicuously, the word 'property' or 'personal property' is missing. Article 2 deals only with personal rights, privileges, dignities, etc. Article 3 deals with privy purse which would also be a part of the rulership or *Gaddi*. Article 6 which deals with succession, guarantees the succession according to law and custom to the *Gaddi* of the State and to the Nawab's personal rights, privileges, immunities, dignities and title.

7 Rajpal Hindi Shabdkosh, Dr. Hardev Bahri, Rajpal & Sons, Pg.206 (2018)
8 Oxford Hindi-English Dictionary, Edited by R.S. McGregor, Oxford University Press, Pg.254 (2018)

Gaddi would be the 'throne' or 'title' of Nawab in the context in which it has been used and the personal rights, privileges, immunities, dignities and titles will be those referred to in Article 2. The word 'property' is also conspicuously absent in Article 6.

40. Article 4 states that the Nawab shall be entitled to full ownership, use and enjoyment of all private properties as distinct from State properties. Such properties must belong to him as on the date of agreement. In our view, Article 6 does not relate to the properties mentioned in Article 4 and the private properties would remain the private properties of the Nawab as a common citizen of the country as held in various authorities referred to above. We have, therefore, no hesitation in holding that on the death of the ruler, Nawab Raza Ali Khan in the year 1966, succession to his private properties was governed by personal laws.

41. Mr. A.K. Ganguli, placed reliance upon the observations in the case of ***Raghunathrao Ganpatrao*** v. ***Union of India***[9], hereinafter referred to as 'the second privy

9 1994 Supp. (1) SCC 191

purses case'. In this case, the erstwhile rulers challenged the 26th Amendment, 1971 of the Constitution whereby the benefits given to the rulers, as enshrined in the Constitution in Articles 291 and 362 mentioned hereinabove, were taken away. This was done after the judgment in the first ***Princes Privy Purses case*** wherein it was held that the guarantees, given to the erstwhile rulers having been embodied in the Constitution, could not be taken away by executive fiat. Thereafter, the Parliament amended the Constitution and it was in this context that the following observations were made:

> "**74.** The agreements entered into by the Rulers of the States with the Government of India were simple documents relating to the accession and the integration and the "assurances and guarantees" given under those documents were only for the fixation of the privy purses and the recognition of the privileges. The guarantees and the assurances given under the Constitution were independent of those documents. After the advent of the Constitution, the Rulers enjoyed their right to privy purses, private properties and privileges only by the force of the Constitution and in other respects they were only ordinary citizens of India like any other citizen; of course, this is an accident of history and with the concurrence of the Indian people in their Constituent Assembly.
>
> **75.** Therefore, there cannot be any justification in saying that the guarantees and assurances given to the Rulers were sacrosanct and that Articles 291 and 362 reflected only the terms of the agreements and covenants. In fact as soon as the Constitution came into force, the Memoranda of Agreements executed and ratified by the States and Union of States were embodied in formal agreements under the relevant articles of the Constitution and no obligation flowed from those

> Agreements and Covenants but only from the Constitutional provisions. To say differently, after the introduction of Articles 291 and 362 in the Constitution, the Agreements and Covenants have no existence at all. The reference to Covenants and Agreements was casual and subsidiary and the source of obligation flowed only from the Constitution. Therefore, the contention urged on the use of the words 'guaranteed' or 'assured' is without any force and absolutely untenable."

42. We are not *stricto sensu* dealing with this issue because the succession to the estate of Nawab Raza Ali Khan opened in the year 1966, prior to the 26th Amendment Act. However, one thing which is clear is that the rulers enjoyed right to privy purses, private properties and privileges only because of the Constitution and in other respects they were ordinary citizens. It was urged that since the rights were guaranteed under the Constitution, the rule of primogeniture would apply. We find no force in this contention because, as already discussed above, in Article 362 reference is made only to the personal rights, privileges and dignities of the ruler of an Indian State and, in our view, rights would not include succession to personal properties.

43. Another argument raised on behalf of the contesting defendants is that Nawab Raza Ali Khan, knowing that his succession was governed by the rule of primogeniture, had

created a trust named 'The Raza Trust' for the welfare of his family members other than defendant no. 1. He had also made various other grants and gifts in favour of his children whereas the elder son was deprived of such benefits. It is contended that the plaintiff and the other defendants supporting the plaintiff had taken benefit of the said Trust and gifts and, therefore, cannot challenge the entitlement of defendant no. 1. This argument cannot be accepted. We have only to decide what was the legal entitlement of the legal heirs and in what manner the succession to the estate of late Nawab Raza Ali Khan was to be governed. We may also mention that the Trust, which has been referred to by the contesting defendants, was created in the year 1944, much before the Nawab ceded his property to the Dominion of India. At that time, there was no doubt that succession to the properties of the State of Rampur would be governed by the rule of primogeniture. Even after Nawab ceased to be the ruler, he gifted a number of extensive properties to the defendant no. 1 during his lifetime including a property known as Rafat Club in Rampur, which the defendant no. 1 sold to the State of U.P. in 1961. The erstwhile Nawab also gifted a property known as

Kothi Bareilly and a house in Delhi to defendant no. 1. Both the Division Bench and the learned Single Judge held that these properties gifted by the erstwhile Nawab to the defendant no. 1 were given to him only to maintain his status as the ruler and, therefore, could not be taken into consideration while deciding the issue of succession of the erstwhile Nawab of Rampur.

44. We find a contradiction in the findings of the High Court in this regard. On the one hand, it is said that the plaintiff and the other family members cannot urge that the estate of the Nawab should be governed by personal law because they have derived benefits from the Raza Trust and gifts in their life time and, on the other hand, when it comes to the defendant no. 1, it is said that the gifts were made only with a view that defendant no. 1 should be able to maintain his status as the prospective heir. If he was to get all the properties of the Nawab, then why gifts would have to be made in his favour in his life time. Therefore, this contention is rejected.

45. There is no dispute between the parties that if personal law is to apply then the Muslim Personal Law (Shariat) Application Act, 1937 will apply and since Nawab Raza Ali Khan was a Shia, his estate will devolve upon his heirs under the Muslim personal law, as applicable to Shias.

46. During the pendency of the suit the plaint was amended from time to time because of the death of defendant no. 1, defendant no.1/1 and defendant no.3. After the amendment, the shares of all the legal heirs were worked out in para 9-F of the plaint. These shares have not been disputed by any one nor there is any dispute with regard to the manner in which the shares have been worked out. Therefore, these shares are accepted to be correct. The parties shall be entitled to the property as per the shares set out in para 9-F of the plaint which shall form a part of the decree.

47. In view of the above discussions, we allow the appeals, set aside the judgments of learned Single Judge and Division Bench of the High Court of Judicature at Allahabad, and determine the shares of the properties in terms of Para 9-F of

the plaint. The appeals are accepted and a decree is passed in the following terms:-

(1) The parties shall be entitled to succeed to the properties of late Nawab Raza Ali Khan, set out in Schedules A and B to the plaint, as per personal law and in the shares set out in para 9-F of the amended plaint.

(2) The first effort shall be to divide the immovable properties (set out in Schedule A to the plaint) as per the respective shares, by metes and bounds and for this purpose the Trial Court may appoint a Commissioner to assist it.

(3) In case the division of the immovable properties (set out in Schedule A to the plaint) is not feasible by metes and bounds the Trial Court shall fix the owelty money and follow the procedure prescribed by law so that at the first instance efforts are made to keep the properties within the family.

(4) To evaluate the value of moveable properties left behind by Nawab Raza Ali Khan (set out in Schedule B to the plaint), we direct the Trial Court to appoint a Commissioner. Properties shall also be divided as per the shares and if that is not feasible owelty money will be fixed.

(5) Prayer for decree of mesne profits is rejected since no evidence has been led in this regard.

(6) The defendant no.1/2 and defendant no. 1/3 shall render accounts in respect of the incomes, profits, usufructs and benefits inherited by them or enjoyed by deceased defendant no.1 and deceased defendant no. 1/1. These shall be adjusted while determining the value of the properties falling to their shares and also the owelty money.

(7) The Trial Court shall also determine whether the defendant no.1 (since deceased), defendant no.1/1 (since deceased), defendant no.1/2 or defendant no.1/3 have sold or transferred any movable property or immovable property during the pendency of these proceedings. The value of such immovable property or movable property sold or transferred shall obviously be deducted from the shares of defendant no.1 /2 and defendant no.1/3.

(8) We direct all the parties to appear before the District Judge, Rampur on 02.09.2019 and request the District Judge, Rampur to keep the case on his docket and proceed further. The District Judge may first try to impress upon the parties to make the actual division of the properties by settlement by mutual agreement since the main dispute with regard to the rule of succession and the shares has been determined.

(9) As the suit has been pending for almost half a century and the parties have been litigating for more than 5 decades and some of the parties are at an advanced age, we direct the trial court to dispose of

the matter in terms of our directions above at the earliest but, in any case, not later than 31.12.2020.

48. I.A. No. 3 of 2014 is dismissed. The applicants shall, however, be at liberty to file a Civil Suit to establish their rights.

49. No order in the Contempt Petition in view of the directions issued.

50. All other applications are disposed of. No order as to costs.

.....CJI.
(Ranjan Gogoi)

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
July 31, 2019