2026 INSC 571

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11179 OF 2011

TIKKA SHATRUJIT SINGH & ORS. ...APPELLANT(S)

VERSUS

SUKHJIT SINGH & ANR. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. We have heard Shri Nikhil Nayyar, Senior Counsel for the appellants, Shri Santosh Paul and Dr. Arun Mohan, Senior Counsel appearing for the contesting respondent and Shri Raj Shekhar Rao, Senior Counsel representing the proforma respondent No.2-Ms. Gayatri Devi, who is supporting the case of the appellants.

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Reason:

2. The dispute in this appeal is between two arms of the erstwhile royal family of Kapurthala. One arm is that of Brigadier Sukhjit Singh[1], the eldest male lineal descendant of late Maharaja Paramjit Singh of Kapurthala, who has also been recognized as the ruler of Kapurthala by the Government of India. The other arm is led by his estranged wife, Smt. Gita Devi (now deceased) and their two sons, Shatrujit Singh and Amanjit Singh (now deceased), as well as their two daughters, Priti Devi and Gayatri Devi.

3. The Brigadier filed Original Suit No.35 of 1977 seeking a declaration of certain properties as his personal properties. Another suit, being Original Suit No. 1052 of 1977, was filed by his wife, sons, and daughters, seeking partition of the family properties, claiming that certain properties were ancestral coparcenary and private properties in the hands of the Brigadier and, as such, have to be divided as per the Hindu Law.

1 Hereinafter referred to as 'the Brigadier'

4. The Brigadier contends that under the Customary Law, in accordance with the rule of *primogeniture* applicable to princely states in India, the properties, whether public or private, were inherited by him as his personal properties and he is free to deal with them in the manner he likes. These are not the coparcenary properties liable for partition under the Hindu Law.

5. The Original Suit No.1052 of 1977 was initially decided by the Single Judge of the High Court sitting on the original side by judgment and order dated 06.04.1992, and it was held that the properties were ancestral coparcenary and private properties of the Brigadier and, as such, were liable to be partitioned in accordance with the Hindu Law. In terms of the above judgment, the other Original Suit No.35 of 1977 was dismissed on the same date.

6. The Brigadier applied for the review of the aforesaid judgment, which was partly allowed *vide* order dated 28.04.1995, and the two suits were directed to be reheard on merits except on issue Nos. 6 to 9. Upon rehearing, the single Judge ruled in favour of

the Brigadier *vide* judgment and order dated 03.09.2004, holding that under the rule of *primogeniture*, the Brigadier had succeeded to the properties except for those mentioned in Exhibit DA and PW-1/1, the two family settlements. He was held to be the absolute owner of the properties and the suit for partition as such was dismissed.

7. The above judgment and order of the Single Judge was carried in appeal under Section 96 of the Code of Civil Procedure, 1908[2], to the Division bench of the High Court. The Appellate Court, *vide* judgment and order dated 19.11.2010, affirmed the judgment, order, and decree passed by the Court of the first instance. Therefore, the arm led by Smt. Gita Devi, except one of the daughters, i.e., Smt. Gayatri Devi, who has been arraigned as a proforma respondent, has filed the present appeal. The said proforma respondent is supporting the case of Smt. Gita Devi and others.

8. Thus, under challenge in this appeal is the judgment and order dated 19.11.2010 passed by the Division Bench of the

2 Hereinafter referred to as 'CPC'

High Court in exercise of powers under Section 96 of the CPC, affirming the judgment and order of the Single Judge on the original side dated 03.09.2004 by which the suit of the Brigadier was decreed and that of partition filed by Smt. Gita Devi and others was dismissed.

9. According to the factual matrix of the two suits, Gita Devi and others contend that the properties mentioned in paragraph 8 of the plaint of Suit No.1052 of 1977 are ancestral and coparcenary properties, and as such, they are entitled to their partition and separate share. They, along with the Brigadier, form an HUF. They were all joint in estate and mess up until August 1976, when the Brigadier deserted the family and started living separately at the Gymkhana Club, New Delhi.

10. The Brigadier contested the aforesaid suit by filing a written statement *inter alia* contending that Smt. Gita Devi had no locus to file the suit, and no partition can be claimed in respect of the properties which form part of the impartible estate. The said properties have devolved upon him also by virtue of the two wills of his grandfather, Maharaja Jagatjit

Singh, and his father, Maharaja Paramjit Singh, dated 16.01.1949 and 10.07.1955, respectively. Therefore, he claims to be the absolute and exclusive owner of the said properties. The said properties are assessed for taxation as his individual properties.

11. He further contended that in the State of Punjab, there is no right of partition in respect of joint family estates during the lifetime of the father and that under the rule of *primogeniture,* which is prevalent as per custom, he is the exclusive owner of the entire estate. He has also been recognised by the Government as the ruler of Kapurthala and received a privy purse of Rs. 2,70,000/- per annum until the enactment of the 26th Amendment to the Constitution, 1971, by which privy purses were abolished.

12. The Brigadier, on 13.01.1977, filed Suit No.35 of 1977 against his wife and children seeking ownership of the two properties, i.e., Villa at Kapurthala and the Chateau in Mussoorie, along with all movables lying therein, alleging that they are his personal and exclusive properties and that the property at

Greater Kailash, B-90/A, also exclusively belongs to him as he acquired it from his personal funds.

13. In short, the crux of the stand of the Brigadier was that Kapurthala was a Princely State and its ruler was the sovereign head. Thus, the properties of the State were not the joint Hindu family/coparcenary property, which could be subjected to partition. The rule of *primogeniture* is prevalent in the State by virtue of which he, being the eldest male lineal descendant, succeeded to all the properties. The Hindu Law or the Mitakshara Law does not apply to such properties. Even the lapse of British Paramountcy on 15.08.1947, the merger of the State of Kapurthala on 20.08.1948 or the enforcement of the Constitution of India with effect from 26.01.1950 made no difference to create any coparcenary deviating from the rule of *primogeniture.*

14. On the basis of the aforesaid pleadings, the Court of first instance framed as many as eleven issues. Issue Nos. 6 to 9 were in context with the two wills of Maharaja Jagatjit Singh and Maharaja Paramjit Singh as pleaded by the Brigadier.

Those issues were decided by the Single Judge against him, and it was held that the grandfather's will does not exist and that the father's will is invalid. When the review was considered, the Court without touching issue Nos. 6 to 9, directed for the rehearing of the matter on merits on other issues except issue Nos. 6 to 9. The relevant portion of the review order dated 28.04.1995 is reproduced herein below:

> *"Hence, I allow both the applications but I grant the review in respect of issues no.1 to 4, 5, 10 and 11. The findings of this Court with regard to the issues 6 to 9 in my opinion do not call for any review."*

In other words, the matter was reopened on issues other than issue Nos. 6 to 9, which were in relation to the will. It is in view of the above direction that, upon rehearing, the learned Single Judge trying the suits had not gone into the issues in relation to the wills. The matter regarding wills stood concluded as per the decision of the Court of first instance dated 06.04.1992.

15. It may not be out of context to mention that the Princely State of Kapurthala, with an area of about 630 sq. miles, was

founded by Baba Jassa Singh Sahib in the year 1772. He conquered Kapurthala in 1780 and made it his capital. He died in 1783, and as he had no son or nephew, he was succeeded by his second cousin, Bhag Singh. Maharaja Jagatjit Singh was the 7th ruler of Kapurthala. He assumed full ruling powers on 24.11.1890. He ruled for about six decades and is considered the architect of modern Kapurthala.

16. During his tenure, the British paramountcy elapsed on 15.08.1947. Subsequently, he signed a merger agreement on 05.05.1948, and his sovereignty ceased on 20.08.1948 with the formal merger of the State of Kapurthala into the Patiala and East Punjab States Union (PEPSU). The merger agreement/covenant in question is Exhibit D-23. He died on 19.06.1949, merely a year after the signing of the merger agreement.

17. In other words, before the death of Maharaja Jagatjit Singh, the sovereignty of the State of Kapurthala had come to an end with the signing of the merger agreement on 05.05.1948. Thus, he was divested of the State of Kapurthala, retaining for

himself only the throne and the "private properties" as declared by him. Despite the end of sovereignty, he continued to be recognised as a ruler primarily for the purpose of receiving the privy purse and some other privileges.

18. At the cost of repetition, it must be noted that, after independence, the rulers of Faridkot, Jind, Malerkotla, Nabha, Patiala, Kalsia, Nalagarh, and Kapurthala signed a covenant of merger, and all these estates merged into PEPSU with effect from 20th August 1948. Until the merger, Maharaja Jagatjit Singh was the sovereign ruler of Kapurthala. Thereafter, his sovereignty came to an end, and he retained royalty only for the purposes of receiving the privy purse and some other privileges attached to it.

19. The covenant of merger signed by him clearly provides that the erstwhile ruler shall be entitled to full ownership, use and enjoyment of all properties as distinct from the State properties. In accordance with the document of accession, Maharaja Jagatjit Singh, prior to merger, had declared that the Chateau in Mussoorie would devolve upon his heirs and

successors as private personal property. He, thereafter, by the declarations dated 11.08.1948 and 11.04.1949, declared certain properties to be his private properties in terms of the covenant, which included most of the properties mentioned in paragraph 8 of the plaint of Suit No.1052 of 1977.

20. Maharaja Jagatjit Singh, on his death, left behind three sons, as two other sons had pre-deceased him. The three surviving sons were Paramjit Singh, Karamjit Singh and Ajit Singh. Ajit Singh was born to him through a Spanish wife, and all through had lived abroad and never involved himself in the family affairs or claimed any right in the properties. The other son, Karamjit Singh, was younger; therefore, Maharaja Jagatjit Singh was succeeded by his eldest son, Paramjit Singh, to the throne as the 8th ruler of Kapurthala, but he died shortly thereafter, on 19.07.1955, within six years of succession.

21. It was only after the demise of Maharaja Paramjit Singh that his eldest son Brigadier succeeded him as the 9th ruler of Kapurthala. He was also recognised as such by the Government of India by a notification dated 04.08.1956. He

continued to receive the privy purse till it was abolished by the Constitution (26th Amendment) Act, 1971.

22. The Brigadier was married to Gita Devi on 20.02.1958, from which wedlock, two sons and two daughters were born, who are in support of Gita Devi.

23. In the meantime, the Hindu Succession Act came into force with effect from 17.06.1956.

24. In the above backdrop, the point for consideration before us is about the character of the properties held by Maharaja Jagatjit Singh which with the passage of time devolved upon Maharaja Paramjit Singh and then upon the Brigadier: (i) whether the said private properties are joint Hindu family/coparcenary properties or absolute properties in the hands of Brigadier; and (ii) whether they would henceforth devolve upon his heirs by virtue of the rule of *primogeniture* or in accordance with the mode of succession under the Hindu Law.

25. According to Black's Law Dictionary, 11th Edition, '*primogeniture*' in its simplest form denotes a condition of being the firstborn child among siblings. Under the common law, the

firstborn inherits his ancestor's estate to the exclusion of the younger siblings. This common law right is generally described as a rule of *primogeniture* and is also termed as '*primogenitureship*'.

26. Ordinarily, according to it, the eldest among the heirs, male or female, succeeds to the estate to the exclusion of others, whereas in the case of lineal male *primogeniture*, the eldest male member succeeds to the exclusion of the others.

27. Male lineal *Primogeniture*, therefore, is a rule of succession which is applicable to impartible estates in the case of rulers and monarchs. Under this rule, the eldest son or the firstborn son succeeds to the throne to the exclusion of his younger brothers. In other words, the rule of succession by which the firstborn son succeeds to the entire estate of the rulers to the exclusion of other sons is called the rule of *primogeniture*.

28. There are judicial precedents considering the scope and applicability of the custom of impartible estate and that the rule of *primogeniture* was a general rule of succession in all princely States of India.

29. In ***H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior & Ors. v. Union of India & Anr.***[3], it has been observed by Justice G.K. Mitter that, invariably, the rule of lineal male *primogeniture* coupled with the custom of adopting a son prevailed amongst the Hindu rulers. Even Lieutenant Colonel James Tod in his work "Annals and Antiquities of Rajasthan" of Oxford University Press 1920, reprinted in 1978 by M.N. Publishers, New Delhi, states that the law of *primogeniture* prevails in all Rajput sovereignties. It connotes that the existence of the rule of *primogeniture* is well recognised as a custom amongst the princely states of India in accordance with Section 48 of the Indian Evidence Act, 1872.

30. It is, thus, well acceptable in this country that the application of the rule of *primogeniture* in the case of sovereign rulers must be presumed to exist. Thus, as per the rule of *primogeniture*, the ruler of a princely estate would hold the estate as an absolute owner, and it would be impartible. No one can acquire any interest in such an impartible estate by birth or adoption. The succession to rulership as well as to the

3 (1971) 1 SCC 85

impartible estate would be governed by the rule of *primogeniture*.

31. Accepting that the rule of *primogeniture* was prevalent and applicable, it is said that only the succession to the throne as a ruler was by way of the rule of *primogeniture,* but succession to the private properties had to be in accordance with the Hindu Law, meaning thereby that all members of the family/coparceners have the right in those properties and could claim partition.

32. In a way, a distinction has been sought to be made between the private properties of the ruler and the public properties to which he succeeded.

33. Having explained the background case history and the rule of *primogeniture* which was prevalent in the royal families of India, we first embark upon examining the nature and character of the properties involved in the two suits in the hands of Maharaja Jagatjit Singh, which ultimately devolved upon the Brigadier.

34. In suit No. 35 of 1977, instituted by the Brigadier on 13.01.1977, it was *inter alia* prayed therein that an injunction be granted restraining Smt. Gita Devi from visiting or entering the Villa at Kapurthala and the Chateau in Mussoorie. In view of the averments made in the aforesaid suit, only the aforesaid two properties are involved therein.

35. It may not be out of context to mention that in Civil Suit No. 35 of 1977, the Brigadier in the plaint itself *vide* paragraph 6 admitted himself as the Karta of the HUF of which he and his two sons were co-parceners. Meaning thereby, existence of coparcenary is admitted to him. The relevant extract of paragraph 6 of the aforesaid plaint is reproduced hereinbelow:

> "6. The Plaintiff is also Karta of the HUF of which he and his two sons Shatrujit Singh and Amanjit Singh are coparceners."

36. In the Partition Suit No.1052 of 1977 instituted by Smt. Gita Devi on 29.11.1977, the properties involved are mentioned in paragraph 8 of the plaint.

37. A combined reading of the averments contained in the two suits reveals that the dispute between the parties is with regard to the following properties:

> *"1. Villa at Kapurthala*
> 2. *A double-storeyed residential house be bearing Municipal No. B-90-A, Greater Kailash I, New Delhi.*
> 3. *Commercial flat No. 101 on the first floor of the building known as Surya Kiran situate at Kasturba Gandhi Marg, New Delhi. It was purchased in the joint names of Gita Devi and the Brigadier with ancestral funds and is coparcenary property.*
> 4. *A residential house known as Villa Bound -vista and cottage Villa Chalet, servants quarters, garages with orchard and gardens attached thereto situate in village Chuharwal, District, Kapurthala, purchased jointly in the names of Tikka Shatrujit Singh (first son) and Maharaja Kumar Amanjit Singh (deceased second son) vide sale deed dated 08.06.1971 from the funds of HUF.*
> 5. *The residential place in Mussorie, known as Chateau with St. Helens, Mussoorie together with servants quarters, garages, out-houses, Tennis courts, gardens etc.*
> 6. *All movables including furniture, carpets, de art, paintings, drapery, Crockery, cutlery etc. lying in the Villa Kapurthala, Chateau and St. Helens, Mussoorie and B-90 A; Greater Kailash, New Delhi.*
> 7. *All jewellery and valuables lying in the safes and Toskhana inside the Villa, Kapurthala and in the safes in Chateau, Mussorie.*
> 8. *Jewellery lying in locked brief case kept in locker No. 325, Grindlays Bank, H Block, Connaught Place, New Delhi, containing a very*

valuable emerald, three crown pieces, and 4 packages containing jewellery.

9. *Jewellery lying in Societies General, Bouleward Haussmann, Paris, France, under the joint names of Gita Devi and Brigadier.*
10. *Shares in joint stock companies, share certificate of which are lying in the safe custody with the First National City Bank, Fort, Bombay, under the joint names of Gita Devi and Brigadier.*
11. *Any other properties of which the plaintiffs are not aware and which are in possession of defendant No. 1 and belong to the HUF."*

38. The covenant of 05.05.1948 entered into by the rulers of Faridkot, Jind, Malerkotla, Nabha, Patiala, Kalsia, Nalagarh, and Kapurthala for the purposes of formation of PEPSU *inter alia* provides as under:

"ARTICLE VI

(1) The Ruler of each covenanting State shall as soon as may be practicable, and in any event not later than the 20th of August, 1948 make over the administration of his State to the Raj Pramukh and thereupon.

a) All rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Government of the Covenanting state shall vest in the Union and shall hereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder;

b) All duties and obligations of Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the Union and shall be discharged by it;

c) All the assets and liabilities of the Covenanting State shall be the assets and liabilities of the Union, and

d) The military forces if any, of the Covenanting State shall become the military forces of the Union.

….. ….. ….. ….. ….. ….. ….. ….. ….. ….. ….. ….. ….. …. …. ….

ARTICLE VIII

The Raj Pramukh shall, as soon as practicable and in any event not later than the 30th of August 1948 execute on behalf of the Union an Instrument of Accession in accordance with the provisions of the Section 8 of the Govt. of India Act, 1935, and in place of the Instruments of Accession of the several Covenanting States; and he shall by such Instrument accept as matters with respect to which the Dominion Legislature may make laws for the Union all the matter mentioned in List I and List III of the Seventh Schedule to the said Act, except the entries in List I relating to any tax or duty.

….. ….. ….. ….. ….. ….. ….. ….. ….. ….. ….. ….. ….. …. …. ….

ARTICLE XI

1. The Ruler of each Covenanting State shall be entitled to receive annually from the revenues of the Union for his Privy purse the amount specified against that Covenanting State in Schedule I;

Provided……. ……. ……. ……. ……. ……. ……. ……. …….

2. The said amount is intended to cover all the expenses of the Ruler and his family including expenses of his residences, marriages and other ceremonies, etc. and shall subject to the provision of paragraph

(1) Neither be increased nor reduced for any reason whatsoever.

…… …… …… …… …… …… …… …… …… …… …… …… ……

ARTICLE XII

(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.

(2) He shall furnish to the Raj Pramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(3) 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 such person as the Govt. of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be so referable after the 30th June, 1949.

… …… …… …… …… …… …… …… …… …… …… …… ……

ARTICLE XIV

(1) The Succession, according to law and custom, to the Gaddi of each Covenanting State, and to the personal rights, privileges …….. and titles of the Ruler thereof is hereby guaranteed.

(2) Every question of disputed succession in regard to a Covenanting State which arises after the inauguration of the Union shall be decided by the Council of Rulers after referring it to a bench consisting of all the available Judges of the High Court of the Union and in accordance with the opinion given by such bench.

… …… …… …… …… …… …… …… …… …… …… …… ……"

39. Upon a bare reading of the terms and conditions of the aforesaid covenant, it is clear that all rights, authority and jurisdiction belonging to the ruler and incidental to the Government of the covenanting State shall vest in the Union; all duties and obligations of the ruler pertaining or incidental to the Government of the covenanting State shall devolve upon the Union of India and shall be discharged by it; and all assets and liabilities of the covenanting State shall be the assets and liabilities of the Union of India. In other words, the covenanting State ceases to exercise any authority or jurisdiction as the ruler and all the assets and liabilities of the ruling clan shall become the assets and liabilities of the Union.

40. In lieu of the above, the ruler of each covenanting State was entitled to receive annually from the revenue of the Union, a privy purse of the amount as may be specified, which was intended to cover all the expenses of the ruler and his family, including expenses for his residences, marriages and other ceremonies, etc.

41. In addition to the above, Article XII of the covenant specifically provides that the ruler of each State shall be entitled to full ownership, use and enjoyment of all the private properties (as distinct from the State properties) and that the ruler shall furnish, on or before 20.09.1948, an inventory of all the immovable properties, securities and cash balances held by him as private property. In other words, the ruler of the covenanting State was given ownership only in respect of private properties to be declared by him in the form of an inventory on or before 20.09.1948.

42. In furtherance of the above covenant, then Maharaja Jagatjit Singh of Kapurthala, on 11.08.1948, declared the following properties comprising the Mussoorie Estate to be his private and personal properties with full power of disposition and transfer over it. He explicitly declared that these properties would descend to his heirs and successors as their private and personal property. The said properties of the Mussoorie Estate are as follows:

1. Chateau

2. St. Helens

3. St. Helens Cottage

4. Wycliffe

5. A.D.C. Quarters

43. Further, on 11.04.1949, the Maharaja declared certain other properties to be his private properties, which include the following:

> *"HOUSES –*
>
> *1. Jagatjit Palace along with all the buildings, structures etc. situated within its premises together with all the furniture and other persons (resident of His Highness the Maharaja) Area 245 Ghumaons 1 Kanal 1 Marla.*
>
> *2. Elysee with all the buildings, structures, etc. situated within its premises together with all the furniture and other articles (residence of Her Highness the Maharani Sahiba) Area 26, Ghumaons 3 Kanals 13 Marlas.*
>
> *3. Villa Bona Vista along with all the buildings, structures, etc. situated within its premises together with all the furniture and other articles. Situated on the bank of river Bein about three miles from Kautilya town (residence of the heir-apparent) Area 26 Ghumaons 0 Kanal 1 Marla.*

4. Mahijit Niwas along with all the buildings, structures etc. situated within its premises together with all the furniture and other articles (residence of the widow of Maharajkumar Mahijit Singh, son of His Highness the Maharaja).

5. Sunny Side along with all the buildings, structures, etc. situated within its premises together with all the furniture and other articles. (residence of Maharajkumar Karamjit Singh, son of His Highness the Maharaja).

6. Ivanhoe along with all the buildings, structures etc. situated within its premises together with all the furniture and other articles. (residence of Maharajkumar Ajit Singh, son of his Highness the Maharaja).

<u>Mussoorie</u>

7. Chateau Kapurthala along with all the buildings, structures, etc. situated within its promised all the furniture and other articles. (the summer residence of His Highness the Maharaja).

8. St. Helens along with all the buildings, structures, etc. situated within its premises together with all the furniture and other articles. (the summer residence of Her Highness the Maharani. This building is situated within the premises of Chatean Kapurthala).

9. St. Helens Cottage along with all the buildings, structures, etc. situated within its premises together with all the furniture and other articles (the summer residence of Maharajkumar Karamjit Singh).

10. Wycliffe along with all the buildings, structures, etc. situated within its premises together with all the furniture and other articles (the summer residence of the widow of Maharajkumar Mahijit Singh).

(Note: Already declared as private properties by the Maharaja on 11.08.1948)

LANDS AND JAGIRS

….. ….. ….. ….. …..

CARS

….. ….. ….. ….. …..

LIVESTOCK

….. ….. ….. ….. …..

SECURITIES AND CASH BALANCES

….. ….. ….. ….. …..”

44. In view of the covenant of merger and the declarations made by the then Maharaja, only the above properties declared by him to be his personal private properties came under his personal ownership with full rights of use and enjoyment thereof and the rest of the properties, being State properties, vested in the Union of India.

45. Upon comparison of the properties in dispute under the two suits and the properties declared to be the personal properties of the ruler, it is evident that all properties under the suits were either declared to be the personal properties of the Maharaja or were acquired from the sale proceeds of some of them. Besides the above, one or two of the properties were held in joint names or were jointly purchased from the sale proceeds of the erstwhile private properties and as such were joint in nature.

46. The issue, therefore, is how the aforesaid properties of the ruler declared to be the private personal properties (as distinct

from the public properties) would devolve upon the heirs and successors.

47. Upon the signing of the merger covenant, Maharaja Jagatjit Singh ceased to be an absolute sovereign and assumed the status of an ordinary citizen of India. The recognition of the Maharaja as the Ruler by the President of India under Article 366 (22) of the Constitution of India was a political or an executive act for ceremonial purposes entitling the Maharaja to receive privy purse and other connected privileges, but it was not an indicium of ownership of property.

48. Article XIV of the covenant guarantees to the ruler, the succession according to law and custom, to the *Gaddi* (throne) of each covenanting State and to the personal rights, privileges and titles to the ruler thereof. The aforesaid article confines the rule of succession prevalent according to law and custom, i.e., *primogeniture,* only with regard to *Gaddi* (throne) and the personal rights, privileges and title of the ruler. It does not guarantee succession according to law and custom, or *primogeniture,* to the ruler's private personal property. Rather,

Article XII provides that the ruler of each covenanting State shall be entitled to full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him and that he shall furnish an inventory of all immovable properties, securities and cash balances held by him as private properties. In consonance with the above covenant, an inventory of private properties was declared by the then Maharaja Jagatjit Singh. Therefore, the properties so declared by him as per the inventory became his private personal properties, over which he had full ownership and right of use and enjoyment. The covenant nowhere provided that such private and personal properties declared by the Maharaja would be governed by the rule of *primogeniture.*

49. The Mussoorie Declaration of 11.08.1948 (Exhibit D-1) by Maharaja Jagatjit Singh, in unequivocal terms, declares the properties of Mussoorie to be his private and personal properties that would descend to his “heirs and successors” as private and personal property. The use of the words “heirs and successors” in the plural form indicates the Maharaja's explicit

intention that the said properties be succeeded by all his heirs and successors, not by a single successor, which contradicts the rule of *primogeniture*.

50. On the reading of the aforesaid declaration, it can be comfortably said that the Maharaja had not only declared some of his properties as private and personal properties but has also expressed his intention that they would devolve upon his heirs and successors in the normal way, rather than under the rule of *primogeniture*. This was done by the Maharaja in exercise of his powers as a sovereign ruler before the actual merger had taken place on 20.08.1948. Thus, it was in the nature of a sovereign decree having the force of law to the effect that the sovereign ruler intended to share his private personal properties amongst all his descendants, rather than to a single individual heir.

51. One of the earliest decisions of a Three-Judge Bench of this Court on the point in issue is in the case of ***Revathinnal Balagopala Varma v. His Highness Padmanabha Dasa***

Bala Rama Varma[4], which is generally referred to as the 'Travancore case'. In that case, the Maharaja of Travancore, the sovereign ruler, signed the covenant of merger with the erstwhile Cochin State, thereby becoming part of the territory of the Dominion of India with effect from 01.07.1949. The terms and conditions of the said covenant were similar to those in the present case. The Maharaja of Travancore also declared certain properties to be his private property. A suit was subsequently filed by one of the Maharaja's family members, claiming that the Maharaja was not the sole owner of those properties, even though they had been declared private property. This Court accepted that, before accession, the properties of the State of Travancore devolved from ruler to ruler by the rule of male-lineal *primogeniture,* and that there was no distinction between private and State properties. The Maharaja exercised sovereign power over the entire estate, i.e., over all the properties. However, keeping in view the fact that the Maharaja had specifically declared the properties in dispute to be his private properties under the covenant, it was

4 1993 Supp (1) SCC 233

held that these properties acquired the status of his private and personal properties and were no longer the properties of the State.

52. Another Three-Judge Bench of this Court in ***Talat Fatima Hasan through her constituted attorney Syed Mehdi Husain v. Syed Murtaza Ali Khan (Dead) through legal representatives & Ors.***[5], commonly known as Rampur Case, also had an occasion to consider the issue "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 '*Gaddi* (rulership)' or by the personal law applicable to the 'ruler'."

53. In the Rampur Case, the Nawab of Rampur, Raza Ali Khan, also signed the merger agreement with the Union of India. Under the terms of that 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

5 (2020) 15 SCC 655

was required to furnish to the Dominion Government an inventory of such immovable properties, etc., which he considered to be his private and personal properties. Accordingly, the Nawab *vide* Declarations dated 31.05.1949 and 27.06.1949 declared a number of properties to be his personal properties. The State of Rampur ceded to the Dominion of India w.e.f. 01.07.1949, and the Nawab was declared to be a ruler in terms of Article 366 (22) of the Constitution of India.

54. Thus, in the above background, an issue was raised in the suit as to whether the legal heirs of the Nawab were entitled to share in the properties the Nawab had declared as his private and personal property. The suit was ultimately carried to this Court. The central point of discussion was whether the private properties held by Nawab Raza Ali Khan would devolve upon his eldest son under the rule of *primogeniture,* or be governed by his personal law and devolve upon all his legal heirs.

55. This Court after considering the various precedents on the subject right from 1952 till date as also in the case of ***H.H.***

Maharajadhiraja Madhav Rao (supra) popularly known "Princes Privy Purses Case" held that a ruler under Article 366 (22) of the Constitution of India is a person who 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. Such person, though defined as a "ruler" has no territory and exercises no sovereignty over any subjects. He is simply a citizen of India with certain privileges because he or his predecessors surrendered their territory, powers, and sovereignty to the Dominion of India. Apparently, such rulers were in name only, with no lands or personal property. *They were Rajas without Praja*.

56. In the aforesaid case, this Court cited with approval the case of ***Kunwar Shri Vir Rajendra Singh v. Union of India & Ors.***[6], hereinafter referred to as Dholpur Case, where in a similar factual situation, the Constitution Bench held that the right to private properties of the last ruler depends upon the personal law of succession. The recognition of the ruler as a right to succession to the *Gaddi* (throne) by the President is an

6 (1969) 3 SCC 150

exercise of political power. In other words, it was held that the right to succession to the *Gaddi* is distinct from the right to succession to private properties, which has to be in accordance with the personal law of succession. The contention that the Dholpur Case was set aside by the Princes' Privy Purses Case was not accepted; rather, it was appropriately explained by holding that the use of the expression "political power" in the Dholpur Case was inappropriate and that the appropriate term could have been "executive power". Thus, the observations in the Princes' Privy Purses Case did not impact the underlying ratio laid down in the Dholpur Case. The Constitution Bench also negated the contention that succession to *Gaddi* would automatically mean succession to private properties and that the private properties are properties attached to *Gaddi.* It was held that succession to the *Gaddi* (throne) was only a matter of courtesy to protect their erstwhile titles but the properties declared as personal properties had to be treated as their private properties only and not as attached to the *Gaddi* (throne) for the purpose of succession by the rule of

primogeniture. In the ultimate analysis, the Constitution Bench held that succession to the Nawab's private property had to be governed by his personal laws, not by the rule of *primogeniture.* This Court also repelled the argument that the rights of the rulers stood guaranteed by the Constitution in a way that it protected the rule of *primogeniture* for all properties, holding that Article 362 only applies to protect the personal rights, privileges and dignities of the ruler of an erstwhile Indian State and would not include succession to personal properties. The relevant excerpt from the judgment is as under:

> "44. … 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."

57. The issue of applicability of the law of *primogeniture* in the matter of succession in the context of the erstwhile Princely State had also come up for consideration before the three Judges Bench in the case of the State of Faridkot in ***Maharani Deepinder Kaur (since deceased) through legal representatives & Ors. v. Rajkumari Amrit Kaur & Ors.***[7]. In the said case, the ruler of Faridkot, Raja Harinder Singh, also entered into a similar covenant on 05.05.1948 with the Government of India and executed the instrument of accession, as a result of which the Faridkot State became a part of the Indian Union.

58. The aforesaid covenant is one and the same as the covenant entered into by Maharaja Jagatjit Singh in respect of the State of Kapurthala.

59. In the case of Faridkot, two suits were filed concerning succession to the properties of the Raja, which were shown to be private property under the covenant. The dispute travelled to the High Court, wherein, apart from other issues, one of the

7 (2022) 9 SCC 658

points of determination formulated was whether the law of *primogeniture* is applicable to the succession of the private properties of the deceased ruler, Maharaja Harinder Singh of Faridkot.

60. The High Court, in answering the above point, observed that prior to the merger agreement, the properties in question were held by the late Raja as a sovereign, and there was no distinction between the State and private properties, as the sovereign ruler was the owner of all the properties. However, following the merger and accession, some of the properties were earmarked by the Raja as his personal property, leaving the rest as State property. Upon the declaration of the list of private properties, the same ceased to be State properties. Article XII of the covenant permitted full ownership, use, and enjoyment of all private property (as distinct from State property) and, therefore, the concept of impartible State disappeared with the merger. On the declaration of these properties as private properties, the said properties lost the sovereign character that existed prior to the covenant.

Moreover, Article XIV of the covenant only recognised succession to the *Gaddi* (throne) according to law and custom and not to the private properties. It cannot be said that the *Gaddi* (throne) included the private properties. This is clear from the simple reading of Article XIV together with Article XII of the covenant. The Government never guaranteed succession to the private properties under the covenant, and, therefore, the private properties were left to be succeeded in accordance with personal law. The relevant paragraphs of the High Court Judgment i.e., paragraph 78 to 83 are quoted below:

> "78. Now coming to the conclusion whether Law of Primogeniture is applicable in the succession of Estate of deceased Raja Harinder Singh, ...
>
> 79. Prior to merger agreement, the property in question was held by the late Raja as sovereign and there was no distinction between the State and the private properties, as sovereign was owner of all the properties. After the merger agreement and accession to Dominion of India, the properties were earmarked by late Raja as his personal properties for which he was competent to do so under the Covenant. After approval of the properties in the list submitted by the Raja as

his personal properties, the same ceased to be State properties. Reference can be made to paras 61, 63, 64, 67 and 69 of Revathinnal Balagopala Varma v. Padmanabha Dasa Bala Rama Varma [Revathinnal Balagopala Varma v. Padmanabha Dasa Bala Rama Varma, 1993 Supp (1) SCC 233] .

80. On merger of Faridkot State with Dominion of India, rule of primogeniture, if any, ceased to exist on account of Act of State. In the Covenant dated 5-5-1948, there is no clause/article which either recognises or guarantees the continuance of alleged rule of primogeniture. The Covenant has been reproduced in the White Paper. As per Article XII of the Covenant, the Ruler of each Covenanting State was entitled to the full ownership, use and enjoyment of all the private properties as distinct from the State properties, belonging to him on the date of his making over the administration of the State to Rajpramukh. As per Clause (2) of Article XII, the Ruler of each Covenanting State was required to furnish an inventory of all the immovable properties, securities and cash balances to the Rajpramukh before 20-9-1948. This inventory is in the context of immovable properties, securities and cash balances held by the Ruler as private properties. On approval of list by Rajpramukh, the properties in the hands of the Ruler became his absolute properties and he was entitled to deal with his properties in

the manner he liked. Once the properties have been retained by the Ruler as his personal properties after surrendering the sovereignty to Government of India, pursuant to the Covenant, then the properties held by him are his private properties and other members of royal family had no claim. Reference can be made to paras 69 & 81 to 86 of Revathinnal Balagopala Varma case [Revathinnal Balagopala Varma v. Padmanabha Dasa Bala Rama Varma, 1993 Supp (1) SCC 233] .

81.

.....

82. The impartible estate of Hindu Undivided Family, if any, existed prior to the Covenant entered by the Ruler disappeared on account of an Act of the State. The territories of former State of Patiala have merged into the territories of India and all the joint Hindu family property/impartible estate, which existed prior to the accession have ceased to exist on account of Act of the State. The grant of private properties to the Ruler was an Act of State and such properties cannot maintain the earlier character which was prior to entering into Covenant by the Ruler with Government of India. Impartibility of Estate ceased to exist on account of merger into the Dominion of India and, therefore, rule of primogeniture, if any, ceased to exist on account of merger of Faridkot State with Dominion of India. The guarantee under the

Covenant was only in respect of succession to Gaddi and not to the private properties. The right to private properties of the ex-Ruler depends upon the personal law of succession to such private properties.

83. Article XIV of the Covenant only recognised the succession to "Gaddi" and not to the private properties, as approved in Article XII of the Covenant. Gaddi and private properties are two distinct connotations and it cannot be said that Gaddi included private properties in any manner. Clause (1) of Article XIV of the Covenant prescribed that 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 is hereby guaranteed. Article XIV does not extend the assurance and guarantee to private properties in any manner. The guarantee with regard to succession, according to law and custom is given to the Gaddi of each covenanting State and to the personal rights, privileges, dignities and title to the ex-Rulers thereof. There is no guarantee with regard to succession according to law and custom qua the private properties. The Government never guaranteed succession according to law and custom to the private property of the Ruler which he kept after submission of the list to the Rajpramukh. Reference can be made to White Paper on India States published by Government of India, Ministry of States

issued on 5-7-1948. Part XI of the Indian States under the new Constitution under the head "Guarantees Regarding Rights and Privileges" and Part VII "Settlement of Rulers Private properties" would show that the nomenclature has been reflected in the White Paper, wherein it has been mentioned that prior to the Covenant, there was no distinction between private and State property of the Ruler. In the White Paper, it has been mentioned that upon integration of States, Ruler was required to furnish list of immovable properties, securities and cash balances, etc. claimed by him as private property and upon approval of the same, the Ruler was entitled to full ownership and enjoyment of private properties as distinct from State properties. The personal privileges of the ex-Ruler and those privileges have nothing to do with the personal property of the Ruler. The guarantee or assurance are in respect of personal rights, privileges and dignities of the Ruler. It does not extend to personal property which is different from personal rights, privileges and dignities of the Ruler. In this context reference can be made to the ratio of Sudhansu Shekhar Singh Deo v. State of Orissa [Sudhansu Shekhar Singh Deo v. State of Orissa, AIR 1961 SC 196] (five-Judge Bench) and State of Bihar v. Kameshwar Singh of Darbhanga [State of Bihar v. Kameshwar

Singh of Darbhanga, (1952) 1 SCC 528 : AIR 1952 SC 252] (five-Judge Bench)."

61. This Court, sitting in a combination of three Judges, in ***Maharani Deepinder Kaur*** (supra) in context with the aforesaid judgment, upheld the findings and the observations made by the High Court. The findings were approved as fully justified and, thus, by a comprehensive reasoned judgment, turned down the challenge to the judgment and order of the High Court. In other words, the judgment and order of the High Court were upheld. The view taken that the rule of *primogeniture* continues to apply only with respect to the succession to the *Gaddi* (throne) and not to the personal private properties declared as such by the erstwhile Maharaja was accepted. This Court in the ultimate analysis held as under:

> "32.... The findings rendered by the High Court were, therefore, fully justified and there is no reason to entertain any challenge in that behalf."

62. In view of all the above Full Bench decisions of this Court on the point in issue, we can safely conclude that no doubt that succession to the throne of the Maharaja in the Princely State of India including that of Kapurthala was being governed by the ruler of male lineal *primogeniture,* but it altogether took a different connotation after the merger agreement was signed and some of the properties were declared to be the private and personal properties of the Maharaja. The covenant preserved the rule of *primogeniture* only in respect of succession to the *Gaddi* (throne) but in no way guaranteed this in respect of the private personal properties of the Maharaja; rather Article XII of the covenant clearly provided that the ruler of each covenanting State shall be entitled to full ownership, use and enjoyment of all private properties, as distinct from State properties, belonging to him, provided he furnished an inventory of all such properties by a particular date. This confirms that the covenant only protected the Maharaja's full ownership, use and enjoyment of all private properties. These private properties were recognised as the properties belonging

to the Maharaja as properties having been inherited from the family, but no rule of the covenant or any Article of the Constitution protected such private properties in the hands of the Maharaja from the ordinary rule of succession as applicable. Consequently, the said properties were treated as the ordinary property of a private citizen and were even subject to taxation and acquisition in the ordinary way.

63. In the above context, a reference may be made to the Constitution bench decision in the case of ***Visweshwar Rao vs The State of Madhya Pradesh***[8]***,*** wherein some of the properties declared by the erstwhile ruler as private properties under the covenant of merger were sought to be acquired by the State. Upon a challenge to the said acquisition, it was argued that such private property was protected by Article 362 of the Constitution and could not be taken over by the State. This Court rejected that argument, holding that no doubt the properties became private properties by virtue of the covenant as distinguished from the properties of the State, but then in respect of such properties, the ruler did not stand in a better

8 1952 SCR 1020

position than any other owner possessing private property; therefore, such private properties were not immune from acquisition. Article 362 of the Constitution did not prohibit the acquisition of properties declared as private properties by the ruler under the covenant of merger, nor did the Constitution guarantee their perpetual existence in the hands of the erstwhile ruler. The guarantee under Article 362 was of a limited nature, ensuring only that the private properties declared by the ruler would not be claimed as State properties. The guarantee or assurance was limited to the personal rights, privileges, and dignity of the ruler and did not extend to his personal property.

64. In another case of ***Sudhansu Shekhar Singh Deo vs State of Orissa***[9]***,*** the erstwhile ruler of Sonepur, in terms of the merger agreement with the Dominion of India, declared some of the properties to be his private properties. The agricultural income from some of these private properties was subjected to tax under the provisions of the Orissa Agricultural Income Tax Act, 1947. The ruler of Sonepur challenged the imposition of

9 (1961) 1 SCR 779

this tax by means of a petition and contended that, as a ruler prior to the merger, he was immune from taxation and that, as a sovereign ruler, he could not be subjected to taxation within his own State. The argument was repelled by the Constitution Bench, holding that the privilege guaranteed under the covenant of merger is a personal privilege available to the him as an ex-ruler and that privilege does not extend to his personal properties.

65. The conspectus reading of all the above decisions clearly brings out a distinction between the personal and private properties of an erstwhile ruler, as declared by him under the covenant of merger/accession and those belonging to the State. All the aforesaid decisions also make it clear that the covenant of merger only protected the succession to the Gaddi and to the personal rights according to law and custom or by rule of *primogeniture* but not with regard to the properties declared to be the private properties inasmuch as after the merger the ruler became a citizen of the country but with certain privileges, and without any sovereign control over

public properties or over the subjects. Therefore, the succession to such private ancestral properties must be in accordance with the personal law of the ruler and not as per any custom or rule of *primogeniture*.

66. In contrast to the decisions mentioned above, a Division Bench of this Court in ***Trijugi Narain (Dead) Through Lrs. & Ors vs Sankoo (Dead) Through Lrs. & Ors.***[10] had an occasion to consider in context with the State of Maihar, whether the impartible properties of the former ruler, post-merger agreement or after the enactment of the Hindu Succession Act, had ceased to be an impartible estate and were converted into coparcenary property of the joint Hindu family.

67. This Court observed that there are judicial precedents acknowledging the custom of impartible estates and that the rule of *primogeniture* was a general rule of succession in all the princely states. This Court, relying upon ***Pratap Singh vs Sarojini Devi***[11], observed that impartibility and the application of the rule of primogeniture in the case of a

10 2019 SCC OnLine SC 1604
11 1994 Supp. (1) SCC 734

sovereign ruler must be presumed to exist, whereas in the case of zamindari estates or other impartible estates, the rule of *primogeniture* must be established by way of custom. Thus, a distinction was made between an estate of the sovereign ruler and that of the zamindar. It was also observed that an impartible estate, though ancestral, was clothed with the incidence of self-acquired and separate property, except with regard to the right of survivorship, which was consistent with the custom of impartibility.

68. In the ultimate analysis, this Court held that as per the custom relating to impartible estates and the rule of *primogeniture*, the ruler of the princely state would not hold the estate as the Karta or coparcener, but as the absolute owner, and the estate would continue to remain impartible. Consequently, 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, succession to the rulership and the impartible estate would not be governed by the Mitakshara law of survivorship but by the rule of

primogeniture, although the successor would remain morally bound to provide maintenance to the other family members.

69. This Court further placing reliance upon ***D.S. Meramwala Bhayawala vs Bai Shri Amarba Jethsurbhai***[12] held 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 such a right under Hindu Law is restricted to coparcenary property only. This Court, further relying on the covenant of merger, observed that upon signing the merger agreement, the rulers surrendered their sovereignty and assumed the status of ordinary citizens, albeit with certain rights and privileges as set out in the Constitution.

70. The Court further again placing reliance upon **Pratap Singh** (supra) observed that any doubt or debate on whether the custom of impartibility and the rule of *primogeniture* continued post-covenant and merger is no longer *res integra,* in view of the three Judges Bench decision of this Court in the case of

12 (1968) 9 GLR 609

Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo[13] and Section 5 (ii) of the Hindu Succession Act, wherein it has been provided that an estate which descends to a single heir by the terms of any covenant or agreement entered shall not be governed by Section 4 of the Hindu Succession Act, effectively exempting it from the Hindu Succession Act. This Court, in the aforesaid decision of ***Trijugi Narain*** (supra) concluded that the succession to the erstwhile sovereign property now held as private property would devolve *vide* the merger agreement and the Constitution according to the customs applicable to the erstwhile rulers. Furthermore, it held that the recent decision dated 31st July 2019 of the Supreme Court in ***Talat Fatima Hasan*** (supra), which pertains to Muslim Personal Law, would not be applicable, as the issue therein was whether the properties held by the Nawab would devolve upon his eldest son by applying the rule of *primogeniture* or would be governed by the Muslim Personal Law.

13 (1981) 4 SCC 613

71. In short, this Court in ***Trijugi Narain*** (supra) in ascertaining whether the impartible properties of a former ruler post-merger agreement or after the enactment of the Succession Act would continue to remain as impartible estates or would be converted into coparcenary property of the joint Hindu family, by implication held that the three Judges decision of ***Talat Fatima Hasan*** (supra) would not be applicable as it concerns the applicability of Muslim Personal Law. The relevant extract of the ***Trijugi Narain*** (Supra) is reproduced hereinbelow:

> "45. .....The recent decision of this Court in Talat Fatima Hasan v. Nawab Syed Murtaza Ali Khan [Talat Fatima Hasan v. Nawab Syed Murtaza Ali Khan, (2020) 15 SCC 655] decided on 31-7-2019 pertains to the Muslim Personal Law (Shariat) Application Act, 1937 applicable to the State of Rampur. This is clear from para 13 of the judgment in Talat Fatima Hasan [Talat Fatima Hasan v. Nawab Syed Murtaza Ali Khan, (2020) 15 SCC 655] , 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."

72. It was further held in ***Trijugi Narain*** (Supra) that in view of ***D.S. Meramwala*** (supra)**, Pratap Singh** (supra) **and Bhaiya Ramanuj Pratap Deo** (supra), the succession to erstwhile sovereign property now held as a private property would devolve as per the customs applicable to the erstwhile rulers i.e., the rule of *primogeniture*.

73. This Court in ***Trijugi Narain*** (Supra) did not consider the central issue that was involved in ***Talat Fatima Hasan*** (supra) by simply stating that the said decision was limited to Muslim Personal Law. The ratio of *Talat Fatima Hasan (supra)* is not appreciated in all its facets. The question is not about the applicability of Personal Law, but rather whether the rule of primogeniture applies, thereby excluding Personal Law. The answer in the three-judge bench judgments is on the rule of primogeniture that the private properties held by the Nawab, upon cessation of sovereignty, would not automatically devolve upon his eldest, by applying the rule of *primogeniture* but would be governed by his personal laws, whether it happened to be Muslim or Hindu Personal Laws.

74. It may be important to note that though the Division Bench decision in ***Trijugi Narain*** (Supra) sought to distinguish the three Judges' decision in the case of ***Talat Fatima Hasan*** (supra), but thereafter another case, ***Maharani Deepinder Kaur*** (supra), was rendered on 07th September 2022, which ruled otherwise. Therefore, as a matter of judicial discipline, the decision of the Division Bench in ***Trijugi Narain*** (Supra) would not prevail over the decision of the three Judges in ***Maharani Deepinder Kaur*** and that of ***Talat Fatima Hasan*** (supra).

75. Judges interpret statutes; they do not interpret judgments. In other words, they interpret the words of the statutes, but their words are not to be interpreted as statutes. Reference in this regard may be held to the decision of this Court in ***Bharat Petroleum Corporation Ltd. and Anr. vs. N.R. Vairamani and Anr[14].*** In ***Herrington vs. British Railways Board[15],*** Lord Morris said:

14 AIR 2004 SC 4778
15 1972 (2) WLR 537

> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

76. In view of the aforesaid dictum, we need not interpret the observations and the findings returned by the various decisions of this Court, but rather ought to concentrate on the interpretation of the documents and the statutes, which interpretation is clearly spelt out in the earlier three Judges decisions of this Court and lastly in another three Judges decision in the case of ***Maharani Deepinder Kaur*** (supra).

77. It may not be out of context to refer to Section 5 of the Hindu Succession Act, 1956, which came into force on 17 June 1956. The aforesaid Act provides for overriding effect over any text, rule or interpretation of Hindu Law or any custom or usage as part of Law in force and that such law shall cease to have effect with respect to any matter provided for under the Act. Sections 6 and 8 of the Act provide for the devolution of interest in coparcenary property, and Section 5 is an exception

to it. The relevant part of Section 5, for our purposes, is reproduced herein below:

> "5. Act not to apply to certain properties.—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) …"

78. The aforesaid Section 5 (ii) of the Hindu Succession Act specifically excludes the application of the Act to the estates which descend to a single heir of a ruler under the terms of the covenant or agreement of merger with the Government of India. However, the aforesaid provision was not in force at the relevant time when the properties in question devolved upon Maharaja Paramjit Singh in 1949. At that point, the succession opened under the ordinary law in force. Therefore, the consequent devolvement of the personal private properties of the Maharaja would also be viewed through the lens of the personal law applicable to the parties at that time.

79. In ***Trijugi Narain*** (supra), this Court relied upon **Bhaiya Ramanuj Pratap Deo** (supra), which only observed that Section 5 (ii) of the Hindu Succession Act protects an estate which descends to a single heir by the terms of any covenant and that the Hindu Succession Act would not be applicable to such estates. However, interestingly, in the case at hand, the estate/the private properties declared by the ruler devolved upon the single heir, Maharaja Paramjit Singh, on 19.06.1949 immediately after the merger agreement. At that time, the Hindu Succession Act was not in force. The said Act was enforced with effect from 17.06.1956, and by that time, the properties had already acquired the status of private property of the then ruler, Maharaja Paramjit Singh, in his capacity as an ordinary citizen, due to the signing of the merger agreement. Accordingly, the Hindu Succession Act or Section 5(ii) of the Act, which exempts estates descending to a single heir under a covenant, is not applicable here. The said properties/estate did not constitute the ruler's estate, as the merger covenant guaranteed such custom only for *the Gaddi*

(throne), not for private property. As the private properties of an ordinary citizen, they were required to devolve according to the ordinary personal law then in force, namely, the Hindu Mitakshara Law.

80. In view of the above discussion that the properties declared to be the private properties of the Maharaja would devolve according to Hindu Law/ Law of Succession and not by rule of primogeniture, the judgment and order of the learned Single Judge as well as of the Division Bench of the High Court which holds that the rule of primogeniture would prevail in the succession of properties is illegal and is unsustainable in law.

81. Shri Nikhil Nayyar, Senior Counsel, representing the arm led by Smt. Gita Devi, in the end, has passed on a list of immovable and movable properties which presently remain the subject matter of the dispute, as all other properties have since ceased to exist. This list of properties is not disputed by the other side.

82. The said list mentions four immovable properties. The first two are a Double-storey residential house No. B/90-A, Greater

Kailash-I, New Delhi and Commercial Flat No. 101 on the first floor of the building "Surya Kiran", Kasturba Gandhi Marg, New Delhi. Both of these properties were admittedly purchased with part of the sale proceeds from the ancestral properties, namely Jagatjit Palace and Elysee Palace in Kapurthala, which were originally declared the private property of the Maharaja. Both these properties, though purchased from the nucleus of the ancestral properties, stand in the joint names of Brigadier and Smt. Gita Devi. Thus, irrespective of their character as ancestral or individual, they are liable to be partitioned at least between the Brigadier and Smt. Gita Devi.

83. It may also be worth noting that the counsel for both parties on 09.09.2001 stated before the Court of first instance as under:

> "We agree that the properties B-90-A, Greater Kaialash, flat No. 101, Surya Kiran, New Delhi, and the shares of Continental Devices India Ltd., all standing in the joint names of plaintiff No. 3 (Smt. Gita Devi) and defendant No. 1 (Brigadier), were acquired from the sale proceeds of Jagatjit Palace and Elysee Palace, Kapurthala."

84. Thus, the acquisition of the above properties in the joint names out of the sale proceeds of the private ancestral properties is an admitted fact by both parties.

85. The third property is the residential house, The Villa Bouna Vista, along with Cottage Villa Chalet, servant quarters, garages, etc., situated in Village Chuharwal, District Kapurthala. This property is admittedly in the joint names of his two sons, including the deceased son, Amanjit Singh. It was also purchased with part of the sale proceeds of the ancestral properties, namely Jagatjit Palace and Elysee Palace, Kapurthala. This property, therefore, if not to be partitioned amongst all the family members, is at least liable to be divided between the two joint owners or their successors.

86. It is also worth noting that after the demise of one of the sons, namely, Amanjit Singh, on 10.11.1991, the High Court declared his mother Smt. Gita Devi to be his sole, absolute and rightful heir to succeed to his rights in the Villa Bouna Vista.

87. In addition to the above, the Brigadier, in his written statement filed in Civil Suit No. 1052 of 1977, accepted that

the Villa Kapurthala, referring to Villa Bouna Vista, stands registered in the name of his sons, although he contended that the entire sale consideration was paid by him. He explicitly stated therein that he had "no objection" to the said property continuing in the names of his two sons. The relevant paragraph 23 of the written statement of the Brigadier in the aforesaid is extracted below:

> "23. With regard to the Villa property the answering defendant submits that the said property stands registered in the hands of the Plaintiffs 1 and 2. The entire consideration for the said property was paid by the answering defendant as is recorded in the sale deed pertaining to the said property.
>
> Without prejudice to the contention of the Defendant No. 1 in the foregoing paragraphs, for the limited purpose of the present suit only, the answering defendant has no objection to the villa property continuing to stand in the names of Plaintiffs 1 and 2. The defendant No. 1 reiterates that the Plaintiff No. 3 has no manner of right, title or interest in the Villa property or in the contents of the Villa property."

88. In light of the joint statement made by the counsel for the parties and the admissions in the written statement of the

Brigadier, all the above three properties held in joint names are open for division, at least between the joint owners. Therefore, the Brigadier cannot deny partition with respect to these assets.

89. The last and fourth immovable property is the property in Mussoorie, i.e., Kapurthala Chateau and St. Helens, including all associated movable property, such as furniture, carpets, etc. These have been declared to be the private personal properties of the ruler. Therefore, this property is to be partitioned as per the rule of succession under the Hindu Law or Hindu Succession Act, 1956, excluding the exception contained in Section 5(ii) of the Act.

90. Insofar as jewellery lying in Sociétés Générale, Bouleward Haussmann, Paris, France and the shares in joint stock companies lying in the safe custody with the First National City Bank, Fort, Bombay, they are not the properties that have been declared to be the private personal properties of the ruler. Therefore, these properties would not devolve upon the family members under Hindu Law.

91. Thus, the immovable property at Mussoorie comprising of Kapurthala Chateau and St. Helens, Mussoorie is the only property declared to be the private property which would devolve upon all the family members. Rest of the immovable properties are in the joint names and are liable to division between the joint holders. All other properties which are immovable in nature have not been declared to be the private properties and would not devolve upon the family members.

92. Accordingly, the Mussoorie property, is liable to be divided/ partitioned in equal proportions (1/4th each) among the four surviving heirs: The Brigadier, one surviving son and two daughters. This final division accounts for the intestate shares of the deceased son and the deceased mother, Smt. Gita Devi, which have been redistributed among the survivors in accordance with Sections 8 and 15 of the Hindu Succession Act. Regarding the Delhi properties (B-90A, Greater Kailash-I and Flat No. 101, Surya Kiran), these were admittedly jointly registered in the names of the Brigadier and Smt. Gita Devi. Upon the demise of Smt. Gita Devi, her undivided 1/2 share

devolves equally among her four Class I heirs (husband, son, and two daughters) at 1/8th each under Section 15(1)(a) of the Hindu Succession Act. Consequently, Brigadier is entitled to a 5/8th share (1/2 original + 1/8 inherited), while surviving son, and two daughters are each entitled to a 1/8th share in these properties.

93. Other property i.e. Villa Bouna Vista along with Cottage Villa Chalet, servant quarters, garages etc. at Kapurthala is in the name of the two sons, therefore, the Brigadier has no share in the same. The said property was jointly held by two sons in equal proportion and accordingly each of them held 1/2 share therein. Upon the demise of one of the sons in the year 1991, his undivided 1/2 share devolved upon his mother Smt. Gita Devi, she being his Class-I heir under the Hindu Succession Act. Thereafter, upon the subsequent demise of Smt. Gita Devi, the said 1/2 share devolved equally upon her surviving heirs namely the Brigadier, the surviving son and the two daughters. Consequently, the surviving son would retain his original 1/2 share and would further inherit 1/8th share out

of the estate of Smt. Gita Devi, thereby becoming entitled to 5/8th share in the aforesaid property. The Brigadier and the two daughters would each be entitled to 1/8th share therein.

94. On the basis of the above discussion, our conclusions are summarized as under: -

(i) There is a general presumption in India that the estate of the ruler and monarch of a princely state, as per the custom, stands governed by the rule of male lineal *primogeniture*;

(ii) After the signing of the agreement of merger and notification of certain properties as the personal private properties of the *Maharaja*, only the perceived throne devolved according to the rule of *primogeniture,* but not the personal private properties of the ruler;

(iii) Following the lapse of the British paramountcy and the signing of the agreement of merger, the *Maharaja* assumed the status of the ruler only for the namesake to succeed to the *Gaddi* and to enjoy certain privileges attached to it, the personal private properties declared to

be so by him would devolve upon his successors in accordance with the Muslim/Hindu Law or subsequently in accordance with the Hindu Succession Act and not by the rule of *primogeniture;*

(iv) The Division Bench decision in ***Trijugi Narain*** (supra) would not override the ratio laid down by the three-Judges Bench in the cases of ***Travancore***, ***Talat Fatima Hasan*** (**Rampur**) (supra) and ***Faridkot***. The Three-Judge Bench decision in the ***Faridkot*** case, being the latest in time, may be without referring to ***Trijugi Narain*** (supra), the ratio laid down therein would prevail and thus the properties declared to be the personal private properties of the ruler would devolve not according to the rule of *primogeniture* but according to the personal law, whether Muslim Law or Hindu Law;

(v) Finally, of the four immovable properties, three, as stated earlier, are in the joint names of the family members. Therefore, irrespective of the applicability of the rule of

primogeniture or the Hindu law, they are liable to division between the joint holders; and

(vi) Lastly, the only immovable property which remains is the property at Mussoorie, i.e., Kapurthala Chateau, and St. Helens, Mussoorie would devolve upon the successors under Hindu Law and are divisible amongst the family members.

95. In the light of the above conclusion, the judgment and order dated 19.11.2010 is hereby set aside and the appeal is allowed in part. A preliminary decree of partition be drawn in accordance with the shares described above.

96. The appeal succeeds in part, as above, with no order as to costs.

.....J.
[Pankaj Mithal]

.....J.
[S.V.N. Bhatti]

New Delhi;
MAY 27, 2026