

# SUPREME COURT OF INDIA

Umrao Singh Ajit Singhji

Vs.

Bhagwati Singh Balbir Singh

C.A.No.125 of 1952

(Mehr Chand Mahajan, C.J.I., B. K. Mukherjea, Vivian Bose, B. Jagannadhadas and T. L. Venkatarama Ayyar, JJ.)

11.10.1954

## JUDGEMENT

### MAHAJAN, C. J.:

1. This is plaintiffs' appeal, under a certificate, against the dismissal of their suit by the High Court of Judicature for Rajasthan (Jaipur Branch) and praying for a declaration of their rights of succession to the Gaddi of Indergarh.

2. The relevant facts concerning this litigation are these : Maharaja Sumer Singhji was the last jagirdar of Indergrah (District Kotah, Rajasthan). He died without male issue on 14-7-1949 at Delhi. On 2-8-1949 Maharaja Umrao Singh, one of the appellants in the present appeal, instituted a suit against the respondent Maharaja Bhagwati Singh and three others on the allegation that Maharaja Sumer Singhji of Indergarh having died without male issue, the plaintiff was the sole heir of the deceased, and the respondent Bhagwati Singh, minor, was falsely alleging himself to be an adopted son of the late Maharaja and was trying to succeed to his estate; that Maharaja Bhagwati Singh was never adopted by the deceased and consequently the plaintiff was entitled to a declaration to the effect that he was the real successor to the Gaddi of Indergarh.

In defence it was pleaded that the adoption by the late Maharaja was made after obtaining proper sanction of His Highness the Maharao of Kotah. It was contended that when Kotah State was a separate political unit His Highness the Maharaja Sahib of Kotah was the sole authority to recognise succession regarding the jagirs and that on integration of Rajasthan that authority is enjoyed by His Highness the Rajpramukh under Art. 7(3) of the Covenant of Rulers of Rajasthan and that consequently the District Judge had no jurisdiction to try the case. On this pleading the Court framed the following Issue:

"Issue No. 3 - Whether His Highness the Rajpramukh had an exclusive right to decide the question of succession relating to Kotri (Jagir) in question and whether the jurisdiction of the civil Courts being barred in such matters, the District Court has no jurisdiction to hear the suit?"

3. The learned District Judge, after hearing arguments on this Issue, by his judgement dated 19-12-1949 found the Issue in favour of the respondents and dismissed the plaintiffs' suit. On appeal the High Court of Rajasthan affirmed this decision. During the proceedings in the Courts below, Maharaja Udaibhan Singh was a defendant in the case, was impleaded as a plaintiff. This appeal has

now been preferred by both the plaintiffs.

4. The main issue involved in the appeal is whether the civil Court has jurisdiction to decide the question of succession to the Jagir of Indergarh.

5. Section 9, Civil P.C. provides:

9. "The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

'Explanation' - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."

6. The learned counsel for the appellants contended that the suit instituted by the plaintiffs being of a civil nature, civil Courts had jurisdiction to entertain it and the District Judge and the High Court were in error in holding that their jurisdiction was either expressly or impliedly barred. In our opinion this contention is not well founded. It is true that there is no express statutory provision barring the jurisdiction of the civil Courts regarding suits of this nature, but it is equally clear that their jurisdiction to entertain suits of this nature is impliedly barred.

7. In para 2 of the plaint it was alleged that in the absence of a real son in the line of succession to the Gaddi of Indergarh, the members of the family of Chhapol, on account of being of the same Gotra as that of the jagirdars of Indergarh, i.e., Bhagatsinghot Gotra, were the nearest of kin to them, and on account of this the ruler of Kotah, who held sovereign powers over Indergarh, had continued to accord his sanction in respect of their succession.

In para 3 it was said that the late Maharaja Sumer Singhji himself, from Thikana Chhapol, with the sanction of Maharao Sahib Kotah, was taken as successor to Indergarh, on the death of Maharaja Sher Singh, without a male issue, and that Maharaja Sher Singhji, also in the same manner, on the death of Maharaja Sangram Singhji, dying without a male issue, was taken from Thikana Chhapol, as successor to Indergarh.

The plaintiffs' case thus is clearly founded on the plea that the succession to the Gaddi of Indergarh was determined by the ruler of Kotah in his capacity as sovereign. It is not even alleged in the plaint that the jagir is hereditary in nature or that the sanction of the Maharao was a mere formality. After the integration of Rajasthan the sovereign right exercised by the Maharao of Kotah in this respect was dealt with by Art. 7(3) of the Covenant entered into between the rules of the different States of Rajasthan including Kotah. This Covenant is in these terms :

"Article VII (3) - Unless other provision is made by an Act of the Legislature of the United State, the right to resume jagirs or to recognise succession, according to law and custom, to the rights and titles of the jagirdars shall vest 'exclusively' in the Rajpramukh".

The Rajpramukh, in exercise of this power, on 1-12-1949 recognised Maharaja Bhagwati Singhji, second son of Maharaja Balbir Singhji of Khatoli and adopted son of the late Maharaja Sumer Singhji of Indergarh as successor to the late Maharaja Sahib of Indergarh. The words of the Covenant are unambiguous except the Rajpramukh of Rajasthan will be competent to decide the question of succession. That being so, no suit can be maintained in a civil Court to direct a sovereign to perform his sovereign duties in a particular manner.

The power of recognizing an heir to the Gaddi of Indergarh which was one exercised by the Maharao of Kotah and which is now being exercised by the Rajpramukh of Rajasthan, is political in character and is an incident of sovereignty, and a matter that has to be exclusively settled in exercise of such a power cannot possibly be the subject of adjudication in a civil Court.

8. As above pointed out, no averment has been made in the plaint that the jagir was a hereditary one and was not resumable after the death of the last holder. No facts have been placed on record defining the incidents of this jagir . Ordinarily a jagir is an assignment in land or money for the support of a certain dignity and for the troops annexed thereto. It is either conditional or unconditional.

The assignment is for a stated term, and more usually, it is for the lifetime of the holder, lapsing on his death, to the State although no unusually renewed to his heir, on payment of a nazarana or fine. It is sometimes specified to be a hereditary one. In 'Gulabdas Jugjivandas v Collector of Surat', 3 Bom 186 (A), their Lordships of the Privy Council held that a jagir must be taken 'prima facie' to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary.

In the absence of any evidence to the contrary it has to be assumed that the (Jan). 1956 S. C. /3 and 4

Indergarh jagir was resumable after the death of the last holder and it was in exercise of sovereign rights that the Maharao of Kotah recognized the adoption of Bhagwati Singh and the Rajpramukh of Rajasthan in exercise of the same right recognized him as an heir to the last Jagirdar. Even if the jagir was of a hereditary nature, it seems clear that the Maharao of Kotah was admittedly the sole arbiter for determining the question of succession to the Gaddi according to law and custom and that exclusive power, by the binding force of the Covenant, has passed to the Rajpramukh of Rajasthan.

In this view of the case the rule laid down by their Lordships of the Privy Council in '-Sultan Sani v. Ajmodin' 20 Ind App 50 (PC) (B) is attracted to this case. Therein their Lordships expressed the opinion that the question to whom a saranjam or jagir shall be granted upon the death of its holder is one which belongs exclusively to the Government, to be determined upon political consideration, and that it is not within them competency of any legal tribunal to review the decision which the Government may pronounce.

9. The result is that the jurisdiction of the civil Courts is impliedly ousted for entertaining suits of this nature and that being so, the appeal fails and is dismissed with costs.

Appeal dismissed.

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