

Revathinnal Balagopala Varma

Vs

His Highness Shri Padmanabha Dasa Bala Rama Varma (Since Deceased) and Others

Civil Appeal Nos. 534 and 535 of 1983

(S. Ranganathan, N. D. Ojha, Smt. M. S. Fathima Beevi JJ)

28.11.1991

JUDGMENT

RANGANATHAN, J. –

1. Shri Padmanabhadasa Varma (hereinafter referred to as 'respondent 1') was the erstwhile Maharaja of Travancore, the sovereign ruler of that part of the territory of India which was formerly known as the State of Travancore. The State ceased to be a sovereign princely State and respondent 1 ceased to be its sovereign ruler with effect from July 1, 1949. On this date, the State was integrated with the erstwhile Cochin State to form the United State of Travancore and Cochin of which respondent 1 became the Rajpramukh. With effect from November 1, 1956, the territories of the integrated State got merged with the rest of the territories of the Union of India to constitute, after certain modifications, the present State of Kerala. As the Maharaja of Travancore, respondent 1 held several items of immovable properties consisting of houses, palaces and lands. Most, if not all, the properties held by him had been inherited by him from his predecessor-Maharajahs. He may also have acquired some properties after he became the Ruler but no details are available. It is, however, common ground that the cost of properties acquired by respondent 1 or his predecessors had been met from the State coffers, there being nothing until 1949 to distinguish between the funds belonging to a Ruler in his individual capacity and the funds belonging to the State. They were also disposing of the properties held by them from time to time at their sweet will and pleasure and it is common ground that even respondent 1 had disposed of several items of properties at various points of time and these alienations - even those made after July 1, 1949 - remained unchallenged.

2. In the context of the political developments referred to earlier, it became necessary to make certain provisions regarding the properties which were formerly held by the Princely Rulers. On May 27, 1949, a covenant Ex. A-2 (the terms of which have been extracted in the order of my learned brother Ojha, J.) was entered into between the Rulers of the States of Travancore and Cochin. It is common ground that, under the terms of the said covenant and the connected document (Ex. A-3), the properties were here concerned with were declared by respondent 1 to be his private properties and not State properties liable to be taken over by the Government of India that the Government of India have not contested the correctness of this declaration at any stage.

3. In the present appeals, arising out of a partition suit filed by the appellant (inspired possibly by proceedings taken under the Kerala Land Reforms Act which resulted in 191.23 acres out of the 309.25 acres of land held by respondent 1 being declared surplus over the permissible ceiling on the basis that they were the absolute properties of respondent 1), the appellant claims that the suit properties are divisible among himself and the 34 defendants to the suit in equal shares and that respondent 1 was entitled only to an one-thirty fifth share therein.

4. Sri Bhaskaran Nambiar, who argued the case elaborately and meticulously, attempted to convince us that respondent 12 owned these properties, not as sole owner, but only in his capacity as the holder of an imputable estate, the karnavan of an undivided marumakkathayam tarwad or a sthanee and that, in any one of the three situations, these properties have become partible under the provisions of recent legislations. The argument was that, if the properties were those comprised in an impartible estate, the rule of primogeniture could be lost (i) by renunciation, (ii) by statutory abolition or (iii) by the properties being no longer needed to maintain the status and dignity of the holder on the basis of the "cessante rone legis, cessat ipsa lex" doctrine. In this case, it is said situation (iii) developed when, on July 1, 1949, respondent 1 ceased to be a ruler. The properties thereupon became the properties of the family or tarwad to which the Ruler belonged and became partible on June 17, 1956 when Section 7(1) of the Hindu Succession Act came into force and, at any rate, on December 1, 1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force. If the properties were merely those of tarwad or Hindu family, they became partible under the above enactments. If the analogy of a sthanam applied, Section 7(3) of the Hindu Succession Act, 1956 rendered them partible. Sri Nambiar invited us to decide the issues before us on the basis of these picturesque analogies, which appear, at first blush, quite plausible and attractive. Indeed I may admit, having regard to the devolution of rulership on the seniormost male member of a marumakkathayam family and the resultant devolution of property from karnavan to karnavan, that I have still not been able to shake off a feeling that basically counsel may be right in saying that the members of the family have a right to share in the properties traceable to the family, once respondent 1 ceased to be the Ruler. But I have come to the conclusion, for the reasons discussed elaborately in the judgment of my learned brother Ojha, J. and also those indicated below, that the pleadings put forward and evidence adduced in the case by the appellate fall short in establishing the family origin of the properties.

5. Before discussing the principal contentions urged on behalf of the appellant, it may be convenient to clear up a ground put up on behalf of respondent 1 purporting to be a complete answer to the claim of the appellant. It was contended on his behalf that the declaration made by him that the properties were his private properties in terms of the covenant of May 25, 1949 concludes the issue once and for all. I agree with Sri Nambiar that this plea is untenable. The covenant only contented an assurance that the Government of India, subject to the arbitration clause in the covenant would not question the declarations by the erstwhile Rulers that certain properties belonged to them in their personal capacity and not in their capacity as Rulers. It settled the issue as between the Ruler and the Government of India and allowed the said properties to be retained by the Ruler without being surrendered to be Government of India. It did not, however, affect or prejudice the rights, if any, of third parties in the properties so declared. It created no title in the Ruler to any properties other or higher than was belonged to him immediately before the appointed day. I agree with Sri Nambiar that one cannot read into the covenant some bargain between the covenanting Ruler and the Government of India whereby the latter, as a quid pro quo to the former surrendering his sovereignty, conferred on him rights to property which might or might not have belonged to him. It did not affect in any way the nature of any property in his hands or the claims, if any, which others might have had against the Ruler quo those properties. These propositions are clear from the decisions in *Visweshwar Rao v. State of M.P.* [1952 SCR 1020 : AIR 1952 SC 252, 296], *Dalmia Dadri Cement Co. Ltd. CIT* [1959 SCR 729 : AIR 1958 SC 816 : (1958) 34 ITR 514] and *Rajendra Singh v. Union of India* [(1969) 3 SCC 150 : (1970) 2 SCR 631 : AIR 1970 SC 1946] as well as the clarification contained in para 4 of the Government of India's memorandum dated May 18, 1951 (Ex. A-4). The appellant's claim for partition cannot therefore be defeated merely by a self-saving declaration of respondent 1 that certain properties belonged to him absolutely if, in reality, they are

established to be properties belonging to a tarwad, estate or sthanam as alleged.

6. Now to turn to the analogies drawn by Sri Nambiar, they have been fully met by my learned brother Ojha, J. The analogy of an impartible estate as known under the Hindu Law cannot be extended to the present case for three reasons. In the first place, all the decided cases referred to on behalf of the appellant, including the Tipperah case [Neelkisto Deb Burmono v. Beerchunder Thakoor, 12 MIA 523 : 12 WR 21 : 3 BLR PC 13], arose in situations where the holder of the estate acquiesced in the jurisdiction of the civil courts of the then British India to decide the issues raised as issues of personal law governing the citizens of the then rulers of British India though he was, by courtesy, called a Maharaja, Rajah or the like. Secondly, in those cases, the incident of impartibility attached itself to properties which belong to a Hindu undivided family in order to give effect to a customary rule of succession of all the properties to a single individual, the rights of the other members of the family to claim a right by birth, maintenance or partition suffering an eclipse so as to prevent the disintegration of the estate. But, in the present case, even according to Sri Nambiar, the properties were impartible because they were properties of a marumakkathayam tarwad which, till recently, was, even otherwise impartible. To put it differently, the impartibility here prevalent is not attributable to the cause that gave rise to impartible estates dealt with in the cases cited by Sri Nambiar. Thirdly, as pointed out by Ojha, J., this contention of Sri Nambiar can have any validity at all only if the properties held by respondent 1 and his predecessors can be said to belong, or to have belonged, to a Hindu undivided family or marumakkathayam tarwad and that has not been established in the present case.

7. Before dealing with the above point, however, I may be deal with the contention based on the analogy of a sthanee or sthanamdar put forward by Sri Nambiar. The nature and incidents of sthanam property have been discussed in the decisions of the Privy Council in Venkateswara Iyan v. Shekhari Varma [ILR (1884) 3 Mad 384 : 8 IA 143 : 4 Sar 259] and K. Kochunni v. K. Kuttanunni [ILR 1948 Mad 672 : AIR 1948 PC 47 : (1948) 1 MLJ 181] as well as several decisions of this Court : Kavalappara K. Kochuni v. State of Madras [(1960) 3 SCR 887 : AIR 1960 SC 1080], M. K. Balakrishnan Menon v. ACED [(1971) 2 SCC 909 : (1972) 1 SCR 961 : AIR 1971 SC 2392] and Inspecting Asst. Commissioner, Ag. I.T. v. V. K. Ramunni Panikkar [(1972) 4 SCC 435 : 1974 SCC (Tax) 167 : (1972) 1 SCR 934]. It is, however, unnecessary to discuss these decisions here in detail as they throw no light on the question whether the Rulership of Travancore can be equated to a sthanam. Sri Nambiar's criticism of the judgment of the High Court in this regard was that it erred in thinking that the institution of sthanam was a peculiar institution familiar only in the northern part of the Kerala State viz. Malabar and was not well known in the territories comprised in the erstwhile States of Travancore and Cochin. Sri Nambiar has shown us no material in support of the contention that sthanams also existed in the States of Travancore and Cochin except to rely on the use of this word in the declaration Ex. A-3 and casual mentions of the word in the Velu Pillai's Travancore State Manual [Ex. B-19] which, as pointed out by Ojha, J., cannot be conclusive, particularly when the appellant himself contested this position in his grounds of appeal to the High Court. I would only like to add that notions such as these are very elusive and it is tempting to adapt them to other situations which bear only a superficial resemblance thereto. Constructed in a very literal sense, the position of every King or Ruler and, indeed, of every corporation sole or office holder can be approximated to that of as sthanamdar but these two sets of expressions are not interchangeable. In Manavikraman Raja v. CED [(1957) 32 ITR (ED) 1] an attempt was made to contend that the Zamorin of Calicut, who was admitted to be a sthanamdar, was as 'corporation sole' within the meaning of Section 7(4) of the Estate Duty Act, 1953, but this contention was repelled. Here we have the converse claim. Merely because the properties held by a person devolve by a rule of succession related to the position held by him, it does not follow that such person is a sthani

within the meaning of Section 7(3) of the Hindu Succession Act. As explained in Mulla's Hindu Law, (15th edn., p. 940) and the decisions referred to earlier, it is clear that three important incidents characterise as sthanams and its properties, which are absent here. In the first place, the powers of as sthani to alienate the corpus of the sthanam properties or to bind his successors by his debts are limited. The powers of respondent 1 as a sovereign ruler in these matters were unlimited. Secondly, when as sthanam was created by opulent and influential families, the members of the tarwad agreed to set aside for the Karnavan certain properties in order that he might keep up his social position and influence; such properties descended to the next head of the family and the other members of the tarwad had no rights therein except reversionary rights in case the sthanam ceased to exist. As will be seen later, when discussing the analogy of as marumakkathayam tarwad, there is nothing whatever on record to show that any properties of any tarwad to which the Rulers belonged had at the inception of the Rulership been set apart for the benefit of the Ruler. Thirdly, in the case of as sthanam, the sthani ceases to have any interest in the other properties of his tarwad because the tarwad has already allotted properties belonging to it to meet the needs of the sthani. There is nothing in the present case to show that the Ruler had no such interest in the other properties of the tarwad to which he belongs. The analogy of a sthani must, therefore, fail.

8. It will be seen from the above discussion that the appellant cannot succeed unless there is material to show that the properties held by respondent 1 and his predecessors had their origin in the tarwad to which they belonged. There is clearly no such material on record, as the precise origin of the Rulership of Travancore is lost in antiquity. Indeed, as rightly pointed out on behalf of respondent 1, this is perhaps the reason why there is confusion on this score in the pleadings of the appellant. The plaint alleges that respondent 1 was the Karnavan of a tarwad known as valiakottaram of which the appellant and defendants 1 to 34 were members. This becomes important because the main basis of the appellant's claim that the Ruler got some properties from the tarwad is the 'treaty' between Marthanda Varma and the Attingal Ranees. This does not help the appellant for two reasons. In the first place, *ex facie*, it shows that the institution of Rulership existed even anterior to the treaty and, consequently, that the ownership of properties by the Ruler did not have its origin in the family. Secondly, the treaty with the Attingal Ranees relates to what have been described as the Sreepadom properties. Respondent 1 claims that these properties were the only properties of a tarwad which may be called the 'Sreepadom Palace Tarwad' and, according to him, the properties of this tarwad had been completely partitioned under Ex. B-3 in 1971. There cannot be two tarwads known as valiakottaram and sreepadom comprising exactly the same members. If they were two different tarwads, the appellant should have said so, explained the nexus between them, clarified which of them is the impartible estate or sthanam and detailed the properties belonging to or acquired with the aid of the properties belonging to either and also demonstrated that only the latter was partitioned - wholly or partly - under Ex. A-3 but that the former was not. Far from doing this, the plaint has avoided all reference to Ex. B-3 and some use is sought to be made of it, when pleaded in reply, to claim that, even according to it, some of its properties still remain unpartitioned and should be made available for partition now. I shall later touch upon Ex. B-3 and the infirmities of the appellant's claims based thereon but I am referring to it here only to show that no evidence has been let in to show that any properties (other than those covered by the treaty) were vested in any ruler by as tarwad, which became available to it on the cessation of the rulership. It is this basic infirmity that vitiates the appellant's claim on each one of the analogies on which he bases his claim.

9. One of the factual aspects on which reliance is placed by the learned counsel for the appellant for claiming a family origin to the Ruler's properties is that the properties of the rulers have passed on from one ruler to the next even though the latter was not a direct lineal descendant. It is urged that, if the properties had been the personal properties of the ruler, they would have devolved on his

personal heirs on his death. In my opinion, this is not a very helpful argument. All the properties held by as monarch or ruler devolve by the rule of primogeniture, there being no distinction in this regard between his personal properties and those held by him as ruler. But this need not necessarily be lineal primogeniture. It could be general primogeniture, the successor to the rulership being determined according to some prevalent custom. The properties will devolve on the successor so decided upon. The fact that the successor is determined on the basis of marumakkathayam law no doubt causes the properties to devolve on the next Karnavan who succeeds to the rulership. But this does not necessarily lead to the inference that the properties held by the Ruler are the properties of as tarwad. The devolution is by succession from ruler to ruler and not one by way survivorship under the marumakkathayam law due to one karnavan taking the place of as deceased predecessor. This circumstance does not, therefore, in my opinion, establish the appellant's claim.

10. Sri Nambiar also suggested that, if the properties were the personal properties of the previous rulers and had devolved on respondent 1, they would be ancestral property in his hands. There is a fallacy in this argument. The doctrine of Hindu law that property inherited by a son from his father would be ancestral property in his hands cannot be applicable in this context. The devolution of properties here was from one monarch to his successor (who is not a son or as lineal descendant) and the successor would be as absolutely entitled to them as his predecessor and cannot become a limited holder.

11. Apparently realising these difficulties, Sri Nambiar contends that the trial court and High Court have committed an error - which we should not repeat - of placing the onus of proving all this on the appellant. He claims that it was sufficient for him to show that there was as tarwad and respondent 1 was its karnavan. Then, according to him, it follows, as a proposition of law, that all properties acquired by the karnavan, whether with or without the aid of any tarwad properties in his hands and whether by virtue of his being as Karnavan or by virtue of some absolute rights that he may otherwise have come to acquire, will all be the properties of the tarwad. We are unable to accept the appellant's contention. Under the general Mitakshara law applicable to Hindus there is no presumption that the properties acquired by any member of the family, even the karta, are joint family properties unless there is, in his hands, as nucleus of joint family property which could have been utilised for acquiring such properties or the properties are shown to have been acquired by him as karta for and on behalf of the family. This position was clearly stated by Venkataraman Ayyar, J. in *Shrinivas Krishnarao Kango v. Narayan Devji Kango* [(1955) 1 SCR 1 : AIR 1954 SC 379] Sri Nambiar, in this context, relied on certain observations made by Subba Rao, J. (as he then was) in *Achuthan Nair v. Chinnamu Amma* [(1966) 1 SCR 454 : AIR 1966 SC 411] to contend that the position under the marumakkathayam law is quite different. Said the learned Judge : (SCR p. 458)

"Courts have recognized the difference between as joint Hindu family under the Hindu law and as tarwad under the marumakkathayam law in the context of acquisition of properties and have adopted different principles for ascertaining whether as property acquired in the name of a member of a family is as joint family property or the self-acquired property of the said member. Under Hindu law, when a property stands in the name of a member of as joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises as presumption that it is as joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law. But the said principle has not been accepted or applied to acquisition of properties in the name of a junior member of a tarwad (anandravan). It was held that there was no presumption either way; and that the question had to be decided on the facts

of each case; see *Govinda Panikker v. Nani* [ILR (1913) 36 Mad 304 : 21 IC 211], *Dharnu Shetti v. Dejjamma* [AIR 1918 Mad 1367 : 5 MLW 259 : 38 IC 292], *Sooppiadath Ahmad v. Irimbantakath Manha Mammad Kunhi* [AIR 1926 Mad 643 : 23 MLW 575 : 96 IC 86] and *Thatha Amma v. Thankappa* [AIR 1947 Mad 137 : (1946) 2 MLJ 175 : 59 MLW 565]. But it is settled law that if a property is acquired in the name of the karnavan, there is as strong presumption that it is a tarwad property and that the presumption must hold good unless and until it is rebutted by acceptable evidence : see *A. Chathu Nambiar v. A. Sekharan Nambiar* [AIR 1925 Mad 430 : 47 MLJ 695 : 85 IC 1050], *Sooppiadath Ahmad v. Irimbantakath Manha Mammad Kunhi* [AIR 1926 Mad 643 : 23 MLW 575 : 96 IC 86] and *Thatha Amma v. Thankappa* [AIR 1947 Mad 137 : (1946) 2 MLJ 175 : 59 MLW 565].

Sri Viswanath Iyar points out that, despite these observations, the Court, in the above case, proceeded to consider the facts of the case and to point out that the karnavati and the junior member in that case were in possession of considerable tavazhi properties from the income out of which the disputed properties could have been purchased. It shall, however, proceed on the basis that there is such a presumption in the case of an ordinary tarwad. It is plain, I think, that no such presumption can operate were the karnavan, being a sovereign ruler, acquires properties in exercise of his sovereign rights. Neither the family nor any member of the family could dream of putting up a claim, so long as he is the ruler, that as the properties had been acquired by a member of the family they belong to the family. It would not be correct to say that they have such a right by that the right remains dormant so long as the ruler is sovereign and will revive on the ruler ceasing to be a sovereign. This is, indeed, forcefully brought out by the observations of Bhagwati, J. (as His Lordship then was) in *Meramwala Bhayala v. Ba Shri Amarba Jethsurbhai* [ILR (1968) 9 Guj 966], which have been extracted in the judgment of my learned brother Ojha, J. It is suggested that the observations in that case run counter to the catena of decisions in the case of impartible estates relied on by Sri Nambiar but this is not correct. If the estate dealt with in that case had been an ordinary imperishable estate, the decision should perhaps been quite different. But once the distinction is borne in mind that the estate was a sovereign estate and its chief a sovereign ruler, the real import of the decision becomes clear. It establishes beyond doubt that the acquisitions by a sovereign ruler cannot be claimed to be joint family property.

12. But, even proceeding on the basis that in a marumakkathayam family there is a presumption that the properties acquired by the karnavan would be joint family properties, that a Ruler is in no better position than an ordinary karnavan and that a nucleus of joint family properties was provided by the Attingal Ranees, I think that any presumption that the properties presently in dispute were joint family properties stands more than rebutted by the other circumstances of the case and the conduct of the parties which are clinchingly against the possibility of there being any tarwad properties as alleged now. In the first place, the properties in suit are alleged to belong to a tarwad known as valiakottaram and it cannot be just assumed, as contended by Sri Nambiar, that this is identical with the sreepadom tarwad. Secondly, the 'partition deed' of July 13, 1971 (Ex. B-3), which is admittedly a partition deed in respect of the sreepadom properties, clinches the issue. It is settled law that, when there is a partition of a joint family, there is a presumption that the partition is full and complete, There is no room for thinking that any of the joint family properties had been left out of the partition, As pointed out by Ojha, J., clause 19 of this partition deed is only a provision *ex abundanti cautela* and does not lead to an inference that there were other sreepadom properties which had been left out of the partition. Much less can there be any inference that there were properties other than the sreepadom properties belonging to a different valiakottaram tarwad. It can hardly be suggested that, at the time of this partition the other members of the tarwad were unaware of the existence of the properties presently in dispute or that, due to some oversight, such extensive properties had been

left out from inclusion in the partition. Sri T. S. Krishnamurthy Iyer, appearing for the State, pointed out that, as early as November 1, 1961, Defendant 19 gave public notice in the newspapers that valiakkottaram properties belonged to the members of the ruling family (though it does not refer in terms to a tarwad) and that respondent 1 was not competent to alienate them. There is a letter dated September 24, 1964 from the Government of India addressed to Defendant 13 refusing consent to her to sue respondent 1 but stating that it had been suggested to respondent 1 that he may think of having a partition effect of "the sreepadom properties". Again, on August 11, 1969, Defendant 12 issued a public advertisement challenging a proposed alienation by respondent 1 of a property known as Satelmond Place and claiming that all the properties taken by respondent 1 under the convenient with the Government of India and "all other ancestral properties, belong to the family of which respondent 1 was only a karnavan. The non-inclusion of these properties or even a mention thereof in the partition deed is significant. Sri Nambiar seeks to get out of this situation by urging that in 1971 a marumakkathayam tarwad was impartible and that they had to be content with a partition of such of the properties as respondent 1 was willing to have partitioned and there was no way of their enforcing a claim of partition of all the properties belonging to the tarwad. But this is not a satisfactory explanation. Though tarwads were impartible under customary law, they were made partible by a single or two-thirds majority of their adult members by the Marumakkathayam Act (Act 22 of 1933) and completely partible at the instance of any individual member by the Marumakkathayam (Amendment) Act (Act 26 of 1958). But even assuming that the royal family of Travancore was outside the scope of these legislations because of the Travancore Kshatriya Regulation, it is curious that individual members, having come out of their shell to challenge alienations but the erstwhile ruler, took no further steps in the matter. If they considered it imprudent, for some reason, to take legal action to challenge the alienations which were being made by respondent 1 from 1961 onwards, they would certainly have got incorporated in the document of 1971 some reference to the other tarwad properties or at least some indication that only some of the tarwad properties (the partition of which were acceptable to respondent 1) were being partitioned by that document in case their claims in this regard were serious. Thirdly, the conduct of the other members in the proceedings under the Land Reforms Act is also interesting. The Land Board had issued notices under the Act to all individual members including the plaintiff, Defendant 3 and Defendant 12 besides a general notice published in the newspapers. While respondent 1 claimed that all the properties belonged to him individually, Defendant 3, Defendant 13 and some others did claim a share in what were alleged to be "tarwad properties now controlled but he Maharaja". The claims of the letter were rejected by the Land Board and they preferred civil revisions to the High Court. The claims were vital in those proceedings, as, if accepted, a substantial extent of lands could have been saved from being declared surplus. Yet a perusal of the proceedings shows that the claims agitated there were totally different : they were much restricted and contained no reference to the present fundamental issue. Indeed, it is entertained to see that defendant 12 claimed that the Satelmond Palace had been acquired but her by way of grant from an earlier ruler, the last Shri Moolam Thirunal Maharaja. The present plaintiff sought to reopen the Board's proceedings by making an application under Section 85(9) of the Land Reforms Act lied after a civil revision petition preferred by him from the Board's order had been dismissed on grounds of delay, If indeed, the appellant and the other members had been serious but their claim that these were all tarwad properties, the real battle would have been fought in greater earnest in the proceedings under the Land Reforms Act and not relegated to a suit to be filed later by the plaintiff taking advantage of the fact that he was minor on the date of the partition. Fourthly, some of the properties and the income therefrom were returned for assessment, and assessed, to wealth tax and income tax only by respondent 1. If, as is now contended, the other members of the family become tenants-in-common in respect of the suit properties on June 17, 1956, they should also have taken steps to file returns or

get assessments made on themselves at least after that date. In fact, respondent 1 sought to contend, those proceedings, that at least the sripadom properties should be assessed separately in the hands of an association of persons and sought the cooperation of Defendant 3 which was not forthcoming (Ex. A. 23). Lastly, there is the evidence in the form of settlement registers, maintenance records, state budget papers, the proclamation and circular referred to by Ojha, J. I would not attach conclusive weight to these either way as they only represent entries made at the instance of respondent 1. But they have some significance. Some of them relate to a period long anterior to the political upheavals that eventually put an end to the sovereignty of respondent 1. It will be appreciated that if the properties had been family properties and had been acknowledged by the Ruler to be such (as is sought to be made out on the basis of the proclamation etc.) the entries would have been in the name of the tarwad or the senior Rani. The entries as made, therefore, lend some support to the contention that the Ruler did not recognise the properties as the properties of the family and considered them to be his own.

13. For the reasons given above, I agree with brother Ojha, J. that the suit properties have not been shown to be properties belonging to an undivided family or marumakkathayam tarwad and hence partible. On the other hand, they were, and were also treated as, the personal properties of the Ruler. In view of this conclusion, several of the other questions debated before us do not arise. I shall, however, touch upon some of them for the sake of completeness.

14. Sri Nambiar strenuously contended that though respondent 1 was a sovereign and independent Ruler he could not have appropriated the properties of the family as his own. The decisions in *Visweshwar Rao v. State of M.P.* [1952 SCR 1020 : AIR 1952 SC 252, 296] *Jagannath Behera v. Raja Harihar Singh* [1958 SCR 1067 : AIR 1958 SC 239], *Sudhanbhu Shekhar Singh Singh Deo v. State of Orissa* [(1961) 1 SCR 779 : AIR 1961 SC 196 : (1961) 41 ITR 743] and *Kunwar Shri Vir Rajendra Singh v. Union* [(1969) 3 SCC 150 : (1970) 2 SCR 631 : AIR 1970 SC 1946] cited by him are not relevant on this issue. They only hold that, after a ruler has ceased to be a sovereign, the properties recognised by the covenants of accession and merger as his personal properties are in no better position than the properties of any other citizen and can be made the subject matter of legislation or litigation like any other such property. They do not relate to the rights of a sovereign qua properties of others when he is a sovereign. Sri Nambiar then referred to observations in *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh* [1952 SCR 889 : AIR 1952 SC 252] to urge that the doctrine of eminent domain has always carried with it an inherent limitation that no subject can be deprived of his property without payment of just compensation and observations in *Virendra Singh v. State of U.P.* [(1955) 1 SCR 415 : AIR 1954 SC 447] to support the contention that no sovereign can exercise an "act of State" against his own subject. The observations first referred to summarised the English Common Law, the continental doctrine and their subsequent American adoption. The latter case touched upon, but did not decide, the scope of the rights of a citizen against the State in the pre-Constitution era. These decisions are not of any direct assistance. On the other hand counsel for respondent 1 cited a catena of decisions to show that a monarch's word was law and that all acts of a sovereign ruler, irrespective of whether they are dubbed as legislative, executive or judicial were beyond question by any authority in the State. These decisions have been referred to by Ojha, J. in his judgment and need not be discussed again. In face of these decisions, it is difficult to agree that there were any limitations on the sovereignty of the Ruler of Travancore so long as he was the Ruler or, in the state of absolute monarchy that prevailed then, the doctrine that the ruler could not take away the property belonging to any subject without payment of compensation or that he could not be an absolute despot if he chose to and deal with the properties of his citizens as he liked.

15. I should, however, like to touch upon certain decisions of this Court which were referred to in the course of arguments. In *State of Gujarat v. Vora Fiddali Badruddin Mithibarwala* [(1964) 6 SCR 461 : AIR 1964 SC 1043] a Constitution Bench of this Court held, by a majority, that a "tharao" issued by a Maharaja could be considered to be law for the purposes of Article 372 of the Constitution. This principle was followed in *Rajkumar Narsingh Pratap Singh Deo v. State of Orissa* [(1964) 7 SCR 112 : AIR 1964 SC 1793], *State of M.P. v. Lal Rampal Singh* [(1966) 2 SCR 53 : AIR 1966 SC 820] and *State of M.P. v. Lal Bhargavendra Singh* [(1966) 2 SCR 56 : AIR 1966 SC 704]. The effect of these decisions was summarised in *Maharaj Dhirja Himmathsinghji v. State of Rajasthan* [(1987) 1 SCC 52]. In that case the sovereign State of Jodhpur merged with other States on April 7, 1949. On the same date an Ordinance was promulgated by the united State providing for the continuous of all laws in force in the covenanting States. The question arose whether an order passed by the former Ruler of Jodhpur in 1946 directing the payment of an annual allowance to this sons from the date of their birth to the date of their majority would be a "law" within the meaning of the ordinance. The High Court and Supreme Court answered the question in the negative. The Supreme Court observed : (SCC p. 56, para 7)

"The High Court negated this contention relying on the law enunciated by this Court in a catena of decisions. The view taken in the aforesaid decisions in substance was that every order passed by a Sovereign Ruler was not 'law' inasmuch as it was not necessarily an order passed in the discharge of its legislative function. The Ruler of the Sovereign State, when he passes an order, may be acting in any one of the three spheres namely, legislative sphere, executive sphere or the judicial sphere, though all the three capacities were combined in him. All the same, only that order would constitute 'law', which was passed in exercise of the powers of the Sovereign in the legislative sphere, and none other. An order passed by the Sovereign in his executive capacity, but it is not the result of a legislative process, and if it is not calculated or designed to bind as a rule of conduct, cannot be characterized as a 'law'. If the result of the order was no more than to bring about a contract, or a grant or a gift, it would not constitute 'law'. The High Court was right in taking the view that having regard to the language of the order itself, it appeared to be an executive order conferring a grant (or a gift) on the plaintiffs. It did not have the characteristics of a legislative measure and did not constitute a law inasmuch as it failed to pass the earlier mentioned tests evolved by this Court in the matter of *State of Gujarat v. Vora Fiddali* [Civil Appeal No. 226 of 1965, decided on November 20, 1968 (SC)] and *Rajakumar Narsingh Pratap Singh Deo v. State of Orissa* [(1964) 7 SCR 112 : AIR 1964 SC 1793].

16. Sri Nambiar contended that the above decisions must be considered to have whittled down the authority of some of the decisions relied upon for respondent 1 and referred to by Ojha, J. I am unable to agree. These decisions arose in the context of the question as to whether certain acts of the erstwhile rulers would be binding on the successor States of the Union as "law" the continuance of which until altered legislatively is postulated by a relevant statutory provision or Article 372 of the Constitution. In that situation, while certain decisions referred to by group of decisions referred to by Sri Nambiar placed a narrower interpretation. But this principle does not apply in the present context where the question is whether an erstwhile subject will be entitled to challenge any act of his former sovereign on the ground that it would not bind him. The answer to this question must be in the negative. This conclusion is reinforced by the unreported decision of 1968 in C.A. 226/65 (*Mahant Hardial Singh v. Ajmer Singh* [Civil Appeal No. 226 of 1965, decided on November 20, 1968 (SC)]) referred to by my learned brother. I would hold, therefore, that if the properties, though family properties, had been treated by the Rulers as their personal properties, the family and its members cannot get over that situation and challenge what was done by the erstwhile Ruler in the exercise of his sovereign power.

17. The other decision to which I would like to refer is that in *Vishnu Pratap Singh v. State of M.P.* [1990 Supp SCC 43] to which I was a party. In that case, a house property had been shown by the Ruler in the list filed with the Rajpramukh under a covenant of agreement forming a union of States as his private property. He gifted the property subsequently on August 25, 1948. The State of M.P., which succeeded the Ruler eventually, was held disentitled to challenged the gift made by the Ruler at a point of time when he was a sovereign Ruler, though the State claimed that, sub-sequently, the Ruler had shown the property as State property in a list submitted to the Government of India in pursuance of a like covenant of September 1949. This decision upholds the absolute right of a ruler to dispose of, at his will, even properties which may actually belong to the State and also implicitly acknowledges his right to take it back from the donee at his pleasure (though in fact he did not been exercise the latter power in that case). It is of course patent that he could not exercise either of these powers after he ceases to be a sovereign ruler.

18. I agree with Sri Nambiar that the Ruler's absolute powers disappeared when respondent 1 ceased to be Ruler. If some properties did not belong to him immediately before the appointed date, respondent 1 could not, by a mere declaration under the covenant, make it his personal individual property. But as I have come to the conclusion that they were the personal properties of the Ruler as on the appointed day, this aspect does not arise for further consideration.

19. There was also a good deal of discussion before us before us about the effect of the various legislations. I should like to touch upon these points briefly. Taking upon the Hindu Succession Act, 1956, it is pointed out that, originally, Section 5 of the Bill had excluded the application of the Act, under clause (iii), to any property succession to which is regulated by a number of enactments in force in the erstwhile State of Kerala including inter alia, the Madras Marumakkathayam Act (Act 22 of 1933) and the Travancore Kshatriya Regulation (7 of 1108) and, under clause (iv), to "any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment". These latter words were wide enough to exclude the applicability of the Act to the properties of the Travancore Rules. However, the Joint Select Committee which considered the Bill was not in favour of such a general exemption and the statue, as eventually enacted, contained a much more restricted provision. Section 5(ii) of the Act excluded the applicability of the Act only to "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". There being no such convent, agreement or enactment in the present case, it is argued, the Hindu Succession Act will apply. One of the provisions of the Act is Section 4 which, insofar as is relevant for our purposes, reads :

"4. Overriding effect of Act. - (1) Save as otherwise expressly provided in this Act, -

(a) any text, rule, or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act."

As pointed out by this Court in *Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj Pratap Deo* [(1981) 4 SCC 613 : (1982) 1 SCR 417], the effect of the provision is that succession to impartible estates other than those mentioned in clauses (ii) and

(iii) of the section is governed by the Act and in those cases the rule of primogeniture stands abrogated. So also, it is said, if the suit properties are treated as tarwad properties, the custom of devolution to the next karnavan of the family would be inconstant with the provisions of Section 7(1) of the Act. Or, again, if the properties are treated as those of a sthanamdar the custom of succession to the next sthanee would be inconsistent with the provisions of Section 7(3) of the Act. The question, however, is : assuming that the analogies are accepted as valid, when does the custom cease to operate ? Can it be said, as contended for by Sri Nambiar, that the properties became partible on June 17, 1956 when the Hindu Succession Act came into force or only on July 20, 1991 when respondent 1 passed away and the succession to his properties opened. In support of his contention Shri Nambiar refers to *Sundari v. Laxmi* [(1980) 1 SCC 19 : (1980) 1 SCR 404] as interpreted by the Gujarat High Court in *Pratapsinhji N. Desai v. CIT* [(1983) 139 ITR 77 : 1982 Tax LR 1935 (Guj)] and the Patna High Court in *CIT v. Maharaja Chintamani Saran Nath Sah Deo* [(1986) 157 ITR 358 : 1985 Tax LR 257 (Pat)] [overruling *CIT v. Maharaja Chintamani Saran Nath Sah Deo* [(1982) 133 ITR 658 : (1980) 15 CTR (Pat) 300] and differing from *CIT v. U. C. Mahatab, Maharaja of Burdwan* [(1981) 130 ITR 223 : (1981) 85 CWN 203]]. We have examined these decisions, *Sundari v. Laxmi* [(1983) 139 ITR 77 : 1982 Tax LR 1935 (Guj)] dealt with the question of a succession that opened out after June 17, 1956 and there is nothing in this decision which would support the conclusion that the customary rule of primogeniture or survivorship would automatically cease on June 17, 1956. Section 4 the Act, in the words of *Sundari v. Laxmi* [(1980) 1 SCC 19 : (1980) 1 SCR 404] (SCC p. 24, para 9), "gives overriding application to the provisions of the Act and lays down that in respect of any of the matters dealt with the Act all existing laws whether in the shape of enactment or otherwise which are inconsistent with the act are repealed. Any other law in force immediately before the commencement of this Act ceases to apply to Hindus insofar as it is inconsistent with the provisions contained in the Act." In other words, while the Act may have immediate impact on some matters such as, for e.g., that covered by Section 14 of the Act, its impact in matters of succession is different. There the Act only provides that, in the case of any person dying after the commencement of the Act, succession to him will be governed not by customary law but only by the provisions of the Act. This is, indeed, clear if we refer to the terms of Section 7(3) which get attracted only when a sthanamdar dies after the commencement of the Act. There is, therefore, no reason to hold that the appellant's entitlement to sue for the partition of the properties arose on June 17, 1956. Indeed, if that had been the position, the appellant would not have allowed more than a decade to go by before instituting the suit for partition, particularly in view of the controversy that had come to the fore as early as 1961.

20. Had the position stood controlled only by the provisions of the Hindu Succession Act, perhaps the appellant's right to claim petition would have matured only when respondent 1 passed away recently in 1991. However, the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976) put an end to all Hindu joint families in Kerala with effect from December 1, 1976. The provisions of this legislation have been interpreted by this Court in *Rama Verma Bharathan Thampuran v. State of Kerala* [(1979) 4 SCC 782 : (1980) 1 SCR 136 : AIR 1979 SC 1918] an unsuccessful attempt for a review of which is reported as *Palace Administration Board v. Rama Verma Bharathan Thampuran* [1980 Supp SCC 234 : (1980) 3 SCR 187]. One interesting question

that arises in this context is this. Section 2 defines "joint Hindu family" to mean any Hindu family with community of property and to include all tarwads and tavazhis governed by various Kerala enactments, one of which is the Travancore Kshatriya Regulation, 1108 which was repealed by this Act. However, unfortunately, the Travancore Royal family was excluded from the purview of the Travancore Kshatriya Regulation. The Royal family of Travancore was therefore not a tarwad or tavazhi governed but the 1108 Regulation and would not, therefore, come within the inclusive part of the definition of a 'joint family' in the 1976 Act. However, the first part of the definition is wide enough include all Hindu joint families, the only exception being the Cochin Royal family in respect of which a special provision has been made in Section 8 of the Act. There can therefore be no doubt that, on December 1, 1976, the family came to an end and the family members became tenants-in-common in respect of the family property. However, this issue need not be probed further in view of our conclusion that the suit properties did not belong to a Hindu undivided family or a marumakkathayam tarwad.

21. Sri Nambiar made a point that at least the sreepadom properties situated outside Kerala should be held to be partible. He bases his contention on the terms of the proclamation issued by respondent 1 on August 10, 1947. The proclamation starts with a preamble in the following words :

"Whereas Our Ancestor and Ourselves have, as devotees of Sri Padmanabha, been ruling over the State of Travancore during many centuries and Our sole concern has been the welfare and happiness of Our subjects whom we have been associating with Us and propose further to associate with Us in the administration of the State :

And Whereas it has become necessary, in the events that have happened, to regulate the succession to the Throne of Travancore, to determine other questions incidental thereto, to regulate and fix the Civil List of Ourselves and the members of Our Royal Family and to make provision for certain other purposes :

And Whereas in respect of succession, adoption, marriage, and other matters, Our Royal Family has, from time immemorial, recognised and observed and Marumakkathayam Law as modified by customs and usage in Our Royal Family :"

and proceeds to declare, in para 9 :

"9. All properties movable and immovable, acquired in the name of Our Dewan or on behalf of our Government in any place outside Travancore shall be treated as Our Personal properties and shall be at the disposal and for the sole use of ourselves and of the members of our Royal Family."

22. It is suggested that the direction that all these properties "shall be at the disposal and for the sole use of ourselves and of the members of our Royal Family" bears out the contention that the Ruler recognised that these were family properties. I am unable to agree. The Proclamation was issued by the Ruler a few days before the declaration of India's independence. Being a Royal proclamation it uses the plural to denote the Ruler. Its purpose, for whatever it was worth, was to declare that the specified properties acquired out of State funds outside the territories of Travancore, were his personal properties and would be available for the use of the Ruler and the members of the Royal family. The words "at the disposal of" in the context only permit a right of user and do not invest a right of disposal of the properties by the other members of the family. In any event, this

Proclamation was amended on March 23, 1948 by the issue of another Proclamation which substituted the following Section 9 in place of the earlier Section 9 :

"9. Immovable properties in Courtallam, Tinnevely District, in Ootacamund and Kotagiri on the Nilgiris, in Adyar, Madras, and in New Delhi (all houses and grounds), purchased and improved for the use and benefit of the Sovereign and the members of the Royal Family, together with the movable properties therein, shall be the personal property of Us and Our Successors and shall be at Our disposal."

This was also a pre-accession proclamation and leaves no doubt that, at least in the mind of the Maharaja, there was no doubt that these were his personal properties. The claim, on the basis of the proclamation, that at least the properties outside the territory of the erstwhile Travancore State would be partible, is therefore, not tenable. Indeed this contention is inconsistent with another, apparently, alternative, contention put forward by Sri Nambiar that these proclamations manifest the intention of respondent 1 that properties outside Travancore will also have the same character as those inside the State.

23. Sri Nambiar could not dispute that the case presently made out on behalf of the appellant was not pleaded in these terms in the trial court or High Court. His submission, however, was that he was adducing no new facts but was only seeking the application of first principles and precedents to admitted facts, which the trial court and High Court had failed to do. He was only, he said, meeting the case of respondent 1, on the facts admitted by him, on the basis of legal contentions which may have not been put forward in these precise terms earlier. I agree with Ojha, J. that the case is not a simple as that. The appellant has come to court seeking partition of certain properties alleging them to be properties of a tarwad of which he was a member. He must plead and prove the exact composition of the tarwad as well as the nature and mode of acquisition of properties and establish now the properties fall to be treated as the properties of the tarwad. As I have already mentioned, I do not think that there are many presumptions which come to the rescue of the appellant in this matter. An element of uncertainty has been introduced because at some stage in this history of the palace of Travancore, the Ruler entered into an agreement with the Attingal Ranees under which the mode of succession to the throne was defined and the management of certain properties belonging to the sreepadom tarwad was assumed by the Ruler. But this cannot lead to the conclusion that all the properties held by the Ruler were held by him only as karnavan of the family. I have also earlier pointed out that the conduct of the other members of the family, the partition of 1973 and several other circumstances militate against the state of affairs pleaded by the appellant. His pleas cannot be taken as pure contentions of law. They are dependent, for their acceptance or otherwise, on various facts in respect of which no property foundations have been laid. It is, therefore, impossible to accept the legal contentions urged by Sri Nambiar on the basis of an interpretation of facts that will fit in with these contentions put forward for the first time before this Court.

24. In the result, I agree with Ojha, J. that the appeals have to be dismissed. I have been tempted to add a separate judgment only in view of the interesting questions raised and the historical background in which they arise.

OJHA, J. (for Fathima Beevi, J. and himself) –

These two appeals by special leave have been preferred against the judgment dated October 8, 1982 of the High Court of Kerala in A.S. No. 210 of 1979. Appellant in Civil Appeal No. 534 of 1983 instituted Original Suit No. 253 of 1976 against the since deceased respondent 1 (who shall

hereinafter for the sake of convenience be referred to as the appellant and respondent 1 respectively) for partition and rendition of accounts in the Court of Sub ordinate Judge, Trivandrum. Respondent 1 till the integration of the States of Travancore and Cochin on July 1, 1949 was the Ruler of the erstwhile State of Travancore and thereafter until the formation of the State of Kerala on November 1, 1956 he was the Rajapramukh of the State of Travancore-Cochin. The suit was instituted by the appellant on the assertion that defendants 1 to 34 (respondent 1 being defendant 1 in the suit) were members of the Travancore Royal family. This family according to the appellant was an undivided marumakkathayam tarwad governed by marumakkathayam law as modified by custom and usage in respect of succession, inheritance and some other matters and that respondent 1 had been managing the properties of the tarwad in his capacity as its karnavan. According to him the properties in suit being tarwad properties were liable to be partitioned among the appellant and defendant 1 to 34 on per capita basis and the appellant was entitled to a 1/35 share. Some of the properties had been alienated by respondent 1 but the appellant in place of challenging such alienations preferred to seek relief for accounting with regard to the proceeds of the alienations and for division of those proceeds among the members of the tarwad. He also prayed for a decree with regard to his share in the income of the tarwad properties which according to him were received by respondent 1 as karnavan. Some of the landed properties had been the subject matter of the ceiling proceedings under the Kerala Land Reforms Act, 1963. In those proceedings accepting the properties to be of respondent 1 the Kerala Land Board, Travancore by its order dated February 15, 1972 declared excess lands liable to be surrendered to the government. Against the aforesaid order the appellant filed a revision before the High Court which was dismissed on the ground of being belated. Thereupon the appellant made an application under Section 85(9) of the Land Reforms Act before the Land Board for setting aside its order dated February 15, 1972 aforesaid. This petition was rejected by the Board on August 7, 1978 and possession over the land declared to be excess was resumed by the government. Against the order rejecting his application under Section 85(9) the appellant filed a revision before the High Court which was disposed of on September 11, 1979 reserving liberty to the appellant to move for relief under Section 85(9) on the basis of the decision in A.S. No. 210 of 1979 as and when it was given. As noticed earlier A.S. No. 210 of 1979 was decided by the High Court on October 8, 1982 by the judgment under appeal. The case of the appellant even with regard to the properties which were the subject matter of the ceiling proceedings was that since they were tarwad properties they were to be treated as belonging to different families which constituted independent units in the tarwad and on that basis the tarwad was entitled to retain much larger area than the area which respondent 1 was found entitled to retain on the basis that these properties belonged to him.

25. Respondent 1 contested the suit and filed a written statement. Even though it was not disputed that the appellant and defendants 1 to 34 were members of a family it was denied that they were members of an undivided marumakkathayam tarwad and that respondent 1 was the karnavan thereof. His case was that defendants 3 and 12 who were the two senior female member in the family and were junior and senior Maharanis of Travancore respectively along with their descendants formed a tarwad known as Sreepadom (the tarwad set up by the appellant in his plaint was, according to him, known as Valiakottaram). The case of respondent 1 further was that this Sreepadom tarwad known as the Royal family of Travancore had its own properties which were divided per stripes on July 13, 1971 in two equal halves between the branch of defendant 3 on the one hand and of defendant 12 on the other. It was also asserted that the branch of defendant 12 made a further partition in which the appellant who was a member of that branch was given an individual share. According to respondent 1 after the partition of the properties of Sreepadom on July 13, 1971 there ceased to be any undivided tarwad. He asserted that the properties in suit belonged to him

absolutely who before the integration of the States of Travancore and Cochin was the sovereign Ruler of Travancore and in that capacity held all the properties including the properties in suit, there being no distinction at that time between the properties of the Ruler and that of the government. The properties in suit which according to respondent 1 were held by him as sovereign as his own were retained by him for himself absolutely when he surrendered the sovereignty of the State. Respondent 1 further asserted that he was competent to deal with these properties in any manner as he liked and his action in this behalf was beyond challenge. Subsequently, an additional written statement was also filed by respondent 1 wherein it was inter alia pleaded that the suit itself was not maintainable inasmuch as the Royal family of Travancore even though governed by the marumakkathayam law as modified by custom and usage was not governed by any statute and no member could ask for a compulsory partition of the properties of a family governed by marumakkathayam law. Another written statement was filed by defendant 3 who was the mother of respondent 1 wherein pleas identical to those raised by respondent 1 were taken. Defendant 12 also filed a written statement wherein inter alia she claimed absolute right over Item 10 of Schedule A to the plaint on the basis of a grant by His Highness the late Sreemoolam Thirunal who was at the time of the grant the Ruler of the erstwhile Travancore State. Some of the defendants who were the descendants of defendant 12 also filed written statements supporting the claim of the appellant except with regard to Item 10 aforesaid which even according to them belonged absolutely to defendant 12. A written statement was filed also by defendants 32, 33 and 34 supporting the case of the appellant with the exception that defendant 32 took a further plea that she having married on May 14, 1952 under the Special Marriage Act, 1872 became divided in status from the rest of the members of the tarwad and was consequently entitled to a 1/6 share in all the property of the tarwad as at the time of her marriage there were only six members in that tarwad. The guardian of defendants 6, 7 and 10 who were minors also filed a written statement supporting the case of respondent 1. The State of Kerala which had been impleaded in the suit as defendant 35, in its written statement supported the order passed by the Kerala Land Board in the ceiling proceedings.

26. The trial court framed necessary issues arising out of the pleadings of the parties and after giving them an opportunity of producing evidence both oral and documentary in support of their respective pleas dismissed the suit. It specifically held that the appellant and defendants 1 to 34 did not belong to an undivided marumakkathayam tarwad and that respondent 1 was not karnavan of any such tarwad nor were the properties in suit tarwad properties as claimed by the appellant. It also repelled the claim of defendant 12 that Item 10 of Schedule A to the plaint was her absolute property.

27. Aggrieved by the decree of the trial court the appellant preferred A.S. No. 210 of 1979 in the High Court whereas two cross-objections were filed, one by defendant 12 and other by defendants 32 to 34. The appeal as well as the cross-objections were dismissed by the High Court. Against this decree of the High Court the appellant has preferred Civil Appeal No. 534 of 1983 whereas defendants 32 to 34 have preferred Civil Appeal 535 of 1983. Yet another civil appeal being Civil Appeal No. 536 of 1983 was preferred by defendant 12. Since, however, defendant 12 died during the pendency of that civil appeal and no consequential steps were taken, the said appeal by order dated August 16, 1991 passed by this Court was abated.

28. Since it has not been seriously challenged before us that respondent 1 was a sovereign ruler of Travancore till July 1, 1949 we find it unnecessary to dwell upon the question as to how sovereignty came to be vested in the rulers of Travancore. As was agreed by the parties before the High Court as also before us the crucial question for determination is about the title of the appellant over the properties in suit. In other words, in the context of the pleadings of the parties the question which

falls for consideration is whether the family of the appellant and defendants 1 to 34 was an undivided marumakkathayam tarwad known as Valiakottaram governed by marumakkathayam law as modified by custom and usage in respect of succession, inheritance and some other matters and the properties in suit belonged to this tarwad and respondent 1 had been managing the same as its karnavan as alleged by the appellant or whether these properties were held by respondent 1, as asserted by him, as his personal properties carved out by him as such in his capacity as the sovereign ruler of Travancore and were retained by him as his personal properties even after he surrendered his sovereignty as indicated in the inventory furnished to the Government of India in pursuance of the covenant dated May 27, 1949 (Ex. A-2) and accepted by the Government of India vide Ex. A-3.

29. Before advertng to this question, we find it appropriate at this stage to deal with a legal plea raised by learned counsel for the appellant about the nature and extent of authority of respondent 1 over the properties in suit in his capacity as the sovereign ruler of Travancore. According to learned counsel for the appellant since the properties in suit belonged to a tarwad and respondent 1 was managing them as karnavan, as asserted by the appellant, the mere fact that he was also the sovereign ruler of Travancore was of little significance. He also urged that since respondent 1 was not only a karnavan of tarwad but also the sovereign ruler of Travancore, the properties in suit were made impartible in order to maintain his status but after he ceased to be ruler of Travancore, these properties even though were impartible earlier became partible. Reliance was placed in this behalf on certain statutory provisions including the Hindu Succession Act to which reference shall be made later. He also placed reliance on certain decisions dealing with the nature and legal incidents of an impartible estate. We propose to consider these decisions first to clear the legal ground based thereon.

30. The first decision to which reference was made by learned counsel for the appellant is the Privy Council decision in the case of Baijnath Prasad Singh v. Tej Bali Singh [AIR 1921 PC 62 : 48 IA 195 : 23 Bom LR 654]. In this case it was reiterated that when a custom is found to exist it supersedes the general law which however still regulates all beyond the custom. It was also held that the zamindari which was in dispute in that case being the ancestral property of a joint family though impartible the successor fell to be designated according to ordinary rule of mitakshara law and that the respondent in that case being the person who is a joint family would, being the eldest of the senior branch, be the head of the family was the person designated in this impartible raj to occupy the gaddi. Insofar as the proposition that when a custom is found to exist it supersedes the general law which, however, still regulates all beyond the custom is concerned no exception can be taken to it. In regard to other proposition it may be pointed out that the dispute in that case was about the succession to the zamindari of Agori Barhar as is apparent from the very first sentence of the judgment even though the ancestors of the parties were referred to as Rajahs. It was apparently not a case of a sovereign ruler. The other cases on which reliance was placed in this behalf are these :

In Shiba Prasad Singh v. Rani Prayag Kumari Debi [AIR 1932 PC 216 : 59 IA 331 : 36 CWN 1046] it was held : (AIR pp. 228-23)

"Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have : (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility as laid down in.... To this extent the general law of the Mitakshara has been superseded by custom, and

the impartible estate, though ancestral, is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right therefore still remains, and this is what was held in Baijnath case [AIR 1921 PC 62 : 48 IA 195 : 23 Bom LR 654]. To this extent the estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birthright of the senior member to take by survivorship still remains. Nor is this right a mere spes successions similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced and surrendered. Such being their Lordships' view, it follows that in order to establish that a family governed by the Mitakshara in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. It is not sufficient to show a separation merely in food and worship. Admittedly there is no evidence in this case of any such intention. The plaintiffs therefore have failed to prove separation, and the defendant is entitled to succeed to the impartible estate. Being entitled to the estate, he is also entitled to he improvements on the estate, being the immovable properties specified in items 9 to of Sch. Kha. These improvements, in facts, form part of the impartible estate."

31. The question in that case related to the right of succession to an estate and other properties left by Raja Durga Prasad. This case too does not appear to be a case of a sovereign ruler as is apparent from the recital of facts inter alia to the effect that on August 27, 1915 Raja Durga Prasad made a will whereby he purported to dispose of some of the properties in dispute and that the will was governed by the Hindu Wills Act, 1870 and several sections of the Indian Succession Act, 1865, were thereby made applicable to wills governed by that Act. Had it been a case of a sovereign ruler neither of these Acts would have been applicable to him.

32. In CIT v. Dewan Bahadur Dewan Krishna Kishore [AIR 1941 PC 120 : (1941) 9 ITR 695 : 1942 MWN 4] it was held that holder of an impartible estate receiving income from house property was not owner of the property and such income, therefore, was not assessable under Section 9 of the Income Tax Act, 1922 and further that income from impartible estate of holder of such estate was income of individual and not income of undivided family of himself and his sons for purposes of the said Income Tax Act. This again was apparently not a case of a sovereign ruler inasmuch as such ruler could not have been governed by the Income Tax Act, 1922.

33. In Mirza Raja Shri Pushavathi Viziaran Gajapathi Raj Manne Sultan Bahadur v. Shri Pushavathi Visweshwar Gajapathi Raj [(1964) 2 SCR 403 : AIR 1964 SC 118] it was held that an ancestral estate to which the holder has succeeded by the custom of primogeniture is part of the joint estate of the undivided Hindu family. Though the other rights enjoyed by members of a joint Hindu family are inconsistent in the case of an impartible estate the right of survivorship still exists. Unless the power is excluded by statue or custom, the holder of customary impartible estate, by a declaration of his intention, can incorporate with the estate his self-acquired immovable property and thereupon the said property accrues to the estate and is impressed with all its incidents including a custom of descent by primogeniture. In all such cases the crucial test is one of intention. A holder of an impartible estate can alienate the estate by gift inter vivos, or even by a will, though the family is undivided; the only limitation on this power could be by a family custom to the contrary or the conditions of the tenure which have the same effect.

34. In *Nagesh Bisto Desai v. Khando Tirmal Desai* [(1982) 2 SCC 79 : (1982) 3 SCR 341] it was held (SCC p. 89, para 18)

"It is a trite proposition that property though impartible may be the ancestral property of the joint Hindu family. The impartibility of property does not per se destroy its nature as joint family property or render it the separate property of the last holder, so as to destroy the right of survivorship; hence the estate retains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line".

It was further held that since the decision of the Privy Council in *Shiba Prasad Singh* case [AIR 1932 PC 216 : 59 IA 331 : 36 CWN 1046] it is well settled that the fact that an estate is impartible does not make it the separate and exclusive property of the holder : where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family.

35. The decision in this case has been reaffirmed in *Kalgonda Babgonda Patil v. Balgonda Kalgonda Patil* [1989 Supp 1 SCC 246].

36. In *Anant Kibe v. Purushottam Rao* [1984 Supp SCC 175] it was held that the junior members of the joint family in the case of ancient impartible joint family estate take no right in the property by birth and, therefore, have no right of partition having regard to the very nature of the estate that is impartible. The only incidence for joint property which still attaches to the joint family property is the right of survivorship which, of course, is not inconsistent with the custom of impartibility. Referring to the facts of the case it was pointed out in paragraph 8 of the Report that there was ample evidence on record to show that the inam lands although impartible were always treated by members of the family as part of the joint family properties and the succession to the inam was by the rule of survivorship as modified by the rule of lineal primogeniture. It was also clear that the junior members were in joint enjoyment of the inam lands and the evidence showed that the properties acquired by the inamdar for the time being from out of the income of the inam such as the two houses at Indore and other properties were always dealt with as part of the joint family property.

37. In *Thakore Shri Vinayasinghji v. Kumar Shri Natwarsinghji* [1988 Supp SCC 133] the decision of the Privy Council in the case of *Shiba Prasad Singh* [AIR 1932 PC 216 : 59 IA 331 : 36 CWN 1046] was referred to with approval.

38. In *Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj Pratap Deo* [(1981) 4 SCC 613 : (1982) 1 SCR 417] also the decision of the Privy Council in the case of *Shiba Prasad Singh* [AIR 1932 PC 216 : 59 IA 331 : 36 CWN 1046] was referred to with approval. It was further held in this case relying on *Chinnathayi alias Veeralakshmi v. Kulasekara Pandiya Naicker* [1952 SCR 241 : AIR 1952 SC 29], that to establish that an impartible estate has ceased to be joint family property for purposes of succession it is necessary to prove an intention express or implied, on the part of the junior members of the family to give up their chance of succeeding to the estate.

39. So far as these decisions are concerned, apart from the fact that in the instant case respondent 1 was holding the properties in dispute as a sovereign ruler and his right over these properties will have to be considered in this background, what has been held in the aforesaid cases may be of some assistance if it is found as a fact that the family of the appellant and defendants 1 to 34 was an undivided Marumakkathayam tarwad known as Valiakattaram governed by Marumakkathayam law

as modified by custom and usage in respect of succession, inheritance and some other matters and the properties in suit belonged to this tarwad and respondent 1 had been managing the same as its karnavan as alleged by the appellant. On the other hand, if it is found that those properties were personal properties of respondent 1 in the manner alleged by him, these decisions will be of no assistance. The fate of this appeal really, therefore, depends on the decision of the question referred to above with regard to the nature of the property.

40. The decision on the said question one way or the other would have bearing on the other submission made by learned counsel for the appellant that the impartible nature of the property in suit came to an end on the commencement of the Hindu Succession Act, 1956 and at all events on the commencement of the Kerala Joint Hindu Family System (Abolition) Act, 1975. As regards the Hindu Succession Act, 1956 reliance was placed on Section 4 and sub-section (1) of Section 7. It was urged that respondent 1 having since died, the properties in suit in view of sub-section (1) of Section 7 and the overriding effect of Section 4 "shall devolve by testamentary succession as the case may be, under this Act and not according to the Marumakkathayam or Nambudri law" as contemplated by sub-section (1) Section 7 read with the Explanation thereto which reads as hereunder :

"7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom. - (1) When a Hindu to whom the marumakkathayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarwad, tavazhi or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the marumakkathayam or nambudri law.

Explanation. - For the purposes of this sub-section, the interest of a Hindu in the property of a tarwad, tavazhi or illom shall be deemed to be the share in the property of the tarwad, tavazhi or illom, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the tarwad, tavazhi or illom, as the case may be, then living whether he or she was entitled to claim such partition or not under the marumakkathayam or nambudri law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

#(2) \* \* \*(3) \* \* \*##

41. Insofar as the Kerala Joint Hindu Family System (Abolition) Act, 1975 is concerned reliance has been placed on Section 4 which contemplates replacement of joint tenancy by tenancy in common. Sub-section (1) applies to members of an undivided Hindu family governed by Mitakshara law holding common coparcenary property on the day the said Act came into force. Sub-section (2) on the other hand applies to members of a joint Hindu family, other than undivided Hindu family referred to in sub-section (1). Since reliance has been placed on this sub-section it is reproduced hereunder :

"4. Joint tenancy to be replaced by tenancy in common. - \* \* \*

(2) All members of a joint Hindu family, other than an undivided Hindu family referred to in sub-section (1), holding any joint family property on the day this Act

comes into force, shall, with effect from that day be deemed to hold it as tenants-in-common, as if a partition of such property per capita had taken place among all the members of the family living on the day aforesaid, whether such members were entitled to claim such partition or not under the law applicable to them, and as if each one of the members is holding his or her share separately as full owner thereof."

42. A perusal of the provisions in the two Acts referred to above makes it clear that sub-section (1) of Section 7 of the Hindu Succession Act, 1956 would apply only if the properties in suit were "property of a tarwad, tavazhi or illom, as the case may be," and respondent 1 had, at the time of his death, "interest" therein. Sub-section (2) of Section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 on the other hand would apply to the members of the joint Hindu family concerned "holding any joint family property on the day this Act comes into force. "On a plain reading of the sub-sections referred to above it is apparent that neither of them would apply if the properties in suit did not fall under the categories referred to therein but were at the relevant time the personal properties of respondent 1. It is for this reason that the applicability of these two Acts would depend as indicated earlier on the finding of the crucial question in regard to the nature of the properties in suit.

43. Before advertng to the question referred to above we consider it appropriate to deal with another submission made by learned counsel for the appellant that the properties in suit constituted "sthanam" and respondent 1 was a sthani thereof and consequently the provisions of sub-section (3) of Section 7 of the Hindu Succession Act, 1956 would be applicable to the properties in suit. This plea was raised before the High Court also and was repelled inter alia by holding :

"Before we look into the law on this subject we have to consider whether there is any foundation for such a case in the pleadings of the parties. We found in the pleadings no reference to the office of the Ruler being that of a stani. Stanom is a peculiar institution familiar in the northern part of the Kerala State, namely, Malabar and is not a well known institution in Travancore. The institution of stanom has peculiar incidents. Merely because a person is an eldest member of the family he does not become a stani. We are mentioning this only to emphasise our point that if it is a case based upon stanom that the court is now called upon to consider that must necessarily have been a matter of pleadings. There is no such pleading in the case."

44. While referring to the observations of Lord Dunedin in *Siddik Mahomed Shah v. Mt. Saran* [AIR 1930 PC 57 (1) : 58 MLJ 7 : 31 PLR 150] that "no amount of evidence can be looked into upon a plea which was never put forward", it was held by this Court in *Nagubai Ammal v. B. Shama Rao* [AIR 1956 SC 593 : 1956 SCR 451] (AIR p. 598, para 12) :

"The true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto."

45. The same view was reiterated in *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira* [AIR 1959 SC 31 : 1958 Ker LT 721].

46. Nothing on the record has been brought to our notice by learned counsel for the appellant that respondent 1 went to trial with knowledge that the question of there being a sthanam and he being a sthani thereof was in issue and that any evidence on the basis of such knowledge was produced on his behalf. Consequently the use of the word "sthanam" in Exs. A-3 and B-9 on which reliance was sought to be placed before us by learned counsel or the appellant cannot be made the foundation for decision of the question about the existence of a sthanam and respondent 1 being a sthani thereof.

47. It was, however, urged by learned counsel for the appellant that whether or not there was a sthanam is a pure question of law and consequently even in the absence of any pleading or issue on the point the question can still be raised. We find it difficult to agree with this submission. The Treatise on Malabar and Aliyasanthana Law (1922 edn.) by P. R. Sundara Aiyar which is a standard book on the subject has been relied on even by learned counsel of the appellant with regard to the origin and nature of sthanam. In the said book itself, however, it is specifically stated in paragraph 154 at page 256 :

"The question whether there is a stanom in any particular case must be decided upon the evidence of usage adduced, and the onus is of course upon those who assert that any particular property belongs to an individual and not to the family to which the individual belongs. It is not sufficient to make a stanom that properties are temporarily allotted to a person filling a particular position; the evidence must be sufficient to prove a long continued usage recognising the property in question as belonging to the person filling a particular position without any interest in the members of the family to which the person holding the position belongs and without any power in them to terminate the arrangement. Is it open to a family to constitute a fresh stanom ? The answer would probably be the same as to the question whether it is open to the members of a family governed by the Mitakshara law to constitute certain property impartible and vest it in a single individual with succession according to the rule of primogeniture. In both cases the answer must be in the negative. Impartible estates and stanoms are recognisable only on the ground of custom. They are held not according to the rules of the common law of the land but in a manner different from such rules but sanctioned by usage."

48. In this view of the matter in the absence of any pleading or issue on the point the appellant cannot be permitted to raise this question on the footing that it was a pure question of law. There is yet another ground which disentitles the appellant from raising this plea. In his grounds of appeal before the High Court the appellant had taken a specific ground being ground No. 29 to the following effect :

"The court below should have found that Ex. A-3 has not created a sthanam in respect of the plaint schedule properties and the court below also failed to note that defendant 1 has no case that he is a sthani and that plaint A schedule properties are sthanam properties. The decision in 1960 [K. K. Kochuni v. States of Madras & Kerala, AIR 1960 SC 1080 : 1960 KLT 31 (SC)] quoted by the court below should have been found not applicable to the facts of the case."

49. This being his categorical stand before the High Court, he cannot now be permitted to take a somersault. On this view, we find it unnecessary to deal with certain cases relied on by learned counsel for the appellant to indicate the nature and incident of the properties of a sthanam and the rights of a sthani therein.

50. At this stage another plea raised by learned counsel for the appellant with regard to the burden of proof may also be disposed of. Relying on the decision of the Privy Council in *Martand Rao v. Malhar Rao* [AIR 1928 PC 10 : 55 IA 45 : 30 Bom LR 251] it was urged that when there is a dispute with respect to an estate being impartible or otherwise, the onus lies on the party who alleges the existence of a custom different from the ordinary law of inheritance according to which custom the estate is to be held by a single member and, as such, was not liable to partition. For respondent 1 on the other hand it has been urged that it not having been disputed that, at any rate till respondent No. 1 was the sovereign Ruler of Travancore, the properties in suit were impartible and descendible to a single person the burden to prove that those properties were joint family properties and thus partible was on the appellant, he being the plaintiff so as to be able to obtain a decree in his favour. Suffice it to say, so far as the question of burden of proof is concerned, that it has been held in *Moran Mar Basselious Catholicos* [AIR 1959 SC 31 : 1958 Ker LT 721] that the "question of burden of proof at the end of the case when both parties have adduced evidence is not of very great importance and the Court has to come to a decision on the consideration of all materials". This view has been reiterated in *Narayan Bhagwantarao Gosavi Balajiwale v. Gopal Vinayak Gosavi* [AIR 1960 SC 100 : (1960) 1 SCR 773] and several other sub-sequent decisions and is by now settled law.

51. Now we may consider the legal effect of respondent 1 being a sovereign Ruler of Travancore till he surrendered the sovereignty as indicated earlier. In *Ammer-un-Nissa Begum v. Mahboob Begum* [AIR 1955 SC 352] dealing with the efficacy of certain 'Firmans' issued by the Nizam of Hyderabad who was a sovereign ruler, it was, with regard to the powers of the Nizam, held : (AIR p. 359, paras 15 and 16)

"It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there was no constitutional limitation upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed.

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The Nizam was not only the supreme legislature, he was the fountain of justice as well. When he constituted a new court, he could, according to ordinary notions, be deemed to have exercised his legislative authority. When again he affirmed or reversed a judicial decision, that may appropriately be described as a judicial act. A rigid line of demarcation, however, between the one and the other would from the very nature of things be not justified or even possible."

52. The same view was reiterated in *Director of Endowments, Government of Hyderabad v. Akram Ali* [AIR 1956 SC 60] wherein it was held : (AIR p. 62, paras 10 to 12)

"Now the Nizam was an absolute sovereign regarding all domestic matters at that time and his word was law. It does not matter whether this be called legislation or an

executive act or a judicial determination because there is in fact no clear-cut dividing line between the various functions of an absolute ruler whose will is law. Whatever he proclaimed through his Firmans had the combined effect of law and the decree of a court : see the judgment of this Court in - Ameer-un-Nissa Begum v. Mahboob Begum [AIR 1955 SC 352].

Therefore, the effect of this Firman was to deprive the respondent and all other claimants of all rights to possession 'pending enquiry of the case'. Exactly what this means is not clear but, taken in conjunction with the surrounding circumstances and with the decision of the Director of the Ecclesiastical Department to which we have referred, it is fair to assume that it means, pending the enquiry by the civil courts about which the Director had twice spoken, that is to say, if there was a right to possession it was held in abeyance till established by the civil courts.

Now, as we have said, the Nizam was at that time an absolute ruler and could do what he pleased. His will, as expressed in his Firman, was the law of the land. Therefore, even if it be assumed that the respondent was in possession, his rights to immediate possession, whatever they may have been, were taken away and held in abeyance till he could establish them in the civil courts.

The question now arises whether this endured after the Constitution and whether the respondent's right to possession, assuming he had any, revived when the Constitution came into being. We are clear that the Constitution effected no change.

It was conceded that the Nizam had power to confiscate the property and to take it away from the respondent 'in toto' and it was conceded that if he had done so the rights so destroyed would not have revived because the Constitution only guarantees to a citizen such rights as he had at the date it came into force; it does not alter them or add to them : all it guarantees is that he shall not be deprived of such rights as he has except in such ways as the Constitution allows. But if the Nizam could take away every vestige of right by a Firman he could equally take away a part of them and at the date of the passing of the Constitution the respondent would only have the balance of the right left to him and not the whole, for what applies to the whole applies equally to the part.

Therefore, even if we accept all the respondent's facts, the position would still be that at the date the Constitution came into force he had no right to immediate possession; the utmost he had was a right to be restored to possession if and when he established his rights in a court of law."

53. In *Madhaorao Phalke v. State of M.B.* [(1961) 1 SCR 957 : AIR 1961 SC 298] while dealing with the powers of Sir Madhaorao, who was a sovereign ruler of the State of Gwalior, it was held : (SCR pp. 964-65)

"It would thus be seen that though Sir Madhaorao was gradually taking steps to associate the public with the government of the State and with that object he was establishing institutions consistent with the democratic form of rule, he had maintained all his powers as a sovereign with himself and had not delegated any of his powers in favour of any of the said bodies. In other words, despite the creation of

these bodies the Maharaja continued to be an absolute monarch in whom were vested the super power of the legislature, the executive and the judiciary.

In dealing with the question as to whether the orders issued by such an absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens. In *Ameer-un-Nissa Begum v. Mahboob Begum* [AIR 1955 SC 352], this Court had to deal with the effect of a Firman issued by the Nizam, and it observed that so long as the particular Firman issued by the Nizam held the field that alone would govern and regulate the rights of these parties concerned though it would be annulled or modified by a later Firman at any time that the Nizam willed. What held about the Firman issued by the Nizam would be equally true about all effective orders issued by the Ruler of Gwalior."

54. While dealing with a Firman issued by the Maharana of Udaipur who too was a sovereign ruler, it was held in *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan* [(1964) 1 SCR 561 : AIR 1963 SC 1638] as follows : (SCR p. 591)

"In appreciating the effect of this Firman, it is first necessary to decide whether the Firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur, it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby."

55. In Civil Appeal No. 242 of 1955 *Mangal Singh v. Legal Remembrancer, Punjab* [Civil Appeal No. 242 of 1955, decided on February 23, 1960] decided by this Court on February 23, 1960 a plea questioning the validity of certain orders passed by the Maharaja of Patiala with regard to a Gurdwara had been raised. An issue about the jurisdiction of the civil court to adjudicate upon the said plea was framed. While dealing with the plea a Constitution Bench after referring to certain earlier decisions of this Court held :

"It cannot be, and has not been, disputed that the position of the Maharaja of Patiala before the coming into force of the Constitution was the same as that, for example, of the Maharaja of Jammu and Kashmir, or the Maharao of Kotah, or the Nizam of Hyderabad. He would therefore be in view of the cases cited above, an absolute sovereign so far as the internal administration of the State is concerned. Under the circumstances, the order Ex. DA of April 2, 1945, be it called judicial or executive, which expressed his will with respect to this Gurdwara and the land in dispute and the management of the Gurdwara and the land belonging to it would be binding on all authorities within his State, and it would not be open to any court to question that

will. In this view of the matter the High Court was in our opinion right in holding that the jurisdiction of the civil court was barred as the sovereign had expressed his will that the land in dispute belonged to the Gurdwara and should be managed by a committee which would be in charge of the Gurdwara."

56. In another decision of this Court in Civil No. 226 of 1965 Mahant Hardial Singh v. Ajmer Singh [Civil Appeal No. 226 of 1965, decided on November 20, 1968 (SC)] decided on November 20, 1968 with regard to the powers of the Maharaja of Patiala this Court held :

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

57. In D. S. Meramwala Bhayala v. Ba Shri Amarba Jethsurbhai [ILR (1968) 9 Guj 966] it was held :

"There is, therefore, no doubt that the Khari-Bagasara Estate was a sovereign estate and the Chief of the Khari-Bagasara Estate for the time being was a sovereign Ruler within his own territories subject to the paramountcy of the British Crown prior to August 15, 1947 and completely independent after that date.

If the Khari-Bagasara Estate was a sovereign estate, it is difficult to see how the ordinary incidents of ancestral coparcenary property could be applied to that estate. The characteristic feature of the ancestral coparcenary property is that members of the family acquire an interest in the property by birth or adoption and by virtue of such interest they can claim four rights : (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. It is obvious from the nature of a sovereign estate that there can be no interest by birth or adoption in such estate and these rights which are the necessary consequence of community of interest cannot exist. The chief of a sovereign estate would hold the estate by virtue of his sovereign power and not by virtue of municipal law. He would not be subject to municipal law; he would in fact be the fountain-head of municipal law. The municipal law cannot determine or control the scope and extent of his interest in the estate or impose any limitations on his powers in relation to the estate. As a sovereign ruler he would be the full and complete owner of the estate entitled to do what he likes with the estate. During his life time no one else can claim an interest in the estate. Such an interest would be inconsistent with his sovereignty. To grant that the sons acquire an interest by birth or adoption in the estate which is a consequence arising under the municipal law would be to make the chief who is the sovereign Ruler of the estate subject to the municipal law. Besides, if the sons acquire an interest in the estate by birth or

adoption, they would be entitled to claim the rights enumerated above but these rights cannot exist in a sovereign state. None of these rights can be enforced against the chief by a remedy in the municipal courts. The chief being the sovereign Ruler, there can be no legal sanction for enforcement of these rights. The remedy for enforcement of these rights would not be a remedy at law but resort would have to be taken to force for the chief as the sovereign Ruler would not be subject to municipal law and his actions would not be controlled by the municipal courts. Now it is impossible to conceive of a legal right which has no legal remedy. If a claim is not legally enforceable, it would not constitute a legal right and, therefore, by the very nature of a sovereign estate, the sons cannot have these rights and if these rights cannot exist in the sons, it must follow as a necessary corollary that the sons do not acquire an interest in the estate by birth or adoption.....

... Now it was not disputed on behalf of Meramwala that if prior to merger the estate did not partake of the character of ancestral coparcenary property, the properties left with Bhayawala under the merger agreement would not be ancestral coparcenary properties : if Meramwala did not have any interest in the estate prior to merger, he would have no interest in the properties which remained with Bhayawala under the merger agreement. It was not the case of Meramwala - and it could not be the case since the merger agreement would be an act of State - that as a result of the merger agreement any interest was acquired by him in the properties held by Bhayawala. Bhayawala was, therefore, the full owner of the properties held by him and was competent to dispose of the same by will.....

..... The argument of Mr. I. M. Nanavati however was that the effect of applicability of the rule of primogeniture by the paramount power was that the rights of coparceners under the ordinary Hindu law were eclipses; these rights were not destroyed but they remained dormant and on the lapse of paramountcy, the shadow of the eclipse being removed, the rights sprang into full force and effect. This argument is wholly unsustainable on principle....."

58. It has been brought to our notice by learned counsel for respondent 1 that Civil Appeal Nos. 1358-59 of 1969 were filed in this Court against the aforesaid judgment of the Gujarat High Court which were initially dismissed on March 29, 1974 with certain observations. Sub-sequently, two review petitions bearing Nos. 45-46 of 1974 were filed which were disposed of on March 17, 1976 by the following order :

"The order dated March 29, 1974 in C.A. Nos. 1358-59 of 1969 is recalled and the following order is passed by consent of parties :

Both the C.A. Nos. 1358-59 of 1969 had abated when they were heard. They are therefore dismissed. There will be no order as to costs."

59. Against a judgment of the then Supreme Court of Bombay an appeal was taken up before the Privy Council and the judgment of the Privy Council was reported as *Elphinstone v. Bedreechund* [12 ER 340 : (1830) 1 Kanapp 316 : 4 MLA Supp 50]. In the foot-note of that judgment at page 345 while dealing with the question as to whether there was any distinction between the public and private properties of Peishwa Bajee Row, the following passage occurs :

"The Privy Council reversed the judgment of the Court at Bombay. In the course of the argument Lord Tenterden asked, 'What is the distinction between the public and private property of an absolute sovereign ? You mean by public property, generally speaking, the property of the State, but in the property of an absolute sovereign, who may dispose of everything at any time, and in any way he pleases, is there any distinction ?' and in delivering the judgment of their Lordships he also observed, 'another point made, which applies itself only to a part of the information, is, that the property was not proved to have been the public property of the Peishwa. Upon that point I have already intimated my opinion, and I have the concurrence of the other Lords of the Council with me in it, that when you are speaking of the property of an absolute sovereign there is no pretence for drawing a distinction, the whole of it belongs to him as sovereign, and he may dispose of it for his public or private purposes in whatever manner he may think proper.'"

60. In Halsbury's Laws of England (4th edn., volume 8), under the caption "The Title to the Crown" paragraphs 851, 897 and 1076 have, in our opinion, a bearing on the question raised in the instant case with regard to the powers of a sovereign. In paragraph 851 it has been pointed out that on the death of the reigning sovereign the crown vests immediately in the person who is entitled to succeed, it being a maxim of that common law that the King never dies. The new sovereign is, therefore, entitled to exercise full prerogative rights without further ceremony. In paragraph 897 on the other hand it has been pointed out that the sovereign is regarded legally as immortal, the maxim of law being that "the King never dies". Paragraph 1076 inter alia provides :

"Priority of Crown rights. - Where the Crow's right and that of a subject meet at one and the same time, that of the Crown is in general preferred, the rule being 'detur digniori'.

Thus, the Crown cannot have a joint property with any person in one entire chattel, or one which is not capable of division, and where the title of the Crown and a subject concur, the Crown takes the whole. So if an indivisible chattel or as debt are assigned to the Crown and as subject, or where two persons have a joint property in such a chattel or debt and one person assigns his share to the Crown, or where a bond is made to the Crown and a subject, the Crown takes the whole, for it cannot be a partner with a subject, nor can the Crown become as joint owner of a chattel real by grant or contract, but takes the whole."

61. This being the law with regard to the powers of a sovereign and the legal status of the properties held by him there can be no manner of doubt that till the sovereignty of the Maharaja of Travancore had ceased he was entitled to treat and use the properties under his sovereignty in any manner he liked and his will in this regard was supreme. On the principle that a sovereign never dies and succession to the next ruler takes place without there being a hiatus there could be no change in the legal status of the properties held by one ruler and his successor. As seen above, one incidence of property held by a sovereign was that there was really no distinction between the public or State properties on the one hand and private properties of the sovereign on the other. The other incidence was that no one could be a co-owner with the sovereign in the properties held by him. As observed by Lord Tenterden referred to earlier when you are speaking of the property of an absolute sovereign there is no pretence of drawing a distinction, the whole of it belongs to him as sovereign and he may dispose of it for his public or private purposes in whatever manner he may think proper.

62. That respondent 1 was a sovereign and the properties in dispute as held by the sovereign rulers from time to time were impartible has not been disputed by the learned counsel for the appellant before us. What has been urged by him, however, is that the properties in dispute belonged to a tarwad and were as such joint Hindu family properties and the attribute of impartibility applied to them because by custom only the eldest member of the family could be the ruler and to maintain his dignity and status it was necessary to make these properties impartible.

63. In this connection it has to be kept in mind that the mode of succession of a sovereign ruler and the powers of such a ruler are two different concepts. Mode of succession regulates the process whereby one sovereign ruler is succeeded by the other. It may inter alia be governed by the rule of general primogeniture or lineal primogeniture or any other established rule governing succession. This process ends with one sovereign succeeding another. Thereafter what powers, privileges and prerogatives are to be exercised by the sovereign is a question which is not relatable to the process of succession but relates to the legal incidents of sovereignty.

64. If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him that the said property was held by the sovereign not as sovereign but in some other capacity. In the instant case apart from asserting that the properties in suit belonged to a joint family and respondent 1 even though a sovereign ruler, held them as the head of the family to which the property belonged, the appellant has neither specifically pleaded nor produced any convincing evidence in support of such an assertion. It has been urged on behalf of the appellant that only the eldest male offspring of the Attingal Ranis could, by custom, be the ruler and all the heirs of the Ranis who constituted joint Hindu family would be entitled to a share in the properties of the Ranis and the properties in suit were held by respondent 1 as head of the tarwad even though impartible in his hands. This plea has been repelled by the trial court as well as by the High Court and nothing convincing has been brought to our notice on the basis of which the presumption canvassed on behalf of the appellant could be drawn and the findings of the courts below reversed. We are dealing with an appeal and as has been pointed out by this Court in *Thakur Sukhpal Singh v. Thakur Kalyan Singh* [(1963) 2 SCR 733 : AIR 1963 SC 146] it is the duty of the appellant to show that the judgment under appeal is erroneous.

65. The following extract from pages 190 to 192 of Kerala District Gazetteers, Trivandrum by A. Sreedhara Menon will give as glimpse about the nature of property held by the Attingal Ranis.

"Early in his reign Marthanda Verma assumed direct control over the so-called Attingal 'Queendom'. This was not an act of annexation or conquest, but Nagam Aiya has described the event as 'the amalgamation of Travancore with Attingal'. There has been some misunderstanding among contemporary and later writers in regard to the significance of this step taken by Marthanda Verma. This is the result of a general notion that Attingal was an independent State ruled by the Ranis and that the Kings of Travancore never exercised any authority in the tract. Certain statements found in the memories, commentaries and State papers of the Portuguese, the Dutch and the English have only served to strengthen this notion. According to Van Rhee (1677) 'the princess of Attingal who is not alone the mother of Travancore, but the eldest of Tippaporsorewam has as large territory of her own independent of Travancore'. Hamilton even refers to a regular treaty between Marthanda Verma and the Rani by which the former strengthened the position of the King. He says that 'the Tamburetties of Attingal possessed the sovereignty of Travancore from remote

antiquity, until Raja Marthanda Verma persuaded the Tamburetty to resign the sovereign authority to the Rajas, both for himself and for all succeeding Tamburetties. To perpetuate these conditions, a regular treaty was executed between the Raja and the Tamburetty, which was inscribed on a silver plate, and ratified by the most solemn imprecations, limiting the succession to the offsprings of the Attingal Tamburetties. Having concluded this arrangement Raja Marthanda Verma directed his arms against the neighbouring States'. The theory that the Ranis of Attingal exercised sovereign powers is, however, incorrect. The fact is that in political matters the Ranis of Attingal as such exercised no sovereign rights. Any grant of rights over immovable property by the Ranis of Attingal required the King's previous assent or subsequent confirmation for its validity. It may be noted that the so-called Quondam of Attingal had its origin in the 5th century Kollam Era when two princesses were adopted into the Venad family from Kolathunad and the revenues from certain estates in and around Attingal were assigned to them for their exclusive use. Since then the female members of the ruling family of Travancore had come to be known as Attingal Ranis. It was only the male children of these Tamburetties, either by birth or by adoption, who could inherit the throne. Thus Marthanda Verma and the heir-apparent Rama Verma were both sons of Attingal Tamburetties. This tended to invest the Attingal Ranis with a special dignity in the eyes of the people, native as well as foreign, and led to the notion that they had sovereign rights over Attingal. But in reality the kingdom of Venad extended from Kanyakumari in the south as far as Kannetti in the north, and there was no kingdom or principality intervening within its limits. When Marthanda Verma decided to assume direct control over the estates of Attingal and thus deprive the Rani of some of her rights, he was not interfering in the affairs of a sovereign State. As the head of the royal family and the ruler of the State, he had every right to interfere in the affairs of a part of his kingdom. The Rani of Attingal had neither territory nor subjects, except in the sense that the people of Venad paid respects to her as a senior member of the ruling family. What she possessed was nothing more than the control over the revenues of the estates and an outward status and dignity. Whatever powers she exercised were those delegated to her by the head of the family and the sovereign of the State."

66. The historical perspective referred to above runs counter to the case of the appellant with regard to the rights of respondent 1 over the properties in suit even if it may be accepted that at some point of time they or any part of them were held by the Attingal Ranis before Marthanda Verma had assumed direct control as sovereign ruler of Travancore over the properties of Attingal Ranis. After the assumption of direct control by Marthanda Verma the properties held by the Ranis, whatsoever the extent and nature of such properties may have been earlier, because properties of the State of Travancore and the legal incidents of property held by a sovereign as referred to above applied to them also. There was no scope of such properties continuing to be joint family properties after such assumption of direct control.

67. The properties in suit having passed on from one sovereign to the other came to be ultimately held by respondent 1 in that capacity. Neither any principle nor authority nor even any grant etc. has been brought to our notice on the basis of which it could be held that in the properties of the State held by a sovereign an interest was created or came into being in favour of the family to which the sovereign belonged.

68. At this place reference may be made to the following finding of the High Court :

"No attempt has been made to adduce evidence directly bearing on the question as to how each one of the plaint schedule items are acquired. There is no pleading also as to the source of acquisition. There is no evidence not only as to how they were acquired, but even as to who acquired these items. Perhaps such evidence is not available and it is not possible to get at such evidence in the case."

69. We may here point out that such properties of the family to which the sovereign belonged as were allowed to retain their original character would of course fall in a different category. According to respondent 1 there were such properties known as Sreepadom properties which fell in this category and in which the family members continued to have an interest. These Sreepadom properties according to him were only those which were partitioned in 1971 by the deed of partition executed in this behalf being Ex. B-3 on the record of the suit. As regards the properties in suit what has been asserted on his behalf is that before he surrendered his sovereignty there was no distinction between the properties of the Ruler and that of the State and that before surrendering his sovereignty he had entered into a covenant whereby he was given an option to furnish a list of such properties which he wanted to retain as personal properties and that he having furnished such a list which included the properties in suit and the same having been approved by the Government of India the properties in suit continued to be held by him as his personal properties in the capacity of being their absolute owner. We find substance in both these contentions.

70. As regards Ex. B-3 it would be seen that this deed of partition was executed by the then living members of the Royal Family. Even the appellant who was a minor at that time was represented by his mother. This deed starts with assertion that the parties to it "are members of the joint Hindu Kshatriya family known as 'Sreepadom Palace' which by prerogative is the Royal House of Travancore." I then proceed to describe the extent of the properties held by the Sreepadom and states :

"The lands and other immovable properties mentioned in the Schedule attached hereto have been inherited, held and enjoyed by our family, the aforesaid Sreepadom Palace, as Sreepadom Palace Private Properties and the family continues to have exclusive, absolute and undisputed title of ownership, possession and enjoyment by the laws of inheritance, custom, proprietorship and tradition.

The Sreepadom lands, enfranchised as aforesaid, as well as the private family properties, more particularly described in the Schedule hereunder, were administered by His Highness Sree Padmabha Dass Sri Chithira Thirunal Balarama Verma who is the senior most male member of the family."

71. After discussing in detail the status of Attingal Ranis and the mode in which some of the properties came to be held by them the High Court in the judgment appealed against has held :

"The Sreepadom Palace is the residence of the Attingal Ranis and naturally the Attingal Ranis and the children would constitute a Marumakkathayam tarwad. Properties were assigned even at the time of the original adoption in 483 ME to the family of Attingal Ranis for the purpose of their maintenance in accordance with the style of living expected of them. It is these properties and properties which came into the family later which were subject matter of division under Ex. B. 3 partition deed

in 1971."

72. From the aforementioned discussion by the High Court and the tenure of the deed of partition Ex. B-3 particularly the meticulous care with which the properties which were the subject matter of partition were described both in the body of the deed and the Schedule appended thereto we are of the opinion that all the properties belonging to the joint family in which the appellant could have a share or interest were subject matter of and covered by this deed of partition.

73. It is not disputed that the properties in suit do not form part of this deed of partition. No convincing reason for this significant omission has been brought to our notice. Keeping in view the fact as indicated above that meticulous care was taken to describe the properties which were being partitioned by Ex. B-3 and the presumed knowledgeability ability of the persons who were parties to this deed with regard to the family properties it is difficult to believe that at the time when the deed of partition was executed the properties in dispute were not in the knowledge of the person who were parties to the said deed. The conclusion and indeed the only conclusion which can be drawn from this omission is that at the time of the execution of the deed of partition the parties thereto were fully conscious of the fact that properties in dispute were not joint family properties. In this context not much significance can be attached to paragraph 19 of the deed of partition on which reliance has been placed by learned counsel for the appellant. The said paragraph reads as hereunder :

"If any property over which the Sreepadom Palace has ownership and remaining as Sreepadom Place private property has been emitted to be included in this partition, and the emission is detected at a subsequent date it will also be shared equally between the two branches by mutual agreement to be entered upon as and when such necessity arises."

74. In our opinion, paragraph 19 referred to above was incorporated in the deed of partition in a routine manner it having become almost customary to include such a clause by way of abundant caution. As already indicated above and particularly keeping in view the extent and nature of the properties in dispute it is unbelievable that the parties to the deed of partition were not aware about the existence of these properties and left it to be partitioned in future as and when and "the omission is detected".

75. There is another circumstance which supports this contention. Some of the properties in suit were made subject matter of declaration of ceiling area under the Kerala Land Reforms Act, 1963. Section 82 of the said Act provides the extent of the land which is to constitute the ceiling area whereas Section 83 provides that with effect from such date as may be notified by the government in the gazette no person shall be entitled to own or to hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area. For purposes of determination of ceiling area ceiling returns were to be filed under Section 85 of that Act. Sub-section (2) of Section 85 inter alia provided that where a person owned or held land in excess of the ceiling area such persons shall within a period of three months from the date notified under Section 83 file a statement before the Land Board intimating the location, extent and such other particulars as may be prescribed, of all lands (including lands exempted under Section 81) owned or held by such person and indicating the lands proposed to be surrendered. The date which was notified under Section 83 was January 1, 1970. It is significant to mention here that only respondent 1 had filed a return and that too in his capacity as an individual. Section 85-A which was inserted by Act 17 of 1972 inter alia provided in its sub-section (1) :

"85-A. Certain persons to file statement. - (1) Notwithstanding anything contained in this Chapter, every family consisting of more than one member, owning or holding more than twelve acres in extent of land, every adult unmarried person and every family consisting of a sole surviving member, owning or holding more than six acres in extent of lands and every other person (other than a bank) owning or holding more than twelve acres in extent of land shall, within a period of seventy-five days from the commencement of the Kerala Land Reforms (Amendment) Act, 1972, file a statement before the Land Board intimating the location, extent and such other particulars as may be prescribed, of all lands (including lands exempted under Section 81 owned or held by such family or person)."

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76. The appellant or any other member of the family did not file a return as contemplated by either sub-section (2) of Section 85 or by Section 85-A. The consequence of not filing a return was that apart from the land which was found to be within the ceiling area of respondent 1 who had filed the return the rest of the land was to be declared surplus and was to vest in the State Government. In our opinion, keeping in view the penal consequence of not filing a return namely being deprived of retaining land even to the extent of the ceiling area the circumstance that the appellant or any member of the family did not file a return is indicative of the fact that they did not consider these lands to belong to the joint family.

77. At this place, in order to keep the record straight we wish to point out that subsequently an application was made by the appellant under sub-section (9) of Section 85 of the Kerala Land Reforms Act which inter alia provides :

"85. (9) The Taluk Land Board may, at any time, set aside its order under sub-section (5) or sub-section (7), as the case may be, and proceed afresh under that sub-section if it is satisfied that -

(a) the extent of lands surrendered by, or assumed from, a person under Section 86 is less than the extent of lands which he was liable to surrender under the provisions of this Act, or

(b) the lands surrendered by, or assumed from, a person are not lawfully owned or held by him; or

(c) in a case where a person is, according to such order, not liable to surrender any land, such person owns or holds lands in excess of the ceiling area :

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78. This application was, however, rejected by the Land Board. Against the order of the Land Board C.R.P. No. 3786 of 1976 was filed before the High Court. This civil revision was disposed of by the High Court on September 11, 1979 by making inter alia the following observation :

"It is brought to my notice that the question which the petitioner sought to raise before the Land Board i.e. whether the property belongs to the joint family or to the Maharaja, is now before this Court in appeal in A.S. No. 210 of 1979. In the circumstances I think interests of justice will be served if I direct that the petitioner

can move for relief under Section 85(9) of the Kerala Land Reforms Act on the basis of the decision in the appeal. The Land Board will decide the question of surrender of excess lands on the basis of the decision of the High Court in the appeal. The Land Board would be bound by the said decision and will have accordingly to modify the order if it is so necessary. Till the decision in the appeal and in case in the appeal the decision is in favour of the petitioner, till the Land Board takes a decision on the petition which the petitioner had filed before the Land Board afresh in accordance with the directions given herein, the Land Board shall not distribute any excess lands which they have come in possession on the basis of the order passed against respondent 1. Nor shall the State respondent 16 herein alienate any such lands which might have come into their possession on the basis of the decision in the ceiling case against respondent 1. The State shall not do anything which might prejudice the right of the successful party in the appeal."

79. We shall now consider the second contention referred to above raised on behalf of respondent 1.

80. It may be recapitulated that there are only two alternatives which fall for consideration with regard to the nature of the properties in suit, namely, whether they are joint family property as asserted by the appellant or personal properties of respondent 1 as asserted by him. As regards the properties being joint family properties apart from what has been discussed above, it may further be noticed that the trial court recorded a categorical finding not only that no title deeds or any other documentary evidence to prove the source of acquisition of these properties had been produced on behalf of the appellant, even PW 1, the father of the appellant who appeared as a witness on his behalf had to admit that he did not know whether these properties were settled in favour of anyone and that he had not seen any record to show that these properties belonged to the tarwad as alleged in the plaint. On the other hand, respondent 1, inter alia, produced settlement registers marked as Exs. B-10 to B-14, State Budget Ex. B-15 and B-16, the Kandukrishi Proclamation dated May 27, 1949 and Circular Ex. B-30 with regard to the properties shown in Schedule A to the plaint indicating that they belonged to the Sirkar or State. He also produced Ex. B-17 indicating that maintenance of the palace buildings was being done by the State with the funds of the State exchequer. With regard to securities and shares in the name of respondent 1 and the items of jewellery in his custody, the trial court has held that there was nothing on the record to show that they had been acquired with tarwad funds or that the tarwad had any interest in the same. The fact that the lacuna pointed out by the trial court as aforesaid did exist could not successfully be assailed on behalf of the appellant either before the High Court or even before us.

81. The Rulers of Travancore and Cochin with the concurrence and guarantee of the Government of India entered into a covenant dated May 27, 1949 for the formation of the United State of Travancore and Cochin. This covenant was proved in the suit and marked as Ex. A-2. Article IV of the covenant provided that there shall be a Raj Pramukh for the United State. Article XV which is relevant for the purposes of the instant case provided as hereunder :

"(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 immediately before the appointed day.

(2) He shall furnish to the Government of India in the Ministry of States before the first day of September, 1949 an inventory of all immovable property, 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 Government of India may nominate in consultation with the Ruler of Travancore or Cochin as the case may be and the decision of that person shall be final and binding on all parties concerned."

Respondent 1 furnished the relevant inventory contemplated by the aforesaid Article XV. Copy of government proceedings consequent upon the aforesaid covenant and furnishing of the inventory was marked as Ex. A-3. It starts by saying :

"The question of the private properties of His Highness the Maharaja of Travancore was engaging the attention of the Government of India. The conclusions reached and agreed to by this government and embodied in three statements showing :

(i) Immovable properties recognised as the private property of His Highness the Maharaja of Travancore.

(ii) Immovable properties to be handed over to the State Government, and

(iii) Cash balance and securities recognised as His Highness' private property."

82. Thereafter are to be found the lists containing details of the aforesaid three categories of property. It has not been disputed before us that these lists include the properties in suit.

83. White Paper on Indian States published by the Government of India, Ministry of States, in its Part VII dealing with 'Settlement of Ruler's Private Properties' contains in paragraphs 156 and 157, inter alia, the following statement :

"156. The Instruments of Merger and the Covenants establishing the various Unions of States, are in the nature of overall settlements with the Rulers who have executed them. While they provide for the integration of States and for the transfer of power from the Rulers, they also guarantee to the Rulers privy purse, succession to gaddi, rights and privileges and full ownership, use and enjoyment of all private properties belonging to them, as distinct from State properties. The position about the privy purses guaranteed or assured to the Rulers is set out in detail in Part XI. The provisions of the Constitution bearing on the rights, privileges and dignities of Rulers and their succession to their respective gaddis are also explained in that Part. So far as their private properties are concerned, the Rulers were required to furnish by a specified date inventories of immovable property, securities and cash balances claimed by them as private property. The settlement of any dispute arising in respect of the properties claimed by a Ruler was to be by reference to an arbitrator appointed by the Government of India.

157. In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned by their respective States."

84. Just as the Rulers of Travancore and Cochin had entered into the aforesaid covenant, 35 States in Bundelkhand and Baghelkhand regions agreed on March 13, 1948 to unite themselves into one State which was to be called the United State of Vindhya Pradesh. Article XI of the said covenant as

quoted in Vishnu Pratap Singh v. State of Madhya Pradesh [1990 Supp SCC 43] read as hereunder : (SCC pp. 45-46, para 4)

"(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 the State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before May 1, 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 a Judicial Officer to be nominated by the Government of India, and the decision of that person shall be final and binding all parties concerned."

85. A dispute arose in regard to a house built by one of the 35 Rulers, namely, the Ruler of Chattarpur. Dealing with the effect of the covenant in the background of the Instrument of Accession which each of the rulers including the Maharaja of Travancore had from time to time signed in exercise of his sovereignty in and over his State, it was held in the case of Vishnu Pratap Singh [1990 Supp SCC 43] : (SCC pp. 46-47, 51-52, paras 5, 6 and 13)

"Despite the distinction drawn in Article XI, there was in reality no distinction between State property and the property privately owned by a Ruler, since the Ruler was the owner of all the property in the State. For the purposes of arrangement of finance, however, such a distinction was practically being observed by all Rulers. The apparent effect of the covenant was that all the property in the State vested in the United State of Vindhya Pradesh except private property which was to remain with the Rulers. As is evident, the Ruler was required under Article XI to furnish to the Raj Pramukh before May 1, 1948 an inventory of all immovable properties, securities and cash balances held by him as such private property. Conceivably, on a dispute arising as to whether any item of property was or was not the private property of the Ruler and hence State property, it was required to be referred to a Judicial Officer to be nominated by the Government of India and the decision of that officer was to be final and binding on all parties concerned.

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The factual undenied position is that the Ruler of Chattarpur on July 5, 1948 (vide Ex. D-13-5) submitted a list to the Raj Pramukh of the United State of Vindhya Pradesh of his private properties, and in the said list the house in dispute, namely, Gulab Rai Wala house, was shown as the private property of the Ruler (by the then Maharaja Shri Bhanwani Singh Ju Deo). In the following month, on August 25, 1948, the said Maharaja Shri Bhawani Singh Ju Deo made a gift of the house in dispute in favour of his father-in-law Dewan Shanker Partap Singh (now deceased and represented by his legal representatives-appellants). His gift has become the subject matter of dispute in the suit, out of which this appeal has arisen, for grounds to be taken note of later at an appropriate stage.

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Taking thus the totality of these circumstances in view, we are driven to the conclusion that the High Court committed an error that the Ruler lost his sovereign right to earmark the property in dispute as his private property after May 1, 1948, or that the said property vested in the State with effect from that date or that the letter Ex. P-9 of Shri N. M. Buch and the lists attached thereto, had the effect of divesting the appellants of the title to the property in dispute in favour of the State with effect from that date. In that strain, factual position having not been denied, the validity of the gift dated August 25, 1948, cannot be questioned on the grounds enumerated in the plaint, due to exercise of sovereign power of the Ruler in the grant thereof at that point of time."

86. In view of the foregoing discussion, there can, therefore, be no manner of doubt that the properties in suit were not joint family properties as asserted by the appellant but were the personal properties of respondent 1 as asserted by him. Consequently no exception can be taken to the dismissal of the suit filed by the appellant by the courts below and Civil Appeal No. 534 of 1983 filed by the appellant deserves to be dismissed. For the same reason, Civil Appeal No. 535 of 1983 filed by Defendants 32, 33 and 34 claiming a larger share in the properties in suit on partition treating them to be joint family properties as asserted by the appellant also deserves to be dismissed.

87. We may, at this place, point out that reliance was placed by learned counsel for the appellant on certain decisions laying down that if joint Hindu family property was by custom or otherwise impartible, its nature of partible joint Hindu family property will get revived on the commencement of the Hindu Succession Act, 1956 and the Kerala Joint Hindu Family System (Abolition) Act, 1975. Reference was also made to several passages from Chapter 12 of Hindu Law by S. V. Gupte dealing with impartible property including the circumstances in which impartible property becomes capable of partition. However, in view of our finding that the properties in suit were not joint family properties as alleged by the appellant but were the personal properties of respondent 1, we do not consider it necessary to deal with them. Neither any principle of law nor any authority has been brought to our notice in view whereof personal properties of respondent 1 could get transformed into joint Hindu family properties wherein the appellant could acquire an interest. Even if we proceed on the basis that the personal properties held by respondent 1 continued to retain the character of impartibility and they became partible subsequently, it would, in no way, advance the case of the appellant inasmuch as it has not been shown to us that the appellant would be an heir of respondent 1 with regard to his personal properties. Apparently such properties would on his demise be governed either by testamentary disposition or would devolve on his personal heirs.

88. Another point urged by learned counsel for the appellant was that the covenant could not confer any right in favour of respondent 1 which he did not otherwise possess nor could it take away the rights of the members of the joint Hindu family by accepting the properties in suit to be the personal properties of respondent 1. Suffice it to say so far as this submission is concerned that as has been held above, the properties in suit had been earmarked by respondent 1 as his personal properties which he was competent to do as a sovereign and the government by accepting or approving the list of properties submitted by him as his personal properties in pursuance of the covenant did not purport of its own to create any right in favour of respondent 1 in such properties. The government could have disputed the list submitted by respondent 1 but it chose not to do so and the assertion of respondent 1 that the properties in suit were his personal properties was accepted.

89. In view of the foregoing discussion, both the civil appeals fail and are dismissed but there shall be no order as to costs.

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