

## Maharaj Devi Singh Vs H.H. Maharaja Gaj Singh and Others

**Court:** Rajasthan High Court

**Date of Decision:** Dec. 23, 1982

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1

**Citation:** (1982) WLN 427

**Hon'ble Judges:** D.P. Gupta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

D.P. Gupta, J

1. These three appeals, arise out of a common order passed by the learned by the learned District Judge, Jodhpur dated February 6, 1982 by

which he dismissed the applications filed by the plaintiff appellant as by defendants Nos. 3,5 and (sic) before him, for appointment of a receiver

under order 40 Rule 1 C.P.C. and in the alternative for issuing a temporary injunction under Order 39 Rules 1 and 2 C.P.C. As all these three

appeals arise out of the same suit and pertain to the same matter, they were heard together and are being disposed of by a common order.

2. The undisputed facts are that Maharaja Umaid Singh of Jodhpur died on June 18, 1947 and his eldest son, Hanuwant Singh succeeded him to

the "gaddi" as the Ruler of the former State of Jodhpur, while his other sons, Himmat Singh, plaintiff Devi Singh and Dalip Singh defendants were

given maintenance grants by Maharaja Hanuwantsingh. On May 1(sic), 1948 Maharaja Hanuwantsingh executed a covenant and later a merger

agreement to merge the State of Jodhpur into the larger State of Rajasthan. On March 24. 1949 the Government of India prepared a list of

moveable and Immovable properties which were agreed to be kept as properties of the Ex-Ruler, Shri Han want Singh On the formation of the

new State of Rajasthan on March 30, 1949 the State Government took possession of all properties belonging to the State, while the personal

properties were then left under the control and ownership of the Ex-Ruler. Shri Hanuwant Singh died on January 26, 1952 leaving his minor son,

Shri Gajsingh. The case of Shri Himmatsingh as averred in the plat this that Shri Umaid Singh upon his death left considerable joint Hindu family

properties, as he was covered by the Mitakshra School of Hindu law, and the said properties remained in the hands of late Maharaja Hanuwant

Singh and since his death they are under the control of Shri Gaj Singh. The plaintiff claimed his share in the ancestral joint Hindu family properties.

By means of a separate application the plaintiff prayed that until the decision of the suit a Receiver be appointed in respect of the entire ancestral

movable and Immovable properties and in the alternative, a temporary injunction be issued prohibiting the defendants Nos. 1, 2 and 9 to 13 from

disposing of any of the joint Hindu family properties during the suit. The learned District Judge issued an expert ad interim injunction against the

defendants nos. 1,2 and 9 to 13 restraining them from disposing of joint Hindu family properties till further orders. Similar applications for obtaining

temporary ad interim injunctions were also moved by defendant No 3 Devi Singh and by defendant No. 5 Yaswant singh and defendant No 6

Rajendra Singh, sons of plaintiff Himmat Singh. After hearing both the parties all the aforesaid applications for temporary injunction and for

appointment of a receiver were dismissed by the learned District Judge and the ad interim injunction order issued by him on August 26, 1981 was

vacated by the order dated February 6, 1982. How ever, the learned District Judge, Jodhpur imposed two conditions upon the defendants nos.

1,2 and 9 to 13 namely, that they should keep and maintain proper and correct accounts regarding the properties mentioned in Schedule J annexed

to the plaint and that they should file a balance sheet of their affairs within 3 months after the close of each financial year and they should also

submit within 15 days of the close of each calander year a statement regarding the disposal of any moveable or Immovable properties made during

that year.

3. In these appeals, which were advanced by the learned Counsel were almost the same as were advanced before the learned District Judge. The

contention of the appellants was that the parties were Hindus and wear governed by the Mitakshara School of Hindu Law and that the properties

included in the list of private properties were properties belonging to the joint Hindu family of which the parties were Co-parcenars, including the

appellants, were unable to exercise their rights in respect of the ancestral joint Hindu family properties, the same could be exercised after the

formation of Rajasthan and after the promulgation of the Constitution. Thus, according to the appellants, the plaintiff as the defendants nos 3 and 4

and had a share in the ancestral joint Hindu family properties, which had remained in the hands of late Maharaja Hanuwant Singh at the time of his

death and which were included in the list of properties prepared by the Government of India. It was also argued that defendants nos. 1 and 2 were

disposing of various properties of the joint Hindu family by way of sale or transfer to various trusts and joint stock companies, defendants nos. 9 to

13 which were merely collusive and benami and have been brought into existence for their benefit by the defendants Nos 1 and 2.

4. On the other hand, Mr. L.R. Mehta, appearing for defendants nos. 1 and 2, submitted that succession to the Jodhpur State and all properties

held by the Rulers of that State was governed by the rule of primogeniture for the last several centuries and the senior member of the senior line

succeeded to the "Gaddi" of Jodhpur and also to all the properties. It was also argued that no distinction was ever kept in the State of Jodhpur

between the private property of the Ruler and the property of the State, as the Ruler was sovereign and any property belonging to the State was

his own. It was argued that after the death of Maharaja Umaid Singh, his eldest son Maharaja Hanuwat Singh succeeded by the rule of

primogeniture not only to the "Gaddi" of the State of Jodhpur but also to all the properties of the State of Jodhpur and that he became the absolute

owner of all the properties left by late Maharaja Umaidsingh. It was pointed out that Maharaja Hanuwantsingh gave certain lands for maintenance

to the appellants as "Aajivika Jagir" by the order dated February 10, 1948. He also gave bungalows to the plaintiff and other brothers were also

provided with similar grants including bungalows for their residence. It was submitted by Mr. Mehta that the list of private properties were settled

and accepted by agreement between the Union of India and Maharaja Hanuwant Singh and the Union of India recognised the right of the

Maharaja to such private properties, irrespective of the fact as to whether they were constructed or purchased out of the State funds. But the

Maharaja Hanuwant Singh was recognised by the Union of India as the absolute owner of the properties included in the list of private properties

and the appellants had no right, title or interest in any of the properties mentioned in the said list of private properties, a copy of which has been

appended to the plaint as Schedule I.

5. It may be stated at the very outset that all expressions used or observations made by me at this stage are merely tentative and I have only

considered the matter only to find out whether the plaintiff has been able to put up a prima facie case and nothing said hereinafter shall affect the

final decision of the suit.

6. Jodhpur was one of the major States of Rajasthan which was ruled by Rathore clan of Rajputs until the Jodhpur State merged to form the

United State of Rajasthan on March 30, 1949.

7. After India attained independence, the then Maharaja of Jodhpur executed an instrument of succession to the Dominion of India which was the

end of the paramountcy of the British Crown. The Indian Independence Act of 1947 released the States from all their obligations to the British

Crown, with the consequence that the Indian States became separate independent entities. An instrument of accession executed by the Rulers

provided for the accession of their respective State to the Dominion of India on three subjects, namely, defence, External Affairs and

Communications. A standstill agreement was also executed which provided for the continuance for the time being of all subsisting agreements and

administrative arrangements in matters of common concern between the States and the Dominion of India. This was followed by a process of

integration of small States into sizeable administrative units and the consolidation of the State of Rajasthan was completed in phases. As already

mentioned the State of Rajasthan with the integration of Jodhpur, Jaipur and Bikaner and other princely States was completed on March 30, 1969.

During the British Rule, subject to the overriding authority of the paramount power, the institution of Indian Ruler ship was essentially based on the

personal autocracy of the Ruler. The Ruler was virtually the State. He was the source of all authority in theory as well as in practice. 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 guaranteed to the Rulers

rights and privileges and full ownership, use and enjoyment of all private properties belonging to them as distinct from State properties.

8. In the White Paper on Indian States published by the Government of India, the position in regard to this settlement has been described in part

VII as under:

157. In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property

owned by their respective States--With the integration of States it became necessary to define and demarcate clearly the private property of the

Ruler. The settlement was a difficult and delicate task calling for detailed and patient examination of each case. As conditions of customs differed

from State to State, there were no precedents to guide and no clear principles to follow. Each case, therefore, had to be decided on its merits. The

Government of India were anxious that the new order in States should be ushered in an atmosphere free from any controversies or bitterness

arising from any unhappy legacy of the past. A rigid and legalistic approach would have detracted from the spirit of good will and accommodation

in which the political complexion of the States had been so radically altered. By and large the inventories were settled by discussion between

representatives of the Ministry of States, the Rulers concerned and the representatives of the Governments of the province or the Union as the case

may be. The procedure generally adopted was that after the inventories had been received and scrutinised by the Provincial or the Union

Government concerned and after the accounts of the States taken over had been examined, the inventories were discussed across the table and

settled in a spirit of give and take. In all discussions with the Rulers of the States forming Unions, the Rajpramukhs were associated; the private

properties of the Rajpramukhs were settled by the Government of India in informal consultation with the Premiers of the Unions. This method

made it possible to settle these properties on an equitable basis within a remarkably short period and without recourse even in a single case to

arbitration. The settlements thus made are final as between the States and the Rulers concerned.

158. The settlements made in regard to private properties of the Rulers were arrived at as a compromise between the claims of the Rulers and the

counter claims of the Governments, and with due regard to the paramount need of safe guarding public interest. In the nature of things it was not

possible to lay down or follow any strict or uniform standard; nevertheless certain broad principles were observed.

9. On the question of succession to the properties of the Rulers, Lieut. Col. James Tod in his book *Annals and Antiquities of Rajasthan* ""Vol. II

described the position of the rulers of the State of Rajasthan as under at page 307:

It may be of use in future negotiations, to explain the usages which govern the different States of Rajpootana in respect to succession. The law of

primogeniture prevails in all Rajpoot sovereignties the rare instances in which it has been set aside, are only exceptions to the rule. The inconclusive

dicta of Manu, on this as on many other points, are never appealed to by the Rajpoots of modern days Customs and precedent fix the right of

succession, whether to the gadi of the State or to a fief in the eldest son... ..seniority is, in fact, a distinction pervading all ranks of life,

whether in royal families or those of chieftains.

10. In *Rana Sheonath Singh v. Badan Singh and Ors.* AIR 1922 PC 146 their Lordships of the Privy Council, while dealing with a case of

succession to the properties of Umed Singh, who belonged to a family of Chauhan Rajputs, who had migrated from their original home in

Rajasthan under the pressure of Mohammedan arms to Nima district of Madhya Pradesh, then called Central Provinces, quoted from Col. Tod's

*Annals of Rajasthan* and referred to his book as a valuable work in respect of the customs and institutions of Rajputs. It was observed by their

Lordships of the Privy Council as under:

These references seem sufficient to show that the customs which this family brought from its ancient home continued for a long course of ages. Is

there anything to lead to the conclusion that it was at any time abandoned or interrupted and that the family has ceased to be under the custom?

One fact is obvious, that had the ordinary Hindu Law prevailed in the family, it would long ago have merged in the general population, and there

would have been no gaddi and no Rana. It is the custom and custom alone which seems to their Lordships to have kept it intact.

11. Their Lordships of the Supreme Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of

India and Another, observed as under on the question of succession of Rulers:

At the time when they entered into covenants and agreements, a solemn assurance or guarantee was given by the Dominion of India that

succession to the gaddi of each Ruler would be according to law and custom of the State. It would appear that invariably the rule of lineal male

primogeniture coupled with the custom of adopting a son prevailed in the case of the Hindu Rulers who composed of the bulk of the body. When

on the eve of the Constitution being finally adopted the Rulers with the exception of two or three accepted the same as bidding upon them and their

states, it must follow that they accepted and adopted the Constitution of India because they thought and were assured that the provisions in it

regarding themselves and their successors were to their satisfaction and were binding in nature

12. Learned Counsel for the appellants relied upon the decision of their Lordships of the Privy Council in Neelkanto Deb Burmono v. Berchunder

Thakoor and Ors. 1869 Moore's IAC 12 in support of their submission that although the kingdom or Raj descended by inheritance to a sole heir,

yet, the other joint family property, which formed part of an undivided joint ancestral estate, would normally be inherited according to the Hindu

law. It was observed by their Lordships of the Privy Council as under:

The family in which a title to a kingdom exists in one member follows this general law but it follows it in part only, for the succession to a kingdom

is an exception to it from the very nature of the thing (see 1 Strange's "Hindu Law", P. 19, 2nd Ed ), the family may have property distinct from

that to which a sole heirship belongs, and may continue joint. Still when a Raj is enjoyed and inherited by one sole member of a family, it would be

to introduce into the law, by judicial construction, a fiction, involving also a contradiction to all this separate ownership, though coming by

inheritance, at once sole and joint ownership, and so to constitute a joint ownership without the common incidents of coparcenorship. The truth is,

the title to the Throne and the Royal land is, as in this case, one and the same title: survivorship cannot obtain in such a case possession from its

very nature, and there can be no community of interest: for claims to an estate in lands, and to rights in others over it, as to maintenance, for

instance, are distinct and inconsistent claims. As there can be no such survivorship, title by survivorship, where it varies from the ordinary title by

heirship, cannot, in the absence of custom, furnish the rule to ascertain the heir to a property which is solely owned and enjoyed, and which passes

by inheritance to a sole heir.

13. The decision in Ahmadunnisa Begum v. Union of India represented by Secretary, Ministry of Home Affairs, Government of India, New Delhi

AIR 1949 AP 423 was also relied upon by learned Counsel wherein it was held that the recognition of succession to a estate or gaddi was a

political decision and an act of the State, but it has nothing to do with private properties and whether the succession to private property would

follow the succession to the gaddi was a matter dehors the covenant and either party could set up a claim thereto.

14. Considerable stress was laid by the learned Counsel for the appellants on the decision of the Income Tax Appellate Tribunal Delhi B. Bench in

the case of Income Tax Officer v. Bhawani Singh 1980 (16) CTR (Trib) 25. The question in the case before the Income tax Appellate Tribunal,

was whether late Swai Man Singh, the former Maharaja of Jaipur, should be assessed to tax under the Income tax Act, 1961 in the status of an

individual or in the status of a Hindu Undivided Family. The matter related to the assessment year 1970-71. It was held by the Tribunal that the

rulers of the former State of Jaipur were absolute Ruler or Monarch and if one may call them kings who made all laws, who were the fountains of

all laws and administered them in the manner as they wanted. Before the attainment of independence of the country, the Rulers of the Indian States

administered their States as an absolute over Lord or absolute holder of an immoveable estate and the mode of succession to such State is

determined by the custom, being in favour of the Rule of primogeniture. After the lapse of paramountcy in the year 1947 and entering of the

covenants and the merger agreements by the Rulers of Indian States with the Government of India changed the position. After the advent of

independence the rulers and the Rajas were reduced to the position of an ordinary citizen. He became amenable to all laws of India and that is why

he had filed the return under the Income Tax Act. The Tribunal took note of the fact that the former Ruler of Jaipur State did not keep any

distinction between State properties and the personal properties and it was the covenant which divided the properties into State and personal

properties and while the State properties were taken away by the Government after the merger, the personal properties remained with the former

Ruler. It was after that event that the personal law was held to be applicable to the personal properties of the former Ruler. In view of the fact that

the ruler did not have any self acquired property but had only his ancestral property it was held by the Tribunal that he constituted an H.U.F. "with

his legal heirs".

15. It may be mentioned that Maharaja Swai Man Singh of Jaipur died on June 24, 1970 & the succession opened upon his death while Maharaja

Umaid Singh of Jodhpur died on June 18, 1947 and the succession to the properties left by him opened even before the lapse of Paramountcy on

August 15, 1947 and much before the covenant and the merger agreements were executed by his son, Maharaja Hanuwantsing in the year 1948-

49.

16. Learned Counsel for the appellants also referred to the decision of their Lordships of the Supreme Court in *Kunwar Shri Vir Rajendra Singh v.*

*The Union of India & others* AIR 19 SC 1946 It was held in that case by their Lordships of the Supreme Court that the recognition of the Ruler is

a right to succeed to the "gaddi" of the estate and that recognition of the Rulership is an exercise of political power, but it was not associated with

recognition of right to private properties. Their Lordships observed as under in the aforesaid case:

It is manifest that the right to private properties of the last Ruler depends upon the personal law of succession to the said private properties. The

recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political

power vested in the President and in thus an instance of purely executive jurisdiction of the President. The act of recognition of Rulership is not, as

far as the President is concerned, associated with any act of recognition of right to private properties.

17. In *Rajkumar Devindra Singh and Another Vs. The State of Punjab and Others*, the question was that if a person was in occupation of the

property before it became public premises, could such an occupant be evicted from the said property under the provisions of the Punjab Public

Premises and Land (Eviction and Rent Recovery) Act, 1959 on the ground that he was in an unauthorised occupation of public premises? In that

case, the younger sons of Late Maharaja Bhupinder Singh, earlier Ruler of the State of Patiala were in possession of a house as members of his

family. Thereafter, Maharaja Yadavindra Singh his eldest son, who succeeded to the gaddi of Patiala, sold the house to the Government of Punjab

as the property belonging to him, after he ceased to be the Maharaja of Patiala consequent upon the merger of the State with India. The State



Government took proceedings for eviction of the younger brothers of Yadavindra Singh and their family members. It was held by their Lordships

of the Supreme Court that the persons who had entered into possession of the property before it became public premises and was in occupation of

such property could not be evicted under the provisions of the aforesaid Act because Section 3(a) of the Act could become applicable only when

a person entered into possession of a public premises and was thereafter in unauthorised occupation thereof. The decision in this case turned solely

upon the interpretation of the provisions of Section 3(a) of the Punjab Public Premises Act, as is clear from the following observations of their

Lordships:

A person shall be deemed to be in unauthorised occupation of public premises for purposes of Section 3(1) where he has, before or after the

commencement of the Act, entered into possession "thereof", otherwise than under and in pursuance of any allotment, lease or grant. The word

"thereof" makes it clear that the person must have entered into possession of public premises before or after the commencement of the Act in

order that he may be deemed to be in unauthorised occupation. If the appellants were in possession before the date of the sale of the property to

the Government, it could not be said that the appellants entered into possession of public premises, for at the time when they were in occupation of

the property, the property was not public premises. Then it was either the joint family property or the property of the Maharaja, namely,

Yadavindra Singh. The property was not public premises before it was sold to the Government.

18. The decision of their Lordships of the Supreme Court in Commissioner of Income Tax, Poona Vs. H.H. Raja of Bhore, which related to the

assessment of the former Raja of Bhore for the assessment years 1954-55 to 1953-59. Their Lordships took note of the fact that the Late Raja of

Bhore died on October 9, 1954 and thereupon his estate passed to his three sons who constituted a Hindu undivided family. The eldest of the three

sons succeeded to the title of Raja of Bhore but along with his two brothers he constituted a Mitakshara Coparcenary and the property inherited by

the three brothers from their father was coparcenary property. It is significant to point out that the Late Raja of Bhore had ceased to be a Ruler

after the covenant and the merger agreement and the matter in dispute before their Lordships related to the succession which opened upon his

death on October 9, 1954.

19. In the case of D.S. Meranwala Bhayawala v. Ba Shri Amarba Jethsurbhai 1968 (9) GLR 609 while dealing with the question of succession to

Khari Bagasra estate it was held that prior to August 15, 1947 Khari Bagasra estate was a sovereign estate and it was observed by Bhagwati, J. as

he then was, that if the Khari Bagasara Estate was a sovereign estate, it was difficult to see how the ordinary incidents of ancestral coparcenary

property could be applied to that estate.

20. In *Mirza Raja Pushpavathi Vijayaram Gajapathi Raj Marine Sultan Bhadar v. Sri Pushpavati Visweswar Gojapatairaj Rajkumar of*

*Vizianagram and ors.* AIR 1964 SC 118 their Lordships of the Supreme Court observed that since the decision of the Privy Council in AIR 1932

216 (Privy Council) it must be taken to be well settled that an estate which is impartible by custom cannot be said to be separate and exclusive

property of the holder of the estate. It was observed by their Lordships as under:

If the holder has got the estate as an ancestral estate and he has succeeded to it by primogeniture, it will be a part of the joint estate of the

undivided Hindu family. In the illuminating judgment delivered by Sri. Dinshah Mulla for the Board, the relevant previous decisions bearing on the

subject have been carefully examined and the position of law clearly stated. In the case of an ordinary joint family property, the members of the

family 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; (4) the right of survivorship. It is obvious that from the very nature of the property which is impartible the first of these rights cannot

exist. The second is also incompatible with the custom of impartibility as was laid down by the Privy Council in the case of *Rani Sartaj Kuari v.*

*Deoraj Kuari*, 15. Ind App 51: ILR 10 All 272 and the First Pittapur case *Venkata Surya v. Court of Wards*, 26 Ind App 83: ILR 22 Mad 383

(PC). Even the right of maintenance as a matter of right is not applicable as laid down in the second Pittapur case *Ram Rao v. Raja of Pittapur*, 45

Ind App 148: ILR 41 Mad 778: AIR 1918 PC 81. The 4th right viz., the right of survivorship, however, still remains and it is by reference to this

right that the property, though impartible, has in the eyes of law, to be regarded as joint family property. The right of survivorship, which can be

claimed by the members of the undivided family which owns the impartible estate should not be confused with a mere spes successionis.

It also follows from the decision in AIR 1932 216 (Privy Council) case that unless the power is excluded by statute or custom, the holder of

customary impartible estate, by a declaration of his intention, can incorporate with the estate self-acquired immovable property and thereupon, the

property accrues to the estate and is impressed with all its incidents including a custom of descent by primogeniture.

21. The nature and incidents of impartible estate were also considered by their Lordships of the Supreme Court in Sri Rajah Velugoti Kumara

Krishna Yachendra Varu and Others Vs. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu and Others, It was observed as under in

the aforesaid case:

The law regarding the nature and incidents of impartible estate is now well settled. Impartibility is essentially a creature of custom. The junior

members of a 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 it is impartible. Secondly, they have no right to interdict alienations by the head of the family either for necessity or.... The right of

junior members of the family for maintenance is governed by custom and is not based upon any joint right or interest in the property as cowners.

This is now made clear by the Judicial Committee in (1941) 9 ITR 695 (Privy Council) ""The income of the impartible estate in the individual

income of the holder of the estate and is not the income of the joint family.

22. Learned Counsel for the appellants also made a reference to the decision of their Lordships of the Supreme Court in Nagesh Bisto Desai and

Others Vs. Khando Tirmal Desai and Others, wherein their Lordships observed as under:

It is 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 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.

23. Thus, the aforesaid decisions go to show that the characteristic features of ancestral co-parcenaty property are 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 very nature of a sovereign State or Raj that there can be no interest by birth or adoption in such State and these rights which are the

necessary consequence of community of interest cannot exist. The head of a sovereign State holds the State by virtue of his sovereign power and

not by virtue of Municipal law. He would not be subject to Municipal law, he is in fact the fountain head of all laws. The Municipal law cannot

determine or control the scope and extent of his interest in the State or impose any limitations on his powers in relation to the properties of the

State as a sovereign Ruler, he would be the full and complete owner of the State entitled to do whatever he likes with the State and its properties.

During his life time no one else can claim an interest in the State as any such interest would be inconsistent with his sovereignty. Upon his death, the

succession is governed by custom, by the rule of primogeniture. If all the sons of the former Ruler acquire an interest by birth or adoption, they

would be entitled to claim the rights enumerated above as in an ancestral coparcenary property, but these rights cannot exist in a sovereign State.

None of these rights can be enforced against the Head of the State by a remedy in the Municipal Courts. The Head of the State 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 sovereign Ruler would not be subject to Municipal laws and his action would not be

controlled by the Municipal Courts. If a claim is not legally enforceable, it would not constitute a legal right and, therefore, by the very nature of a

sovereign State, the sons cannot have the aforesaid 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 State by birth or adoption.

24. The general law of Mitakshara applicable to joint family property appears to have been modified by custom and an impartible estate, though it

may be an ancestral joint family estate, is clothed with incidents of self-acquired and separate property to that extent. The only vestige of the

incidents of joint family property, which still attaches to the joint family impartible estate is the right of survivorship which, of course, is not

inconsistent with the custom of impartiality. For the purpose of devolution of the property, the property is assumed to be joint family property and

the only right which a member of the joint family acquires by birth is to take the property by survivorship but he does not acquire any interest in the

property itself.

25. The ancestral impartible estate to which the holder succeeds by the custom of primogeniture would be part of the joint estate of the undivided

Hindu family and the fact that the estate was impartible did not make separate and exclusive property of the holder. Of course, the rights of sharing

partition, to restrain alienation and to claim maintenance, which are ordinarily enjoyed by the members of a joint Hindu family are incompatible with

the very concept of impartiality and are not available to the junior members of the joint Hindu family. The only vestige of the incidents of joint family

property which still attaches to the joint impartible estate is the right of survivorship, which is not inconsistent with the custom of impartiality. Thus,

it appears that the junior members of the joint Hindu family, in the case of ancient impartible joint family estate, take no right in the property by birth

and have no right to claim a share, but have only the chance of succession by survivorship as in the male lineal descendant of the senior line.

26. It is also apparent that prior to the year 1947, when India attained independence, Rulers of Indian States were sovereigns in their own right,

subject to the suzerainty exercised over them by the British Crown. On the enactment of the Indian Independence Act, 1947 the suzerainty, which

the British Crown had as the paramount power over the Rulers of the Indian States, lapsed and with it also lapsed all the treaties and agreements in

force between the British Crown and the Rulers of the Indian States. The result was that all the functions exercised by the British Crown with

respect to Indian States, all obligations, powers, rights and authority exercisable by the British Crown at that time in relation to Indian States or the

Rulers thereof by treaty, grant, usage, sufferance or otherwise came to an end. Like other States, the Ruler of the former State of Jodhpur

executed a stand still agreement and an instrument of accession was also entered into. The instrument of accession provides for the succession of

the State to the dominion of India in respect of three subjects, namely, defence, external affairs and communications. The stand still agreement

provides for the continuance for the time being of all subsisting agreements and administrative arrangements in matters of common concern

between the States and the dominion of India. This accession was followed by a process of integration of Indian States in Rajasthan, which

culminated in the formation of the United State of Rajasthan. Under the instrument, the Rulers of Rajasthan agreed to the integration of their States,

including Jodhpur, in the bigger union comprising of the part of the geographical and (sic)cultural entity known as Rajasthan. Under a covenant the

provisions of which were guaranteed by the Government of India, this union was inaugurated on March 30, 1947, which was later modified by the

integration of Matsya Union on May 15, 1949. On the enactment of the Constitution of India on January 26, 1950 the Union of Rajasthan became

one of the Part "B" State and by the 7th Constitutional Amendment Act, 1956 the Part "B" State of Rajasthan was recognised as one of the State

in India.

27. As a result of the constitutional developments leading to the promulgation of the Constitution, Maharaja Hanuwant Singh who was at one time

recognised as the Sovereign of the independent State of Jodhpur subject to the paramount control of the British Crown, acquired the status of a

citizen of India from the date of the promulgation of the Constitution. Thus, in the case of Rajasthan States, partial sovereignty was ceded under the

instrument of Accession and full sovereignty was ceded when the merger agreements and the instrument of Accession were signed by the rulers of

these States. Prima facie it appears that only after the death of the sovereign or Ruler, after the merger of the States, the sons of the last Ruler

could possibly inherit the personal property like ancestral coparcenary property.

28. As the suit is still to be tried by the learned District Judge, it would be proper for me to refrain from expressing any final opinion on the

questions raised before me and whatever I have observed above must be considered to be merely a tentative or prima facie view, which would

have no bearing on the ultimate decision of the suit. The question as to when the former ruler of Jodhpur State ceased to be the Ruler and when the

ancestral impartible estate ceased to be impartible. When Maharaja Umaid Singh breathed his last on June 18, 1947 he was the sovereign Head or

Over Lord of the State of Jodhpur and its properties. On his death, his eldest son, Maharaja Hanuwant Singh became the holder of the ancestral

impartible state by succession, according to the custom of primogeniture and the junior members of the family, including his younger brothers

obtained merely the right or chance of succeeding to the State by survivorship. The succession, as a matter of fact, opened upon the death of

Maharaja Umaid Singh on June 18, 1947 it appears that at that time Maharaja Hanuwantsingh obtained unfettered and complete power of

control and disposal, in respect of the ancestral impartible estate as well as the personal properties, if any left by Maharaja Umaid Singh, as there is

no material as yet on record to show as to whether during the life-time of Maharaja Umaid Singh any distinction was kept between State

properties and private properties of the Ruler, which alone could have been inherited by his legal heirs as joint family property.

29. As mentioned above, Maharaja Hanuwant Singh, who succeeded to the "Gaddi" of Jodhpur on the death of his father Maharaja Umaid Singh

undoubtedly upon the formation of Rajasthan ceased to be the Ruler, before his death and thereafter he became amenable to the Municipal laws

like any other citizen. But in the case before me the question is not regarding succession to Maharaja Hanuwant Singh, as the plaintiffs do not and

could not claim to be his legal heirs, but they claim a share in the property as legal heirs of Maharaja Umaid Singh. Prima facie, the succession at

the time of death of Maharaja Umaid Singh was governed by the rule of primogeniture and only the eldest male member of the senior line was

entitled to succeed to the ancestral impartible estate. Whether there was any partible property, distinct and separate from the ancestral impartible

estate, is a matter about which there is no relevant material before the Court at this stage.

30. No doubt, after the date when the Ruler of the former State of Jodhpur made over the administration of the State to the Raj Pramukh of the

Union of Rajasthan, the private properties of the Ruler according to the agreed list became distinct and separate from the State properties. The

former Ruler of Jodhpur was recognised and declared as the full owner of the private properties, while the State properties vested in the United

State of Rajasthan. The distinction between private properties and State properties was made when the settlement of the list of private properties

was arrived at between the former Ruler Shri Hanuwant Singh and the Government of India. But learned Counsel for the appellants was unable to

show that prior to the merger of Jodhpur with India and the preparation of the list of private properties, any distinction was made between private

properties of the Ruler and the State properties. As observed above, before the formation of the United State of Rajasthan, the Ruler of the former

State could freely make use for personal purpose any of the properties owned by the State. The necessity of defining and demarcating the private

properties of the former Ruler arose on account of the integration of the princely State to form the United State of Rajasthan and as has been

stated in the White Paper on Indian States the settlement regarding private properties of the Ruler was arrived at as a result of the compromise

between the Ruler and the Government of the United State of Rajasthan with the intervention of the Government of India.

31. It may also be observed that after the death of Maharaja Umaid Singh some properties were given to the plaintiffs by way of grant or

maintenance or family custom from the Ruler to the junior members of the family. Shri Himmatsingh is alleged to have sold one of such properties.

If the argument of the plaintiffs could be accepted and the entire ancestral property could be considered as coparcenary property, then Himmatsingh

alone could not have sold the bungalow which was given to him by a grant by Maharaja Hanuwant Singh.

32. A decision of this Court in State of Rajasthan v. Maharaja Hanuwant Singh (D.B. Civil Regular First Appeal No. 134 of 1960) decided on 6th

May, 1970 was also placed before me. In that case, the Division Bench of the Court held that Jodhpur was an independent sovereign State till 6th

April, 1949 when it merged with other States, to form the United State of Rajasthan on April 7, 1949. The claims of plaintiffs, in the suits, which

were subject-matter of appeals before this Court, and some of whom are appellants before me, was in respect of arrears of maintenance

allowance on the basis of an order passed by Maharaja Umaid Singh on September 13, 1946. This Court negatived the claim in respect of the

arrears of maintenance and it was held that the right of maintenance could not be enforced against the new State of Rajasthan and the suits were

dismissed.

33. Considerable reliance was placed by the learned Counsel for the appellants on certain observations made by the Division Bench of the Delhi

High Court in *Her Highness Mahurani Sarojini Devi v. His Highness Maharaja Pratap Singh and Ors.* (Civil Regular First Appeal No. 6 of 1977)

decided on 23rd May, 1980. In that case it was held that there is no rule that a Ruler of an Indian State could not possess private property which

in the matter of inheritance would be governed by personal law applicable to him and that the rule of primogeniture applied to the ruling family in

relation to rulership rights & did not apply to succession to private property. There can be no dispute about this proposition. The question in that

case was about the ownership of a house situated in Delhi and as to whether it was the private property of the former Ruler of Nabha. The

conclusion of the Division Bench of the Delhi High Court was that the property in dispute was purchased by Maharaja Ripudaman Singh of

Nabhu, "benami" in the name of a third person and it was intended by him to keep the same as his personal and private property, apart from the

State property. As the matter is sub-judice and an appeal is pending before their Lordships of the Supreme Court, it would not be proper to make

any reference to the observations made in the aforesaid decision of the Delhi High Court. However, even if it be accepted that the rule of

primogeniture applied to the state property or to the impartible estate, the plaintiffs will have to adduce evidence as to whether there was any

private property apart from the State property, in the case of Maharaja Umaid Singh. The question whether the properties which were

subsequently included in the list of private properties, as a result of an agreement between the Government of India, the State Government of

Rajasthan and Maharaja Hanuwant Singh, were considered as separate properties of Maharaja Umaid Singh at the time of his demise and they

formed part of the impartible estate which Maharaja Hanuwant Singh inherited in June, 1947 according to the rule of primogeniture. It is yet to be

seen on the basis of evidence which may be led in the suit whether Maharaja Umaid Singh kept any distinction between State properties and

private properties during his life-time and there were any personal properties at the time of his death which could be available for inheritance to his

heirs as his private property.

34. Thus, it appears that the conclusion arrived at by the learned District Judge that the appellants have failed to establish a prima facie case is

justified on the basis of the record and as such no case has been made out for issuing a temporary injunction. The findings of the learned District



Judge in respect of balance of convenience and irreparable injury are also upheld. The learned District Judge had provided sufficient safeguards in

this matter. Further, the plaintiffs have failed to make out a case for the appointment of a receiver as has been held by the learned District Judge.

35. In the result, the order passed by the learned District Judge, Jodhpur is upheld and all the three appeals are dismissed.

36. In the facts and circumstances of the case, the parties are left to bear their own costs of all the three appeals.