

THAKORE SOBHAG SINGH

v.

THAKUR JAI SINGH & ORS.

January 31, 1968

[J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

Jaipur Matmi Rules, 1945—Whether have force of law—Adoption prior to promulgation of Rules without sanction of Ruler—Validity.

Board of Revenue, Rajasthan—Jurisdiction to decide questions of adoption and succession to jagirs in Jaipur State.

The Board of Revenue, Rajasthan, without recording a finding on the factum of respondent's adoption to the last holder of the jagir, rejected his claim to be recognised as the adopted son, on the ground that, under the *Matmi* Rules, the adoption, without the previous sanction of the Ruler, could not be recognised for the purpose of determining succession to the jagir. In the writ petition filed by him, the High Court dealt with the dispute on merits and, holding (a) that the Jaipur *Matmi* Rules had no statutory force because the Ruler had not given his assent to them; (b) that on the death of the last holder without any issue the jagir would vest in the respondent if it was proved that he was adopted in accordance with the personal law of the last jagirdar; and (c) that rule 14(2) requiring the previous sanction of the Government of the State to adopt is prospective and could have no application to an adoption made before the Rules were promulgated, directed the Board to decide the case in accordance with the law declared by the High Court. The Board held that the respondent was proved to have been adopted by the last jagirdar and directed that he should be recognised as the jagirdar.

In appeal to this Court, against the order of the Board of Revenue it was contended by the appellant, who claimed to have a preferential right to the jagir, that: (1) the Board of Revenue had no jurisdiction to decide the dispute relating to adoption as it was triable by a civil court, and (2) since the Jaipur *Matmi* Rules (Validation) Act, of 1961, was passed after the judgment of the High Court, the Board was bound to dispose of the matter in the light of the Rules.

HELD: (1) Under the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, the power to deal with and decide disputes relating to succession to jagir-estates was vested, in respect of proceedings pending at the date of the Act and instituted thereafter, in the Revenue Courts. Therefore, the Board of Revenue was competent to decide the question relating to the respondent's adoption, and its decision on the factum of adoption recorded on appreciation of evidence must be accepted.

(2) It was not open to the appellant to contend that the right of the respondent, as the adopted son, to the jagir had to be decided by the Board on the basis of the *Matmi* Rules and not in accordance with the personal law of the last jagirdar.

(a) Though the State legislature enacted the Validation Act, declaring that the *Matmi* Rules 'shall have and shall be deemed always to have had, the force of law and shall be treated as being and as having been an existing jagir law within the meaning of s. 2(d) of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952', notwithstanding anything

A contained in any judgment of any court, the Act did not supersede the judgment of the High Court and therefore, the Board was incompetent to consider and decide the question whether the Government may, in the absence of its previous sanction, refuse to recognise the adoption of the respondent on the basis of the *Matmi* Rules. [854 A-C]

B (b) According to the personal law applicable to the last jagirdar, the respondent could have been adopted by him and the finding of the High Court that the jagir would vest in the respondent as the adopted son in accordance with such personal law operated as *res judicata* and could not be reopened before the Board of Revenue; and, it was not open to the appellant to contend in the appeal to this Court that the decision of the High Court on questions decided in the writ petition was erroneous. The order of the High Court on the writ petition was not an interlocutory order. [854 E-G]

C (c) Rule 14(2) is on its terms prospective and the Validation Act does not give retrospective operation to the *Matmi* Rules. [853 F]

(d) It could not be contended that the judgment of the High Court should not be treated as *res judicata*, on the ground that if it was regarded as binding between the parties, the equal protection clause of the Constitution would be violated if another person similarly situated were to be differently treated by the Board of Revenue. [855 E-F]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 568 of 1965.

Appeal by special leave from the judgment and order dated October 23, 1962 of the Board of Revenue, Rajasthan at Ajmer in *Matmi* Case No. 40 (Jhunjhunu) of 1961.

E *M. M. Tiwari, D. D. Varma and Ganpat Rai*, for the appellants.

A. K. Sen, D. P. Gupta, Sobhag Mal Jain and B. P. Maheshwari, for respondent No. 1.

K. B. Mehta and Miss Indu Soni, for respondent Nos. 2 to 4.

F The Judgment of the Court was delivered by

Shah, J. This is an appeal brought with special leave against the judgment dated October 23 1962 in *Matmi* Case No. 40 of 1961, of the file of the Board of Revenue, Rajasthan.

G Thakur Sabhal Singh—hereinafter called ‘Sabhal Singh’—a jagirdar of *Thikana* Jhakora in Shekhawati area in the former Indian State of Jaipur applied on November 3, 1933 to recognize Jai Singh—the first respondent in this appeal—as his adopted son for succession to the *Thikana*. On May 23, 1936, the Ruler of Jaipur in Council ordered that he “saw no reason at the present moment to recognize the adoption advocated by” Sabhal Singh, and that the “alleged adoption of Jai Singh shall in no way be deemed to be an adoption that will in any sense bind the *Darbar* as regards the question of succession”. On June 16, 1947, Sabhal Singh preferred another application to the Prime Minister of Jaipur for recognizing the adoption of Jai Singh. The application was

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sent to the Board of Revenue for enquiry and report under the Jaipur *Matmi* Rules, 1945. The Board of Revenue reported that in view of the Council Resolution dated May 23, 1936, the application was not maintainable since Sabhal Singh was living at the date of the application. But before this application could be finally disposed of by the Government of the State of Jaipur Sabhal Singh died and the Prime Minister of Jaipur directed that necessary enquiries be held under the *Matmi* Rules, and for that purpose the record be sent to the Deputy Commissioner for taking action according to the Rules. The *Nazim*, Jhunjhunu held an enquiry and reported that adoption of Jai Singh by Sabhal Singh could not be recognized, for, under the Council Resolution dated May 23, 1936, the Government had refused to grant any recognition to the adoption. In the view of the *Nazim*, the adoption of Jai Singh by Sabhal Singh without the previous sanction of the Government was invalid, and evidence of the "factum of adoption" was inadmissible, but that did not debar Jai Singh from setting up a claim to succeed to the *Thikana* as a descendant in the senior line of the original grantee. An appeal against that order to the Deputy Commissioner was dismissed. A second appeal was then carried to the Board of Revenue. In the view of the Board, on the terms of the Council Resolution dated May 23, 1936, an enquiry into the factum of adoption could not be shut out. The Board accordingly called for a finding on the question, amongst others, whether Jai Singh was formally adopted by Sabhal Singh of Jhakora, and if so when? The *Nazim* reported that the adoption of Jai Singh stood proved satisfactorily, but the adoption could not be recognized because no previous sanction of the Ruler had been obtained. Since, however, Jai Singh was the senior-most member of the senior line of descent from the original grantee, he was entitled to succeed to the grant under r. 14(1) of the Jaipur *Matmi* Rules, 1945, in preference to any other claimant. The papers were then submitted to the Collector, Jhunjhunu. The Collector confirmed the finding of the *Nazim* that Jai Singh was adopted by Sabhal Singh, but in the absence of previous sanction of the Ruler the adoption could not be recognized. The Collector did not, however, agree with the *Nazim* that Jai Singh was the senior member of the senior line of the original grantee: he held that Sobhag Singh—appellant in this appeal—was the senior member of the senior line of the original grantee and recommended that "the *Matmi* be granted in favour of Sobhag Singh." The Board of Revenue agreed with the Collector that Jai Singh was not the senior member of the senior line of the original grantee of the grant in question, and that the appellant Sobhag Singh had a preferential claim to the grant of *Matmi*. The Board without recording a finding on the issue of adoption accepted the recommendation of the Collector.

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A Jai Singh then moved a petition under Art. 226 of the Constitution before the High Court of Rajasthan. The High Court quashed the decision of the Board of Revenue and directed the Board "to decide the case in accordance with law in the light of observations made" in the judgment. In the opinion of the High Court, the *Jagir* devolved according to the personal law applicable to the last holder, and the personal law included the custom or usage relating to the particular *Jagir*; that the custom or usage applicable to the *Jagir* in question was that the adopted son must be a direct male lineal descendant of the original grantee, and that Nahar Singh was the original grantee of the *Jagir* in question and Jai Singh as a descendant of Nahar Singh was entitled to take the *Jagir* if it was proved that the adoption had been made in accordance with the personal law, that the *Matmi* Rules had no statutory force because it was not proved that assent of the Ruler of Jaipur had been given thereto, and that even assuming that the Rules were "existing *Jagir* law" they did not govern adoptions made before they were brought into force. An application for certificate to appeal to this Court against the judgment of the High Court under Art. 133 of the Constitution was rejected on the ground that the dispute had not been finally decided, and a number of issues remained to be decided.

E The Board of Revenue held, on a re-hearing of the appeal, that Jai Singh was proved to have been adopted by Sabhal Singh. The Board accordingly directed that by virtue of the adoption of Jai Singh by Sabhal Singh, Jai Singh be shown in the revenue records as the *Jagirdar* of Jhakora on the demise of Sabhal Singh. Against that order, Sobhag Singh who claimed to have a preferential right to the *Jagir* of Jhakora has appealed to this Court.

F A large number of grounds were canvassed at the Bar in support of this appeal : they fall into three broad divisions :

- (1) That the Board of Revenue had no jurisdiction to decide a dispute relating to adoption which dispute was triable by the Civil Court alone;
- (2) Since the Jaipur *Matmi* Rules had been validated by the Jaipur *Matmi* Rules (Validation) Act, 1961 (Act 21 of 1961), the Board was bound to decide the appeal in the light of the Rules; and
- (3) That on the evidence it is not proved that Jai Singh was in fact adopted by Sabhal Singh as his son on *Kartik Sudi 13 Samvat Year 1987*.

H The first and the third grounds present no difficulty. The Rajasthan Legislature enacted the Rajasthan *Jagir* Decisions and Proceedings (Validation) Act 18 of 1955 to validate certain decisions

given, and proceedings taken, in respect of matters relating to the resumption of *Jagirs* in the covenanting States of Rajasthan, and the recognition according to the law of succession to the rights and titles of *Jagirdars* therein, and to provide the forum for the disposal of such cases and proceedings. The State of Jaipur was one of the covenanting States. By s. 3 of that Act it was provided that all decisions of the various grades of Revenue Courts or officers, in cases or proceedings arising out of, or under, the laws of the covenanting States providing for the resumption of *jagirs* in those States and the recognition of succession to the rights and titles of *jagirdars* therein shall be valid and shall be deemed always to have been valid and shall not be liable to be called in question in any Civil Court. Section 4 provided for continuance of pending cases and proceedings before the Revenue Courts as if they were properly instituted. Section 5 provided that all cases or proceedings of the nature referred to in s. 3 may after the Act be instituted in the Court of the Collector exercising jurisdiction in the area within which the subject-matter of the case or proceeding is situate. Provision was made for appeals from the orders of the Revenue Courts by s. 8, and by s. 12 the order of the Board of Revenue was declared final. The jurisdiction of the civil court to entertain suits or proceedings referred to in s. 5 was expressly excluded by s. 13. The power to deal with and decide disputes relating to succession to *jagir* estates was therefore vested in respect of proceedings pending at the date of the Act and instituted thereafter, in the Revenue Courts. The Board of Revenue was, therefore, competent to decide the question relating to the adoption of Jai Singh by Sabhal Singh.

There is overwhelming evidence on the record in support of the case that Jai Singh was adopted on *Kartik Sudi 13 Samvat Year 1987* by Sabhal Singh with the requisite ceremonies according to the personal law. Every authority or Tribunal which had occasion to deal with this question was of the opinion that Sabhal Singh adopted Jai Singh on *Kartik Sudi 13 Samvat Year 1987* according to the custom of the *Jagir*. Apart from the oral evidence, there is the deed of adoption, a copy of an invitation sent to an invitee to attend the adoption ceremony and the recitals in the application submitted by Sabhal Singh requesting recognition of the adoption of Jai Singh. The Board of Revenue in the judgment under appeal has carefully analysed the evidence, and we see no reason to enter upon a reappraisal of the evidence in this appeal with special leave. The view recorded by the Board of Revenue on appreciation of evidence that Jai Singh was adopted as a son by Sabhal Singh must be accepted.

The second contention may now be considered. In 1945 the Jaipur Matmi Rules were published in the State Government Gazette. By r. 3 all existing orders, rules and *hidayats* which

A were inconsistent with the *Matmi* Rules were repealed. Rule 4 sub-r. (3) defined "*Matmi*" as meaning mutation of the name of the successor to a State grant on the death of the last holder. By r. 5 it was provided that all State grants shall be subject to *matmi* with certain exceptions not relevant in this case. Rule 14 provided :

B " (1) Subject to the provisions of rule 13, succession in the absence of a direct male lineal descendant of the last holder shall be restricted to the lineal male descendants of the original grantee, preference being given to the senior member of the senior line :

C Provided, firstly, that in the case of a grant for the maintenance of a temple, mosque or other religious place, other than a Jain temple, it shall be within the discretion of Government to select as successor any one of the male lineal descendants of the original grantee, with due regard to his suitability for the performance of worship; and

D Provided, secondly,

(2) No adoption shall be recognised for the purpose of succession to a State grant unless a holder has obtained the previous sanction of the Government to adopt, such sanction being given only in favour of a direct male lineal descendant of the original grantee :

E Provided, firstly,

Provided, secondly,"

F That rule is plainly prospective, and can have no application to an adoption made before the Rules were promulgated. Previous sanction to adopt is not a condition of the grant of recognition for the purpose of succession to a State grant in respect of a person who is adopted by the holder of a *Jagir* before the date of the promulgation of the Rules. That was the view taken by the High Court in the writ petition filed by Jai Singh against the order of the Board of Revenue. The High Court also held that the *Matmi* Rules were not sanctioned by the Government, and had not the force of law. It is true that the State Legislature has enacted Act 21 of 1961—called 'The Jaipur *Matmi* Rules (Validation) Act 1961'. By s. 2 of that Act it is provided that "notwithstanding anything contained in the Jaipur General Clauses Act, 1944, or any other law or in any rule of interpretation or in any judgment decision, decree or order of any court, notwithstanding any omission or defect of form or procedure or want of any competent sanction or approval, it is hereby declared that the Jaipur *Matmi* Rules, 1945, published in the Jaipur Gazette, Extraordinary, dated

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the 8th December, 1945, under Revenue Branch Notification No. 15941/Rev., dated 24th November, 1945, shall have, and shall be deemed always to have had, the force of law and shall be treated as being and as having been an 'existing Jagir law' within the meaning of clause (d) of section 2 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (Rajasthan Act 6 of 1952) for the purpose of that Act as well as of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 (Rajasthan Act 18 of 1955), and any other law relating to "*Jagirs* or *Jagirdars*." But the Act did not supersede the judgement of the High Court. The Board of Revenue was therefore incompetent to consider and decide the question whether the Government may in the absence of the previous sanction of the Government refuse to recognize the adoption of Jai Singh. The Act again merely declares that the *Matmi* Rules shall be deemed always to have the force of law and shall be treated as being "existing *Jagir* law" within the meaning of cl. (d) of s. 2 of the Rajasthan Land Reforms and Resumption of Jagirs Act 6 of 1952 and Rajasthan Act 18 of 1955. But the Act does not purport to give retrospective operation to the Jaipur *Matmi* Rules. It is futile then to contend that the Board of Revenue before determining the question as to the factum of adoption of Jai Singh was required to consider whether the adoption was invalid, because sanction of the Ruler of Jaipur was not previously obtained by Sabhal Singh before taking Jai Singh in adoption.

The High Court had also held in the writ petition that on the death of the holder of the *Jagir* without having any issue the *Jagir* will vest in his adopted son in accordance with the personal law. That finding is now *res judicata* and is binding upon the parties. Counsel for the appellant contended that the order passed by the High Court was an interlocutory order remanding the proceeding to the Board of Revenue, and on that account the decision of the High Court will not operate as *res judicata* either before the Board of Revenue or in this Court. We are unable to accept that contention. Against the order of the Board of Revenue rejecting the claim of Jai Singh to be recognized as the adopted son of Sabhal Singh a writ petition was moved in the High Court and a prayer for quashing that order was made. The High Court dealt with the dispute on merits and held that the order of the Board of Revenue holding that because of the *Matmi* Rules the adoption of Jai Singh by Sabhal Singh without the previous sanction of the Ruler could not be recognized for the purpose of determining the succession to the *Jagir* was erroneous. The High Court did in making the final order direct the Tribunal to decide the case in accordance with the law and in the light of the observations made in the judgement, but the direction was, in our judgment, a surplusage. The High Court issued a writ in the nature of *certiorari*

- A quashing the order of the Tribunal. It was unnecessary thereafter to direct or advise the Board of Revenue to perform its statutory duty to decide the dispute according to law. The Board of Revenue had to decide the dispute in accordance with the law declared by the High Court. All questions which had been expressly decided by the High Court on contest between the parties and
- B other questions which must be deemed by necessary implication to have been decided were *res judicata* and could not be re-opened before the Board of Revenue. In this appeal it is therefore, not open to the appellant to contend that the decision of the High Court on the questions decided in the writ petition was erroneous.

- C It is unfortunate that the application for certificate to appeal to this Court filed by Sobhag Singh was erroneously rejected by the High Court. But that does not affect the binding character of the judgment of the High Court between the parties. Unless the decision of the High Court on those questions was set aside by appropriate proceeding in this Court, the judgment must be held binding between the parties. It is, therefore, not open to the
- D appellant to contend, that the right of Jai Singh as the adopted son to the *Jagir* had to be decided otherwise than in accordance with the personal law of Sabhal Singh. It is undisputed that according to the personal law applicable to Sabhal Singh, Jai Singh could have been adopted by him.

- E It was somewhat faintly contended by counsel for the appellant that if the judgment of the High Court is regarded as binding between the parties, the equal protection clause of the Constitution would be violated, and on that account also the judgment must be held invalid. The argument needs no serious consideration. It is difficult to appreciate the contention that two persons similarly situate were or could be differently treated by the judgment of the
- F Board of Revenue, because the decision of the High Court operates as *res judicata* between the parties in one case. By the application of the rule of *res judicata* the appellant was not singled out for special or prejudicial treatment. It may suffice to observe that all adoptions according to the personal law in the State of Jaipur made by *Jagirdars* before the promulgation of the *Matmi* Rules are valid, even if no sanction of the Ruler was obtained to the
- G adoptions. That rule applies to all adoptions by *Jagirdars* in the State of Jaipur.

The appeal fails and is dismissed with costs in favour of the first respondent.