A

JAYVANT RAO AND OTHERS

v.

CHANDRA KANT RAO AND OTHERS

February 26, 1970

B [S. M. SIKRI AND V. BHARGAVA, JJ.]

Constitution of India, Art. 372(1)—*Ruler by order applying law of primogeniture to one Jagir and making it impartible—If Order legislative and therefore valid.*

C L had two sons, G and M. L. and his elder son G were granted a Jagir by the then Ruler of Kotah, jointly in their names, in lieu of a debt which the Ruler owed to them. This property was treated as property of the joint family of L. The name of M, the second son born after the grant, was also mutated against the Jagir villages. The names of the descendants of G and M were from time to time similarly mutated against the Jagir and this Jagir as well as other property of the joint family was managed for some time by the eldest member belonging to either branch D of the family. The respondent C was a descendant of G and claimed in 1937 before the Revenue Commissioner that as the eldest son in the eldest branch he alone had the right over the Jagir according to the custom and usage in Rajputana and, consequently, mutation in the records should be in his name alone. On a report by the Revenue Commissioner, the Ruler passed an order on 22nd January, 1938, directing that the Jagir, like all other Jagirs in the State should be given the status of an impartible estate E and should be liable to render 'Chakri' and 'Subchintki' to the Ruler. It was further ordered that the Jagir would be governed by the rule of primogeniture, so that C alone would be held to be Jagirdar.

The appellants, who were the descendants of M, sought partition of all the family properties including the villages in the Jagir. Although the Trial Court dismissed the suit, on appeal, the High Court granted a decree in respect of other properties but upheld the dismissal of the suit in so far F as the appellants had claimed a share in the Jagir.

The appellants claimed that the Jagir having been joint Hindu property, their rights as successors-in-interest of M could not be defeated by the order of Ruler dated 22nd January, 1938, and consequently, the appellants were entitled to their proper share in the Jagir. It was contended that all orders passed by an independent and sovereign Ruler do not have G the force of law. It is only those orders which purport to lay down a law for the State which cannot be challenged and which would remain in force even after the merger of the Kotah State in India and, after the enforcement of the Constitution, under Art. 372 of the Constitution. It was submitted that, when passing the Order dated 22nd January, 1938, the Ruler was only exercising executive powers of directing mutation of names and was not exercising any legislative powers.

H HELD : Dismissing the appeal.

(i) The High Court was right in holding that the villages in the Jagir, at the time when the suit for partition was instituted, were impartible

property governed by the law of primogeniture and C alone could be treated as the owner of these villages. A

(ii) The very nature of the Order, which changed the law applicable to the Jagir, indicated that it was a legislative act and not a mere executive order. The Ruler did not purport to lay down that the Jagir was already governed by the rule of primogeniture; what he did was to apply the rule of primogeniture to this Jagir for future. Such an order could only be made in exercise of his prerogative of laying down the law for the State. The mere fact that it was laid down for one single Jagir and was not a general law applicable to others in the State was immaterial, because it does not appear that there were any other similar Jagirs which also required alteration of the law applicable to them. [843 B-D] B

(iii) Although no special procedure of law-making was adopted by the Ruler when making this Order, that circumstance could not change the nature of the Order specially when there was nothing to indicate that there was any recognised procedure of law-making in the Kotah State at that time. [844 F-G] C

Rajkumar Narsingh Pratap Singh Deo v. *State of Orissa and Another* [1964] 7 S.C.R. 112; referred to.

State of Gujarat v. *Vora Fiddali Badruddin Mithibarwala* [1964] 6 S.C.R. 461 and *Major Ranjit Singh Rao Phalke* v. *Smt. Raja Bai Sahiba (dead) by her legal representatives and Vice Versa* Civil Appeal Nos. 982 and 983 of 1964 decided on 18th July, 1967 ; distinguished. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1370 of 1966.

Appeal from the Judgment and decree dated February 16, 1966 of the Rajasthan High Court in D. B. Civil Regular First Appeal No. 86 of 1958. E

R. K. Garg, S. C. Agarwal, D. P. Singh, V. J. Francis and *S. Chakravarty*, for the appellant. F

D. V. Patel, Janendra Lal, and *B. R. Agarwala*, for the respondents.

The Judgment of the Court was delivered by

Bhargava, J. This appeal arises out of a suit for partition of properties in the family of one Lalaji Ramchandra who was the common ancestor of the parties to the suit. He had two sons, Govindraoji and Motilal *alias* Krishnaraoji. The plaintiffs/appellants and the non contesting proforma respondents are the descendants of Motilal, while the contesting respondents are the descendants of Govindraoji, the principal one being Chandrakant Rao who was defendant No. 1 in the suit. The appellants sought partition of all the family properties, including eight villages known as "the sarola Jagir" which were situated in the erstwhile State of Kota. The trial Court dismissed the suit in its entirety, holding G H

A that none of the properties in suit was ancestral property. On appeal by the present appellants, the High Court of Rajasthan upheld the dismissal of the suit insofar as the appellants had claimed a share in the eight villages forming the Sarola Jagir, while the suit in respect of the other properties was decreed and a preliminary decree passed in respect of those properties. The appellants B have come up to this Court in this appeal, by certificate granted by the High Court, against the order of the High Court refusing to grant partition of the eight villages of the Sarola Jagir.

In order to appreciate the point raised in this appeal the history of this Jagir in this family may be recited briefly. Lalaji Ramchandra and his eldest son Govindraoji were awarded this Jagir C by means of a Parwana dated 8th April, 1838 issued by His Highness Maharao Ramsingh, Ruler of Kotah. It appears that the Maharao had contracted debts with the family of Lalaji Ramchandra even in the time of his ancestors and, at the relevant time, the amount of debt exceeded Rs. 9 lakhs. This debt was guaranteed by the British Government. In lieu of this debt, this Jagir, which D was already being enjoyed by Lalaji Ramchandra with certain limitations, was given jointly to him and his son Govindraoji, stating that it was being conferred in perpetuity and was always to remain from sons to grandsons and was to be free from all taxes which were being exacted up to that time, such as Barar and Sewai. At the same time, Govind Rao executed a deed of release E by which he accepted the adjustment of the amount due from the Maharao against this grant of Jagir. These documents thus show that this Jagir was originally granted by Maharao Ramsingh, Ruler of Kotah, jointly in the names of Lalaji Ram Chandra and his son, Govindraoji in lieu of the debt which the Maharao owed to them. Subsequently, this property was treated as property of the joint family of Lalaji Ramchandra Motilal the second son F of Lalaji Ramchandra, was born after this grant and his name was also mutated against the Jagir villages. On the death of Govindraoji, the name of his adopted son, Ganpat Raoji, was brought in, while Motilal, the uncle, managed the property on behalf of the family. Motilal executed a will in respect of his properties, including these villages, specifically stating that half of this property belonged to Ganpatraoji, while half would belong to his G adopted son, Purshottam Raoji. After the death of Motilal, Ganpatraoji became the manager of the property and Purshottam Raoji's name was also entered against this property. On the death of Ganpat Raoji, the name of his eldest son Chandrakant Rao was mutated while Purshottam Raoji in the capacity of the eldest H member of the family, started managing the property. The property thus remained in the family, being treated as joint family property and, even during the years between 1852 and 1868 when efforts were made by the Maharao of Kotah to dispossess this

family, the British Government had intervened to ensure that the property remained with this family, insisting that the Maharao could only resume the Jagir on repayment of the loan in respect of which discharge had been obtained when this Jagir was conferred. The property was thus continued to be treated as joint family property until the death of Purshottam Raoji when a question arose as to the mutation of names of his descendants in his place. Chandrakant Rao desired that his name alone should be shown as the holder of this Jagir and, on 22nd October, 1937, gave a statement before the Revenue Commissioner claiming that the eldest son in the eldest branch had the right over the Jagir according to the custom and usage in Rajputana and, consequently, mutation in the records should be in his name alone. A report was sent by the Revenue Commissioner and the matter was dealt with by the Maharao of Kota himself in Mehakma Khas. The order of the Maharao on that report was passed on 22nd January, 1938. By this Order, a direction was made that this Jagir, like all other Jagirs, should be given the status of an impartible estate and it should be given proper shape by being liable to render 'Chakri' and 'Subhchintki' to the Ruler. It was further ordered that the Jagir will be governed by the rule of primogeniture, so that Chandrakant Rao alone would be held to be the Jagirdar. As a result, all these eight villages of the Sarola Jagir came to be shown as the property of Chandrakant Rao alone.

The claim of the plaintiff in this suit was that the Jagir having been joint Hindu family property, the rights of the plaintiffs, who are the successors-in-interest of Purshottam Raoji, cannot be defeated by the order of the Maharao dated 22nd January, 1938 and, consequently, the appellants together with the proforma respondents who are also descendants of Purshottam Raoji are entitled to 1/2 share, whereas the other 1/2 share only can be claimed by the contesting defendants, including Chandrakant Rao who are descendants of Ganpatraoji. Both the trial Court and the High Court have held that, after the order of the Maharao of Kota dated 22nd January, 1938, this Jagir came to be governed by the rule of primogeniture, with the result that Chandrakant Rao alone was the owner of this property, while all other members of the family could only claim maintenance out of this property. Consequently, the claim of the appellants for a share in these villages on partition was negatived. It is the correctness of this decision that has been challenged before us.

Since, in this case, no effort was made on behalf of the respondents to contest the correctness of the finding given by the High Court that all these villages were joint family property and were treated as such right up to the year 1937 when Purshottam Raoji died, we need not enter into the details of the evidence on the basis

A of which this finding has been recorded. The question that falls for decision is whether the Maharao of Kota by his order dated 22nd January, 1938, could validly change the nature of the property, make it impartible and governed by the rule of primogeniture when the property was already joint family property. In deciding this question, the crucial point is that the Maharao of Kota was an B independent and sovereign Ruler whose orders in his State were law. He had absolute power to make any orders, and the Order dated 22nd January, 1938 has, therefore, to be given the force of law which, when it was passed, could not be challenged as invalid. Counsel for the appellants, however, urged that all orders passed by an independent and sovereign Ruler do not have the force of C law. It is only those orders which purport to lay down a law for the State which cannot be challenged and which would remain in force even after the merger of the Kota State in India and after the enforcement of the Constitution under Art. 372 of the Constitution. His submission was that, when passing the Order dated 22nd January, 1938, the Ruler was only exercising executive powers of directing mutation of names and was not exercising any legislative D powers. The nature of the Order passed by him, however, shows that this submission cannot be accepted. No doubt, that Order was made on a report which was put up before the Maharao for deciding who should be held to be the owner of the Jagir when Purshottam Raoji died. The Order shows that the Maharao took notice of the fact that the Sanad had been granted in the name of E Lalaji Ramchandra and his eldest son Govind Rao on executing a deed of release in respect of the debt, but it added that, when the unpaid debt was changed in the form of a Jagir and no special condition was laid down regarding it and the name of only the eldest son was written in the 'Sanad' though another brother was present there, it has to be held that the Jagir was intended to be F given on the same rules on which the other Jagirs were granted The Order then proceeds to take notice of the fact that, though the mutation should have been in the name of Chandrakant after the death of Ganpat Rao, a practice had developed of entering more than one person as the holders of this Jagir. It appears that, in order to give effect to the original intention that this Jagir should be governed by the same rules as all other Jagirs, the Maharao G proceeded to lay down that this Jagir should also be impartible and should be held by the eldest member of the family in the eldest branch. The Ruler considered it desirable to make this Order. because it was envisaged that, if the entire Jagir was distributed amongst all the members of the family, then even the name of 'Thikana' would disappear. It was considered desirable that this H Jagir should be governed according to the custom of the States in Rajputana including Kota State under which the eldest son of the senior branch alone was entitled to hold the property. Thereafter, the Maharao proceeded to lay down that this Jagir should be

equated with other Jagirs by making a direction that the holders of this Jagir should also render 'Chakri' and should continue to do 'Subhchintki'. Having made this direction, the Ruler then held that, since this 'Thikana' was being given proper shape, its custom and status must be similar to that of all other Jagirdars in the State. These directions given by the Ruler clearly show that, though the proceedings came to him on the basis of a report for directions as to the mutation entry to be made on the death of Purshottam Rao, he proceeded to lay down the principles which were to govern this Jagir thereafter. The Ruler decided that this Jagir should be placed on equality with all other Jagirs in the State and should be governed by the same laws. The Order thus made was clearly an exercise of legislative power by which the Ruler was competent to lay down that, though this Jagir had in the past been joint family property, it was to be thereafter impartible property governed by the rule of primogeniture and Chandra Kant Rao as the eldest member of the senior branch was to be the sole Jagirdar. This was, therefore, a case where the Maharao exercised his powers of laying down the law with respect to this one single Jagir. It cannot be said that the Order passed by him was a mere executive order and did not result in exercise of his powers of making the law.

In this connection, counsel for the appellants relied on the principle laid down by this Court in *Rajkumar Narsingh Pratap Singh Deo* v. *State of Orissa and Another*(1) to canvass his submission that the Maharao, in this case, was not exercising legislative powers when he passed the Order dated 22nd January, 1938. In that case, the effect of a Sanad granted by the Ruler of Dhenkanal State had to be considered and the question arose whether the Sanad could be treated as existing law within the meaning of Art. 372 of the Constitution. The Court, after taking notice of previous decisions, drew a distinction between orders made by a Ruler having the force of law and orders which may be of executive nature, and held :—

> "The true legal position is that whenever a dispute arises as to whether an order passed by an absolute monarch represents a legislative act and continues to remain operative by virtue of cl. 4(b) of the Order, all relevant factors must be considered before the question is answered; the nature of the order, the scope and effect of its provisions, its general setting and context, the method adopted by the Ruler in promulgating legislative as distinguished from executive orders, these and other allied matters will have to be examined before the character of the order is judicially determined."

(1) [1964] 7 S.C.R. 112.

A On an application of these principles in that case, it was held that the Sanad in question could not be held to be a legislative act. In our opinion, even if these principles are applied to the case before us, it has to be held that the Order of the Maharao dated 22nd January, 1938 amounted to exercise of legislative power. As we have already indicated earlier, the very nature of the Order, which B changes the law applicable to the Jagir, indicates that it was a legislative act and not a mere executive order. The Maharao did not purport to lay down that the Jagir was already governed by the rule of primogeniture; what he did was to apply the rule of primogeniture to this Jagir for future. Such an order could only be made in exercise of his prerogative of laying down the law for the C State. The mere fact that it was laid down for one single Jagir and was not a general law applicable to others in the State is immaterial, because it does not appear that there were any other similar Jagirs which also required alteration of the law applicable to them. There is also nothing to show that during the period of his rule, the Maharao had adopted any special procedure for promulgating the laws in his State. The manner in which the Order D was passed indicates that, in this State, the Maharao considered himself competent to lay down the law at any time he liked.

Reliance was also placed on the decision of this Court in *State of Gujarat* v. *Vora Fiddali Badruddin Mithibarwala*(1), but that case, in our opinion, has no application at all. In that case, the E question arose whether an agreement entered into by a Ruler had the force of law. In the case before us, there is no such question of any agreement. In dealing with that question, the Court relied on the following extract from a decision of the Court in an earlier case of *The Bengal Nagpur Cotton Mills Ltd.* v. *The Board of Revenue, Madhya Pradesh and Others*(2) :—

F "It is plain that an agreement of the Ruler expressed in the shape of a contract cannot be regarded as a law. A law must follow the customary forms of law-making and must be expressed as a binding rule of conduct. There is generally an established method for the enactment of laws, and the laws, when enacted, have also a distinct form. It is not every indication of the will of G the Ruler, however expressed, which amounts to a law. An indication of the will meant to bind as a rule of conduct and enacted with some formality either traditional or specially devised for the occasion, results in a law but not an agreement to which there are two parties, one of which is the Ruler."

H Emphasis was laid by counsel on the views expressed in this passage that a law must follow the customary forms of law-making and

(1) [1964] 6 S.C.R. 461. (2) A.I.R. 1964 S.C. 8.88

must be expressed as a binding rule of conduct. In the present case, there is nothing to show that, in the State of Kota, there was any other customary form of law-making. The Order of 22nd January, 1938 clearly expresses the direction of the Ruler that the Jagir must be governed by the same customary law as other Jagirs as a binding direction which was to govern the future conduct of the holders of this Jagir. The principle relied on, therefore, does not show that this Order of 22nd January, 1938 did not amount to a legislative act on the part of the Maharao.

Reference was also made to the decision of this Court in *Major Ranjit Singh Rao Phalke* v. *Smt. Raja Bai Sahiba (dead) by her legal representatives & Vice Versa*(1) where the Court said :—

> "It is now settled law that every order of the Maharaja cannot be regarded as law, particularly those which were in violation of his own laws."

and again repeated :—

> "The position today is that every order of the Ruler cannot be regarded as law but only such orders as contain some general rule of conduct and which follow a recognised procedure of law-making."

In that case, the particular order of the Ruler which was questioned had been made in contravention of one of the existing laws of the State and it was held that such an order could not be treated as law. In the case before us, the position is quite different. There was no law of the Kota State which could be held to be contrary to the Order dated 22nd January, 1938. In fact, the general law governing all Jagirs in the State was the customary law under which the Jagirs were owned by the eldest member of the senior branch, and all that this Order did was to apply the same law to this Jagir also. It is true that no special procedure of law-making was adopted by the Maharao when making this Order; but that circumstance cannot change the nature of the Order specially when there is nothing to indicate that there was any recognised procedure of law-making in the Kota State at that time. In these circumstances, we hold that the High Court was quite correct in arriving at the decision that these eight villages, at the time when the suit for partition was instituted, were impartible property governed by the law of primogeniture and Chandrakant Rao respondent alone had to be treated as the owner of these villages.

It, however, appears that, during the pendency of the suit, Jagirs were resumed in Rajasthan including this Jagir which stood in the name of Chandrakant Rao and cash compensation was paid in respect of it. It was urged by counsel for the appellants that,

(1) Civil Appeals Nos. 982 and 983 of 1964 decided on 18th July, 1967.

A even if the Jagir was impartible and governed by the rule of primogeniture, the right, which earlier vested in the members of the family when it was joint family property, would be exercisable when the Jagir was converted into cash and lost its status of impartible estate. It was, therefore, claimed that, after the Jagirs had been converted into cash under the Rajasthan Land Reforms and Re-
B sumption of Jagirs Act No. VI of 1952, the appellants should have been granted a share in the compensation received by Chandrakant Rao on the basis that this property was earlier joint Hindu family property. In the alternative, it was also urged that, even if this claim of the plaintiffs/appellants is not accepted, they would at least be entitled to claim a part of the compensation in lieu of
C their right of maintenance. These two aspects do not seem to have been considered by the trial Court and even the High Court in one sentence disposed of this matter by saying that, since the appellants were only entitled to maintenance, they could not claim any share in the compensation money paid under the Rajasthan Act VI of 1952. In dealing with this aspect, we are handicapped
D by the circumstance that the suit was instituted before this Act VI of 1952 was passed, so that there was no specific pleading in this behalf by the plaintiffs/appellants. The trial Court, therefore, ignored this aspect altogether, and even the High Court did not take into account the effect of Act VI of 1952 in the two aspects which have been mentioned by us above. Since, however, this is
E an appeal against a preliminary decree in the suits and the suit is still to continue in the trial Court, we think it appropriate to direct that these questions should be properly raised in the trial Court by amendment of the pleadings in the plaint, if necessary, and should be considered and decided by that Court. It will be for that court to give a fresh decision whether the appellants are entitled to claim a share in the compensation money received in lieu of these eight
F villages under Rajasthan Act VI of 1952.

The result is that this appeal is dismissed, subject to the modification that the case will go back to the trial Court for deciding the question whether the plaintiffs/appellants can claim a share in the compensation money or not, as indicated above. Costs of this appeal shall abide the decision on this claim of the plaintiffs/
G appellants to a share in the compensation money.

R.K.P.S. *Appeal dismissed.*