

(2019) 10 CHH CK 0001
In the Chhattisgarh High Court
Case No : First Appeal No. 119 Of 2017

Krishana Kumari Devi And Ors

APPELLANT

Vs

Harihar Chandra Bhanjdeo And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 2 Rule 2, Order 9 Rule 4, Order 23 Rule 3, Order 32 Rule 7, Order 41 Rule 27
Transfer Of Property Act, 1882 — Section 41
Chhattisgarh Land Revenue Code, 1959 — Section 165
Central Provinces Court Of Wards Act, 1899 — Section 4, 41
Hindu Succession Act, 1956 — Section 4, 5, 5(ii)
Indian Succession Act, 1925 — Section 63
Evidence Act, 1872 — Section 67, 68

Citation : (2019) 10 CHH CK 0001

Hon'ble Judges : Prashant Kumar Mishra, J; Vimla Singh Kapoor, J

Bench : Division Bench

Advocate : Rajeev Shrivastava, Ankit Singh, Mohan Rao, Jitendra Singh Dhiraj Kumar, Siddharth Dubey Hb Agrawal, Itu Rani Mukherjee, Devershi Thakur, Pravin Kumar Tulsyan, Ashish Surana, Ankit Borkar, Arvind Shrivastava

Final Decision : Allowed

Judgement

,

Prashant Kumar Mishra, J.",

1. This appeal has been preferred by the plaintiffs to assail the legality, validity and correctness of the trial Court's judgment and decree whereby",

their suit for declaration of title and ownership over lands and properties in schedule A, B, 'C', 'D', E & G as also for",

setting aside the sale deeds shown in schedule B, E & G of the plaint has been dismissed. Plaintiffs' prayer for",

possession of the properties in schedule A (including schedule B),

and for a decree to set aside the judgment",

and decree dated 17-2-1978 in civil suit No.2-A of 1978 of the Court of District Judge, Bastar at Jagdalpur has also been dismissed by the trial Court.",

2. The main contesting parties i.e. original plaintiff Bharat Chandra Bhanjdeo now represented by his legal heirs/appellants namely; (1) Smt. Krishna,

Kumari Devi, (2) Kamal Chandra Bhanjdeo & (3) Ku. Gayatri Devi and the original defendants namely; (1) Smt. Hintendra Kumari Devi, (2) Harihar",

Chandra Bhanjdeo, (3) Devesh Chandra Bhanjdeo & (4) Smt. Subhraj Kumari alias Vedvati now represented by the respondents No.1 to 4 namely;",

(1) Harihar Chandra Bhanjdeo, (2) Jyoti Kumari Bhanjdeo, (3) Mohit Chandra Bhanjdeo & (4) Kumari Juhika Bhanjdeo are related to each other as",

they represent different branches of the Royal family of erstwhile Bastar State. Their relationship and status before the trial Court can be better,

understood through the following genealogical tree (as mentioned in the memo of appeal) :,

Plaintiffs' case:,

(as projected in the plaint),

3. The suit land/properties belonged to Bastar State. The Late Maharaja & Ruler of Bastar State Shri Pravir Chandra Bhanjdeo signed the merger,

agreement with the Government of India (for brevity the GOI) on 15-12-1947 through an article of agreement merging the Bastar State with,

the GOI on or about 1-1-1948. Under Article 3 of the agreement Late Maharaja & Ruler was entitled to full ownership and enjoyment of private,

properties as distinct from State properties belonging to the Maharaja on the date of agreement.,

4. On 31-3-1948 an agreement of private properties of Maharaja & Ruler of Bastar State was arrived at between the Maharaja and the Chief,

Minister of Madhya Pradesh on behalf of the GOI and all those properties were eventually handed over to Maharaja Pravir Chandra Bhanjdeo.,

5. According to the plaintiffs, the private properties were saved from being merged in the GOI, therefore, Shri Pravir Chandra Bhanjdeo became",

owner thereof in the sense that the properties were attached to his position as Maharaja & Ruler and, as such, these private properties was capable of",

devolution on the next Maharaja. The private properties were not the personal or self acquired properties of an individual Ruler and for the purposes,

of inheritance and succession are not governed by Hindu Law.,

6. Owing to Maharaja Pravir Chandra Bhanjdeo Kaktiyaâ??s mental infirmity the Government of Madhya Pradesh issued an order on 20-6-1953,"

under the approval of the GOI, declaring him to be incapable of managing his estate and the Court of Wards (MP) took charge of all the private",

properties attached to Maharaja of Bastar. The plaintiffs further pleaded that due to said Maharajaâ??s involvement in subversive activities against,

the GOI by inciting disorder and rebellion amongst the Tribals of Bastar, an order dated 12-2-1961 was passed by the GOI forfeiting all claims to the",

continued enjoyment of his position as Maharaja & Ruler of former Bastar State and was deposed by the GOI.,

7. On 12-2-1961 Shri Vijay Chandra Bhanjdeo, father of the original plaintiff was recognized by the GOI as Maharaja & Ruler of Bastar in place of",

Pravir Chandra Bhanjdeo and by the said recognition obtained all the privileges, rights and enjoyment to the ownership of all the private properties",

belonging to the deposed Maharaja, which were saved in favour of Ruler at the time of merger.",

8. Vijay Chandra Bhanjdeo died on 12-4-1970, therefore, after his death the original plaintiff Bharat Chandra Bhanjdeo was recognized as Maharaja",

& Ruler of Bastar vide GOI notification dated 11-7-1970 w.e.f. 12-4-1970. The original plaintiff, thus, obtained and became entitled to all the",

privileges, rights and enjoyments and ownership of all the private properties of the preceding Ex-Ruler.",

9. At that point of time i.e. as on 12-4-1970 the plaintiff being the minor, the defendant No.1 Smt. Hintendra Kumari Devi, W/o Late Shri Vijay",

Chandra Bhanjdeo, was working as his natural guardian.",

10. It is original plaintiffâ??s specific case that the properties belonging to the Bastar State, which were saved and attached to Maharaja Pravir",

Chandra Bhanjdeo, passed on to the next Ruler in accordance with the Gaddi custom and no other person is entitled to receive any property, which",

were saved to the Maharaja of Bastar State, therefore, upon forfeiture of the rights of Maharaja Pravir Chandra Bhanjdeo as a Ruler and after he",

was deposed, he lost all his rights over the properties and it came to be owned and enjoyed by the next Ruler Vijay Chandra Bhanjdeo upon his",

recognition as Maharaja & Ruler of Bastar by a notification issued by the GOI.

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â?¢ ,",

13. According to the original plaintiff, the private properties saved in favour of Ruler & Maharaja of Bastar were not his personal or self acquired",

property, therefore, devolution of the said property would not be governed under the provisions of Hindu Law or Hindu Succession Act. It is for this",

reason all the private properties of Ruler & Maharaja of Bastar State were devolved and succeeded by the subsequent Rulers namely; Vijay Chandra,

Bhanjdeo and Bharat Chandra Bhanjdeo (original plaintiff) w.e.f. 12-4-1970. Thus, after derecognition of Maharaja & Rulers in the entire country",

w.e.f. 3-5-1972 the last Ruler namely Bharat Chandra Bhanjdeo succeeded the entire suit property and it devolved on him as his absolute personal,

properties. It is also pleaded in para 13 (b) of the plaint that late Maharaja Vijay Chandra Bhanjdeo was holding Vijay Bhawan situated at sheet,

No.81, plot No.2/1 area 117653 sq.ft. with structures as his personal property in his private capacity which was distinct from private properties held by",

him by virtue of his being Ruler.,

14. The original plaintiff challenged the compromise decree dated 17-2-1978 passed in civil suit No.2-A of 1978 on the ground that the said decree,

was obtained by playing fraud as also without impleading the original plaintiff herein, therefore, it is not binding on him/them. The decree was obtained",

without consent of the original plaintiff herein while it dealt with the properties belonging to the Bastar State, therefore, the decree is null & void.",

15. It was specifically pleaded that the judgment obtained by fraud is null & void ab initio. It was also pleaded that the existence of WILL dated 27-2-,

1964 was never informed or brought to the notice of the plaintiff albeit it dealt with properties possessed by the next Rulers Vijay Chandra Bhanjdeo,

& Bharat Chandra Bhanjdeo (original plaintiff) and similarly despite pendency of several litigations before the different forums during the life time and,

after the demise of Vijay Chandra Bhanjdeo the WILL purportedly executed in 1964 was never disclosed or produced before any Court or to the,

other members of the Royal family of Bastar. It was also not known as to in whose custody the WILL was lying and how and when the present,

defendants or the parties to the civil suit No.2-A of 1978 came in possession of the same. The attesting witnesses of the WILL belong to Dhamtari &

Raipur and no reason has been shown as to why Late Pravir Chandra Bhanjdeo was constrained to take attesting witnesses from Dhamtari and,

Raipur. It was further pleaded that Late Pravir Chandra Bhanjdeo later on bequeathed all his properties to his wife Late Subhdra Devi.,

16. Plaintiff also set up a case of execution of WILL by Late Pravir Chandra Bhanjdeo in favour of his wife Subhdra Devi on 3-11-1964 & 15-3-,

1966. Pravir Chandra Bhanjdeo died on or about 26-3-1966 and after his death Subhdra Devi became full owner of all the moveable and immoveable,

properties of Late Pravir Chandra Bhanjdeo including all the suit properties, inclusive of properties shown in schedule â??Aâ?? by virtue of the",

WILL. It is also pleaded that alternatively Pravir Chandra Bhanjdeo having no issues, after his death the entire suit property was inherited by his",

widow Subhdra Devi. Plaintiff further pleaded that properties to the plaintiff by WILL dated 13-11-1968 registered on 14-11-1968. After death of,

Subhdra Devi in 1969 the plaintiff inherited all the properties on the strength of the WILL as also by succession.,

17. According to the plaintiff, the original defendant No.4 was a concubine of Late Pravir Chandra Bhanjdeo as she was not legally married with him.",

Alternatively, even if the original defendant No.4 was married to Pravir Chandra Bhanjdeo the said marriage having taken place during the life time of",

his first wife Subhdra Devi, the second marriage was illegal & void.",

18. Plaintiff further pleaded that on 12-10-1984 he learnt that the original defendants No.2 to 4 with the connivance of original defendants No.1 & 5,

have succeeded in getting their name recorded in the Government records on the strength of compromise decree dated 17-2-1978 and some of the,

properties mentioned in schedule â??Bâ?? have been sold by the defendants No.2 to 4 without they having any valid title over the properties. The,

original defendants No.8 to 493 who had purchased the properties from the original defendants No.2 to 4 are not bona fide purchasers as they have,

purchased the properties for a song and throwaway price knowing fully well that the defendants No.2 to 4 had no right, title or interest.",

19. It was also pleaded that old and new palace of Maharaja of Bastar described in schedule â??Fâ?? are in exclusive possession of the plaintiff. The,

palace premises also consist of houses, buildings, garages and vacant plots. The defendants No.2 to 4 are in occupation of new palace as licencees of",

the plaintiff who is in actual physical possession of old palace with all the superstructures, out houses, garages, buildings and premises adverse to and",
to the exclusion of the defendants No.1 to 4.,

20. In respect of property called Mundi Dongari, khasra No.148, area 33.36 acres, it was pleaded that the same was allotted by the Government of",

Madhya Pradesh to Late Maharaja Pravir Chandra Bhanjdeo at the time of merger agreement between him, Government of Madhya Pradesh and the",

GOI. The defendants No.1, 3 & 4 have also got recorded their names stealthily without consent, knowledge or notice to the plaintiff. There are",

movables like rifles, 12 bore guns, pistols, revolvers, swords, etc. described in schedule â??Câ??, which are kept in Jagdalpur Treasury under the",

custody of the State Government. Ornaments and Jewelers belonging to the Maharaja & Ruler of Bastar described in schedule â??Dâ?? are also,

kept in Jagdalpur Treasury in the custody of the State Government. Plaintiff is entitled to receive the moveables described in schedule â??Câ?? &

â??Dâ??. The plaintiff had applied for delivery of these articles on 30-10-1986 before the Collector, Bastar. The Government of Madhya Pradesh",

(now Chhattisgarh) is also ready and prepared to deliver the same to the original owner, but the defendants have raised unnecessary dispute.",

21. Similarly, agricultural lands situated at villages Dhainaloor, Ghat Padmoor, Nangoor, Jagdalpur, Sumund and Sihawa Nagri, Panchgaon in Dhamtari",

Tashil also belong to the plaintiff and they have been illegally and unlawfully included in the compromise decree passed in civil suit No.2-A of 1978.,

The plaintiff is also entitled to the said lands.,

22. The plaintiff further averred that the defendants No.2 to 4 have sold the properties shown in Schedule 'E' to one Trilochan Singh and the defendant,

No.2 executed the gift deed on 24-3-1982 gifting 1/5th of Vijay Bhawan to defendant No.313 Vidhiya Sagar Tiwari in an unlawful and illegal manner",

therefore, the said deeds are void and not binding on the plaintiff. It is also pleaded that property named Rani Gadia is in the exclusive possession of",

the plaintiff, therefore, he is entitled to the said property. Similarly, the defendant No.4 has illegally gifted away vacant plot No.1/1 sheet No.98 to the",

defendant No.3 vide gift deed dated 7-3-1980, which is void and not binding on the plaintiff. Sale deeds executed by the defendants No.2 to 4 for the",

property mentioned in schedule 'G' to Maharani Dhyani Vidhiya Peeth, defendant

No.395, is also void and not binding on the plaintiff.",

23. In the alternative, plaintiff also pleaded that if the properties are found to be private properties of Late Maharaja Pravir Chandra Bhanjdeo then the",

same having devolved on his widow Smt. Subhadra Devi and the defendant No.4 by succession or inheritance then the plaintiff is entitled to half share,

by virtue of WILL executed by Subhadra Devi.,

24. According to the plaintiff he had no knowledge of the sale deeds shown in schedule 'B', 'E' & 'G' by the defendants No.2 to 4, which came to his",

notice on 12-10-1984 when he became aware of the judgment and decree dated 17-2-1978 in civil suit No.2-A of 1978. The plaintiff also learnt about,

various alienations by the defendants No.2 to 4 from time to time from January, 1985. The plaintiff, therefore, prayed for declaration of title and",

ownership of the properties shown in schedule 'A' (including schedule 'B'), 'C', 'D', 'E' & 'G' and in the alternative declaration and possession as",

prayed in paras 34 & 35 of the plaint and for setting aside the sales shown in schedule 'B', 'E' & 'G'. Specific prayer has been made by the plaintiff for",

setting aside the judgment and decree dated 17-2-1978 in civil suit No.2-A of 1978 of the Court of District Judge, Bastar at Jagdalpur.",

Defendants' case :,

25. The original defendants No.1 to 3 namely; Smt. Hitendra Kumari Devi, Harihar Chandra Bhanjdeo and Devesh Chandra Bhanjdeo did not file any",

written statement. It was only the original defendant No.4 Smt. Subhraj Kumari alias Vedvati who filed her written statement admitting the list of,

private properties prepared at the time of vesting of the state properties in the dominion of India. She also admitted that Maharaja Pravir Chandra,

Bhanjdeo was entitled to full ownership and exclusive enjoyment of the private properties, which, according to her, had the characteristic of separate",

or self acquired property under the Hindu Law. Defendant No.4 denied that the private properties were in the nature of properties held by a ruler and,

would devolve on the next Ruler on the death of the recognised Ruler. According to her, Maharaja Pravir Chandra Bhanjdeo was entitled to lawful",

transfer of the private properties and on his death the said properties were heritable by his legal heirs.,

26. It was specifically pleaded by the defendant No.4 that in lieu of vesting with the dominion of India the Central Government had sanctioned a privy,

purse. The privy purse was to be granted to the succeeding Ruler on the death of his former recognised Ruler. She denied that Maharaja Pravir,

Chandra Bhanjdeo took possession of his private properties in his capacity as Maharaja with further pleading that the private properties were his,

personal and absolute properties.,

27. The defendant No.4 further denied that Maharaja Pravir Chandra Bhanjdeo was incapable or that he had mental infirmity or incapacity. According,

to this defendant the erstwhile Madhya Pradesh Government's decision to take the properties of Maharaja Pravir Chandra Bhanjdeo for management,

by Court of Ward was politically motivated. However, the private properties were later released from the Superintendence of the Court of Ward.",

28. Defendant No.4 admitted that Maharaja Pravir Chandra Bhanjdeo's recognition as a Ruler was withdrawn and Vijay Chandra was recognised as,

a Ruler, however, she denied that on being recognised as Ruler Vijay Chandra got any right or interest over the private properties of Maharaja Pravir",

Chandra Bhanjdeo. Vijay Chandra was entitled to privy purse of Rs.1,50,000/- per year. It is further denied by this defendant No.4 that consequent to",

recognition of Vijay Chandra as a Ruler all properties saved from the merger agreement belonged to him. She would specifically plead that properties,

vested in Maharaja Pravir Chandra Bhanjdeo could not be divested for vesting in Vijay Chandra.,

29. Plea of limitation was raised by the defendant No.4 saying that the cause of action arose on 12-2-1961 for which civil suit No.3-A of 1964 was,

filed, which was dismissed for want of prosecution on 16-7-1975, however, before that Vijay Chandra died on 12-4-1970. It was further pleaded that",

the plaintiff not being the recognised Ruler at the time of institution of suit, he would destroy his own right to sue based on the principle that the",

property belongs to and is succeeded by the next Ruler. Forgery of WILL was also denied. She would specifically state that Maharaja Pravir Chandra,

Bhanjdeo died issueless. The Defendant No.4 being his widow was the only nearest legal heir to inherit the estate of Maharaja Pravir Chandra,

Bhanjdeo, therefore, she applied for mutation. However, the defendants No.1, 2 & 3 published a notice in the daily newspaper on 2-1-1978 that",

deceased Maharaja Pravir Chandra Bhanjdeo has executed a WILL dated 27-2-1964 in their favour bequeathing all his personal properties. On 7-1-,

1978 Smt. Hitendra Kumari submitted a copy of the said WILL before the Nazul Officer and objected to mutation application filed by the defendant,

No.4.,

30. The defendant No.4 further pleaded that the WILL relied by the defendants No.1, 2 & 3 being forged she preferred civil suit No.2-A of 1978 to",

declare the above said WILL dated 27-2-1964 to be a forged document. Since the civil suit would have taken long time for adjudication and,

considering the close relation between the parties, the defendant No.4 and Harihar Chandra with Devesh Chandra represented by their legal guardian",

(as they were minor) compromised the suit with the permission of the Court. It was denied that the plaintiff has any claim, right or entitlement in the",

private property of Maharaja Pravir Chandra Bhanjdeo. The defendant No.4 would aver that compromise decree petition was absolutely honest and,

lawful not being collusive neither with an intention to deprive the plaintiff of his right over the properties. She also denied that Maharaja Pravir,

Chandra Bhanjdeo executed any WILL in favour of Subhadra Devi. She even denied that Subhadra Devi was the wife of Maharaja Pravir Chandra,

Bhanjdeo. Execution of WILL dated 3-11-1964 and 15-3-1966 by Maharaja Pravir Chandra Bhanjdeo in favour of Subhadra Devi was denied being,

forged document. Consequently, Subhadra Devi became the owner of the properties of Maharaja Pravir Chandra Bhanjdeo was also illegal.",

31. Defendant No.4 also denied execution and existence of WILL dated 13-11-1968 allegedly executed by Subhadra Devi with alternative submission,

that otherwise also Subhadra Devi had no title or possession of any of the suit property to transfer in favour of any other person and further that,

before her death on 27-11-1968, she was seriously ill for about a month. This defendant denied that she was the concubine of Maharaja Pravir",

Chandra Bhanjdeo. According to her she was married with Maharaja Pravir Chandra Bhanjdeo on 4-7-1961 at New Delhi according to Hindu,

religious rites. On the request of Maharaja Pravir Chandra Bhanjdeo the Court of Ward was paying this defendant a monthly allowance of Rs.1,000/-",

and after death of Maharaja Pravir Chandra Bhanjdeo the said allowance was continued by the Union Government. She denied that there exists,

judicial separation between Maharaja Pravir Chandra Bhanjdeo and the defendant No.4 with pleading that it was a decree for maintenance under the,

Hindu Adoptions and Maintenance Act and not for judicial separation and hence marital status of the defendant No.4 with Maharaja Pravir Chandra,

Bhanjdeo cannot be questioned.,

32. The defendant No.4 denied that the defendants No.8 to 493 are not bona fide purchasers for value. These defendants have purchased the,

property after verifying and satisfying with the revenue records. It was specifically contended that the palace was the personal property of Maharaja,

Pravir Chandra Bhanjdeo and had gifted the bungalow to Vijay Chandra for his residence, therefore, even after his recognition as Ruler Vijay",

Chandra Bhanjdeo continued to reside in the same bungalow and not in the Palace. The list of private properties of Maharaja Pravir Chandra,

Bhanjdeo includes the palace and also the neighbouring building Rani Gadia. When Maharaja Pravir Chandra Bhanjdeo was killed in police firing in,

1966 Justice Pande Enquiry Commission locked and sealed the palace which was later on opened by the Collector and allowed the entry of Vijay,

Chandra. Thus, the defendant admits the possession of Vijay Chandra Bhanjdeo in the palace and Rani Gadia.",

33. The defendant No.4 further admitted that Mundi Dongri area of 33.36 acres was allotted to Maharaja Pravir Chandra Bhanjdeo as per the merger,

agreement, however, according to this defendant, after death of Maharaja Pravir Chandra Bhanjdeo her name was mutated over the revenue record",

concerning Mundi Dongri. Similarly for the properties described in schedule 'C and the jewelery, plaintiff's title was denied. The defendant No.4 along",

with the defendants No.2 & 3 have made joint claim before the Government in respect of jewelery and arms on which the Government has passed an,

order in their favour and the plaintiff signed the indemnity bond before the Collector, Bastar, agreeing with the said order, therefore, this defendant",

claimed joint ownership of the arms and jewelery along with the defendants No.2 & 3.,

34. The claim of the plaintiff about the agricultural land, as pleaded in para 27 of the plaint, has been denied by the defendant No.4. She also denied",

execution of sale deeds by the defendants No.1 to 4 at different point of time. She specially admits in para 31 that she was in possession of Rani,

Gadia. Sale deed executed in favour of Maharshi Dhyan Vidya Peeth was also pleaded to be a bona fide sale. Claim for setting aside the compromise,

decree has been denied saying that the said decree is valid and lawful.,

35. She would also plead that a recognised Ruler has no right to claim separate property of the predecessor Ruler. Maharaja Pravir Chandra Bhanjdeo,

was in exclusive possession and enjoyment of properties allotted to him by the Government in 1948. The plaintiff did not continue the suit preferred by,

Maharaja Pravir Chandra Bhanjdeo after his death, therefore, the plaintiff has no locus standi to claim the properties of Maharaja Pravir Chandra",

Bhanjdeo. Defendant No.4 further stated that in so far as the lands involved in the sale deeds are concerned the suit for mere declaration is not,

maintainable and further that the plaintiff is required to pay ad valorem Court fees for the lands for which possession is sought. By way of special,

pleadings the defendant No.4 pleaded that the suit concerning the compromise decree dated 17-2-1978 rendered in civil suit No.2-A/1978 is barred by,

limitation as also the claim for possession of the properties described in schedule 'A' (including schedule 'B'), 'E' & 'G' is barred by limitation.",

36. Other defendants filed the written statements in groups or individually. The sum and substance of the defence raised by the aforesaid defendants",

in addition to the defence raised by main contesting defendant No.4, is that they are bona fide purchasers for value paid and the purchases made by",

them were after due enquiry from the Government records, which contained the name of the defendant No.1 or the defendants No.2 to 4 as owner.",

Thus, according to them, even if the defendants No.2 to 4 be ostensible owner they could pass valid title by sale to the purchaser defendants. Issues :",

37. On the basis of pleadings of the parties the trial Court framed as many as 42 issues for adjudication and after trial recorded the following findings,

on material issues :,

â?¢ Trial Court found that Subhadra Devi was legally married wife of Pravir Chandra Bhanjdeo and that Pravir Chandra Bhanjdeo has executed,

WILL in her favour. (Issue Nos.2, 3 & 6)",

â?¢ Trial Court further found that the plaintiff is not entitled to a decree for declaration of his title or possession over the suit land. (Issue Nos.1, 5 &",

10),

â?¢ Trial Court also found that the plaintiff cannot be declared owner of half share of the properties of Pravir Chandra Bhanjdeo on the basis of,

WILL executed by Subhadra Devi in his favour. (Issue No.4),

â?¢ Trial Court found that there is no proof that there was judicial separation between Pravir Chandra Bhanjdeo and the defendant No.4 Vedwati and,

further that the plaintiff is not entitled to either 1/4th or 1/5th share nor the sale deeds executed in favour of purchaser defendants can be declared,

illegal. (Issue Nos.7 to 9),

â?¢ In issue Nos.12 & 13, trial Court held that the suit is neither barred by limitation nor it suffers from misjoinder of causes of action, however, while",

deciding the issue No.14 it held that suit suffers from res judicata, but contrary to this while deciding the issue No.16, the trial Court held that the suit is",

not barred under Order 9 Rule 4 of the Code of Civil Procedure, 1908 (for short 'the CPC') or Order 2 Rule 2 of the CPC.",

â?¢ While deciding issue Nos.17 & 18 the trial Court held that the suit is valued properly and proper & adequate Court fees has been paid.,

â?¢ While deciding the issue No.19 the trial Court held that the suit is maintainable against many defendants challenging the sales in their favour.,

â?¢ In respect of Mundi Dongari land the trial Court found that it was the private property of Pravir Chandra Bhanjdeo. (Issue No.20),

â?¢ While deciding the issue No.21 the trial Court held that the land of Mundi Dongari was not succeeded by defendant No.4 after death of Pravir,

Chandra Bhanjdeo.,

â?¢ In respect of plaint schedule 'C' while deciding the issue Nos.23A & 23B the trial Court held that the suit lands were not the personal property of,

Pravir Chandra Bhanjdeo and the plaintiff did not succeed the same. Similar is the finding in respect of jewelery (issue No.24),

â?¢ Title of the defendants No.2 to 4 over the jewelery was decided against them in issue No.25 and the defendants plea that plaintiff had consented,

to the Government decision of handing over the jewelery to the defendants No.2 to 4 has been decided against the said defendants in issue No.26.,

38. Consequent to the above findings the trial Court has dismissed the suit.,

39. The Plaintiffs have preferred the present appeal challenging the judgment and decree passed by the trial Court dismissing their suit, however, no",

cross appeal or cross objection has been filed by any of the defendants to challenge the findings recorded by the trial Court adverse to their interest.,

Submission of plaintiffs/Appellants :,

40. Shri Rajeev Shrivastava, learned counsel appearing for the appellants/

plaintiffs, would submit that :",

â?¢ The original plaintiff was the successor of Ruler of Bastar State under the Gaddi custom. After death of original plaintiff Bharat Chandra,

Bhanjdeo, plaintiff No.3 Kamal Chand Bhanjdeo has succeeded as Ruler of Bastar State under the said custom.",

â?¢ Referring to Ex.P/68, an order passed by the concerned Ministry of the Government of India, learned counsel would submit that there is",

distinction between private properties of the Ruler and his personal or self acquired properties. The private properties attached to Ruler would,",

therefore, pass on to their successor intact and, as such, plaintiffs are entitled to be declared owner of all the private properties of the Ruler of Bastar",

State.,

â?¢ Defendants No.2 to 4 had sold the properties on the basis of compromise decree dated 17-3-1978 passed in civil suit No.2-A/1978 which was,

obtained by fraud without impleading the original plaintiff or his legal heirs. The judgment obtained by playing fraud is void ab initio, therefore, the",

purchaser defendants in whose favour sale deeds have been executed by the defendants No.2 to 4 would not derive any title as the sale deeds would,

also be tainted with fraud.,

â?¢ The trial Court having held while deciding issue No.21 that the defendant No.4 has no title over the suit properties, it should have instantly set",

aside the sale deeds executed by the defendant No.4. The impugned judgment and decree, thus, suffer from self-contradiction.",

â?¢ The earlier suit preferred by Vijay Chandra Bhanjdeo having been dismissed for want of prosecution it can never operate as res judicata.,

â?¢ Referring to the decision of the High Court of Allahabad in Miss Talat Fatima Hasan v His Highness Nawab Syed Murtaza Ali Khan Sahib,

Bahadur and Others¹ AIR 1997 All 122 , learned counsel would submit that the rule of succession in respect of the Gaddi of Bastar State along with",

properties would pass on according to the rule of male lineal primogeniture, according to which the eldest male heir of the late ruler inherited both the",

Gaddi and the properties, and the properties had an impartible character.",

â?¢ According to learned counsel in view of applicability of Gaddi system the respondents' argument that the properties would devolve as per the,

provisions of the Hindu Succession Act, 1956 (for short 'the Act, 1956') is

unsustainable.",

â?¢ The plaintiff having valued the suit properly; paid adequate Court fees; and having also prayed for delivery of possession of the properties, which",

are not in his possession, the suit should have been decreed in its entirety.",

â?¢ The purchaser defendants having not laid any foundation to substantiate the plea of bona fide purchaser they are not entitled for the benefit of,

Section 41 of the Transfer of Property Act, 1882 (for short 'the TP Act').",

â?¢ Learned counsel would oppose the application filed by the defendants No.1 to 4 under Order 41 Rule 27 of the CPC. He would submit that in one,

of the public document filed along with this application it is mentioned that Pravir Chandra Bhanjdeo was suffering from mental defect, therefore, the",

alleged WILL executed by Pravir Chandra Bhanjdeo in favour of the defendants No.2 & 3 becomes suspicious.,

â?¢ Except the purchaser Brajesh Bajpai (Defendant No.10) all other purchasers were proceeded ex parte and have not led any evidence. In the,

absence of they having led evidence, there is no foundation by these defendants to challenge the maintainability of the suit on the ground of limitation,",

which is always a mixed question of law and fact.,

â?¢ Learned counsel would refer to the documents filed under Order 41 Rule 27 of the CPC to mention that names of the parties are jointly recorded,",

therefore, the suit cannot be thrown out on the ground of limitation.",

â?¢ Shri Rajeev Shrivastava would refer to Section 5 of the Act, 1956 to argue that succession of the private property of the Ruler is not governed",

under the provisions of the Act, 1956.",

â?¢ According to the learned counsel at one point of time the defendants No.1 to 4 would claim title on the basis of WILL but at some other places,

they would refer to the Act, 1956 and similarly earlier they referred to the properties of Pravir Chandra Bhanjdeo as private property, but later they",

have argued that it was the personal property. Thus, there is deviation from the stand taken in the written statement and they are estopped from",

arguing that the suit property is the personal property of Pravir Chandra Bhanjdeo.,

Submission of defendants :,

41. Shri Jitendra Singh, learned counsel appearing for the respondents No.1 to 4,

Per contra, would submit that :",

â?¢ Rule of male lineal primogeniture is not applicable on the Rulers of Princely states after abolition of Privy Purse. Learned counsel would place,

reliance on Ahmadunnisa Begum v Union of India represented by Secretary, Ministry of Home Affairs, Government of India, New Delhi AIR 1969",

AP 423 and Kunwar Shri Vir Rajendra Singh v The Union of India and Others AIR 1970 SC 1946 .,

â?¢ There is no pleading of fraud vis-a-vis judgment and decree dated 17-2-1978 passed in Civil Suit No. 2-A/1978.,

â?¢ Plaintiffs have not challenged the WILL dated 27-2-1964 executed by Pravir Chandra Bhanjdeo in favour of the defendants No.2 & 3, therefore,"

the said properties are owned by the said defendants.,

â?¢ To buttress the aforesaid contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in Union of India v",

Ibrahim Uddin and Another(2012) 8 SCC 148 .,

42. Shri H.B. Agrawal, learned senior counsel appearing for the respondents No.9 to 11 & 25, would submit that :",

â?¢ Jagdalpur being a scheduled area permission under Section 165 of the MP/ Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959')",

was required to be sought, however, there is no material as to whether the plaintiff has sought such permission.",

â?¢ Separate suit should have been filed for each of the sale deed and such suit has to be filed within three years from the date of execution of sale, deed.,

43. Shri Arvind Shrivastava, Shri Ashish Surana, Shri Devershi Thakur & Shri Pravin Kumar Tulsyan, learned counsel appearing for some of the",

respondents/defendants, would adopt the arguments raised by Shri Jitendra Singh, learned counsel for the respondents No.1 to 4. They would submit",

that the suit is barred by limitation. They would refer to the provisions of Section 41 of the TP Act.,

Discussion :,

44. Before proceeding to discuss the merits of the appeal, we shall first take up the respondents' application under Order 41 Rule 27 of the CPC for",

consideration. The documents filed along with the application are certified copies of public documents. They are related to the subject matter of the,

dispute, therefore, the application is allowed",

45. The most crucial question around which the dispute revolves and the law would be required to be applied is the nature of property and the terms,

under which it was settled in the hands of Ex-Ruler at the time of merger, therefore, we shall first advert to the documentary evidence on this issue.",

46. At the time of independence by virtue of provisions contained in the Indian Independence Act, 1947 the independent Dominion known as",

â??INDIAâ? was formed and Ruler of an existing Indian State within the Dominion of India was required to sign the Instrument of Accession. The,

Maharaja of Bastar Shri Pravir Chandra Bhanjdeo Kakatiya, Ruler of Bastar State signed the Instrument of Accession vide Ex.P/80. This Instrument",

stipulated that any reference in this Instrument to the Maharaja or to the Ruler of the State is to be considered as including a reference to his heirs and,

successors.,

47. At the time of merger Rulers of each of the State executed merger agreement as also covenants. The agreement between Maharaja of Bastar,

State and the Governor General of India was executed on 15-12-1947 vide Ex.P/88C. It contains five,

(5) Articles, which are reproduced hereunder :",

AGREEMENT MADE THIS fifteenth day of December 1947 between the Governor General of India and the Maharaja of Bastar State.,

WHEREAS in the immediate interests of the State and its people, the Maharaja of Bastar State is desirous that the administration of the State should",

be integrated as early as possible with that of the Central Provinces and Berar in such manner as the Government of the Dominion of India may think,

fit;,,

It is hereby agreed as follows :-,

ARTICLE 1,

The Maharaja of Bastar State hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the",

governance of the State and agrees to transfer the administration of the State to the Dominion Government on the 1st day of January 1948 (,

hereinafter referred to as â??the said dayâ?)).,.

As from the said day the Dominion Government will be competent to exercise the

said powers, authority and jurisdiction in such manner and through",
such agency as it may think fit.,

ARTICLE 2,

The Maharaja shall with effect from the said day be entitled to receive from the revenues of the State annually for his privy purse the sum of Two,

Hundred and Ten/- rupees /Thousand One Hundred free of taxes. This amount is intended to cover all the expenses of the Ruler and his family,"

including expenses on account of his personal staff, maintenance of his residences, marriages and other ceremonies, etc. and will neither be increased",

nor reduced for any reason whatsoever.,

The said sum may be drawn by the Maharaja in four equal installments in advance at the beginning of each quarter by presenting bills at the State,

Treasury or at such other Treasury as may be specified by the Dominion Government.,

ARTICLE 3,

The Maharaja shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on",

the date of this agreement.,

The Maharaja will furnish to the Dominion Government before the 1st day of January 1948 an inventory of all the immovable property, securities and",

cash balance held by him as such private property.,

If any dispute arises as to whether any item of property is the private property of the Maharaja or State property, it shall be referred to such officer",

with judicial experience as the Dominion Government may nominate and the decision of that officer shall be final and binding on both parties.,

ARTICLE 4,

The Maharaja, the Maharani, the Rajmata, the Yuvaraja and the Yuvarani shall be entitled to all personal privileges enjoyed by them whether within or",

outside the territories of the State, immediately before the 15th day of August 1947.",

ARTICLE 5,

The Dominion Government guarantees the succession, according to law and custom, to the gadi of the State and to the Maharaja's personal rights,"

privileges, dignities and titles.",

In confirmation whereof Mr. Vapal Pangunni Menon, Secretary to the Government of India in the Ministry of States, has appended his signature on",

behalf and with the authority of the Governor-General of India and Pravir Chandra Bhanj Deo Kaktiya Maharaja of Bastar State has appended his,

signature on behalf of himself, his heirs and successors.",

48. Article 1 above contains recital of ceding of the Bastar State with the Dominion Government w.e.f. 1-1-1948. Article 2 speaks about the,

Maharaja's entitlement to privy purse.,

49. Article 3, relevant for the purpose of suit, provides that the Maharaja shall be entitled to the full ownership, use and enjoyment of all private",

properties (as distinct from State properties) belonging to him on the date of agreement. Under this Article, the Maharaja was required to furnish to",

the Dominion Government an inventory of all the immovable property, securities and cash balance held by him as such private property with further",

stipulation that if any dispute arises as to whether any item of property is the private property of the Maharaja or State property, the same shall be",

referred to such officer with judicial experience as the Dominion Government may nominate and the decision of that officer shall be final and binding,

on both parties. Article 4 is about entitlement of the Maharaja, the Maharani, the Rajmata, the Yuvraja and Yuvrani to all personal privileges enjoyed",

by them whether within or outside the territories of the State immediately before 15-8-1947.,

50. Article 5 contains recital about the recognition of gadi of the State. It says that the Dominion Government guarantees the succession, according to",

law and custom, to the gadi of the State and to the Maharaja's personal rights, privileges, dignities and titles.",

51. At the time of merger Maharaja Pravir Chandra Bhanjdeo was the Ruler of Bastar State. By notification dated 20-5-1953 Maharaja Pravir,

Chandra Bhanjdeo was declared to be incapable of managing his estate owing to mental infirmity. Consequent to the said notification of the,

Government of India, the Government of Madhya Pradesh issued a communication dated 20-6-1953 (Ex.P/77) in exercise of powers contained in",

Sections 4 and 41 of the Central Provinces Court of Wards Act, 1899 according sanction to the assumption of superintendence of the estate of the",

said Maharaja by the Court of Wards, Bastar.",

52. Later, by notification dated 12-2-1961 (Ex.P/86), published in the Gazette of India, Maharaja Pravir Chandra Bhanjdeo, was declared ceased to be",

recognised as the Ruler of Bastar State and in his place his brother, Yurraj Vijay Chandra Bhanjdeo Kakatiya, was recognised as the Ruler of Bastar.",

Thereafter, by notification dated 11-7-1970 issued by the President in exercise of powers under Article 366 of the Constitution of India Maharaja",

Bharat Chandra Bhanjdeo Kakatiya, the original plaintiff, was recognised as Ruler of Bastar w.e.f. 12-4-1970 in succession to Late Maharaja Vijay",

Chandra Bhanjdeo Kakatiya, who died on 12-4-1970. This notification was published in the Gazette of India on 25-7-1970 (Ex.P/87C).",

53. Soon after the accession, dispute arose amongst the members of erstwhile family and their heirs or successors, as the case may be, as to the",

ownership of private properties, personal properties or self acquired properties, therefore, the Government of India, Ministry of State wrote to the",

State of Madhya Pradesh clarifying the legal position stating that the Rulers are not entitled to dispose of their private properties for their own,

advantage and that the private properties vested in them in their capacity as Rulers should pass to their successors intact. The above ruling of the,

GOI, MoS was communicated by the State of Madhya Pradesh to all Rulers of States merged in MP vide its communication issued some time in the",

month of October, 1954 (Ex.P/68). The contents of the letter being relevant and important it is reproduced hereunder :",

In connection with the question regarding the disposal of their private properties by the Rulers, the Government of India, Ministry of State have ruled",

that the properties, which have been declared as the private properties of the Rulers, as distinguished from their "personal" or self acquired",

properties, vest in them, in their capacity as Rulers and should pass to their successors intact. The Rulers are not, therefore, entitled to dispose of their",

private properties for their own advantage. If any Ruler finds it necessary to dispose of any of his private properties, he should state the facts to the",

State Government concerned and obtain their approval. The proceeds of the property so permitted to be sold cannot however be appropriated by the,

Ruler himself but should be kept intact for his successor.,

I am, therefore, to request you that the above ruling of the Government of India may kindly be kept in view and that the approval of State Government",

may kindly be sought whenever you desire to dispose of any of your private properties.,

(Emphasis supplied),

54. The above letter of the Government of Madhya Pradesh stating about the ruling of the GOI would therefore declare in no uncertain terms that the,

private properties vested in the Ruler in their capacity as Rulers should pass to their successors intact. The original plaintiff was therefore entitled to,

succeed not only to Gaddi by virtue of Article 5 of the agreement (Ex.P/88C), but also to the private properties of the Ruler of Bastar.",

55. After Maharaja Pravir Chanra Bhanjdeo was derecognised as Ruler of Bastar a dispute arose as to the ownership of new and old palaces, which",

were shown as the private property of Maharaja at the time of Accession, therefore, by communication dated 21-5-1966 issued by the Government of",

Madhya Pradesh addressed to the Commissioner, Raipur Division. It was informed that the present Ruler should be regarded as the owner of the",

palace at Jagdalpur with its appurtenances. By subsequent communication of the Collector, Bastar, dated 24-2-1967 addressed to the Commissioner,"

Raipur Division regarding handing over the property of the deceased Ruler to the present Maharaja of Bastar, it was informed that the old and new",

Palaces have been handed over to the present Ruler on 4-2-1967. The letter also stated that all silver and golden ornaments, cheque books and",

important documents which were found in both the palaces have been deposited in the district treasury.,

56. By memorandum dated 4-12-1952 the Government of Madhya Pradesh informed the Deputy Commissioner, Bastar, Jagdalpur, regarding handing",

over private property of the Maharaja of Bastar. The memorandum dated 4-12-1952 is reproduced hereunder :,

GOVERNMENT OF MADHYA PRADESH,

Political And Military Department,

â?|,

MEMORANDUM,

No. 4372-559/ST, Dated, Nagpur, the 4th Decr. 1952.",

To,

The Deputy Commissioner,"

Bastar, Jagdalpur.",

Sub. :- Private Property of the Maharaja of Bastar Handing Over of,

Ref. :- Correspondence resting with your telegram dated the 25th July, 1952.",

â?|,

The State Government are pleased to direct that the following items of property allowed to the Maharaja of Bastar as his private property in the,

agreement regarding inventory reached between the Maharaja of Bastar and the Chief Minister and approved by the Government of India should be,

handed over to the Maharaja of Bastar subject to the conditions mentioned against them:-,

Serial Item of property Conditions,

No.,

1. Rest House at Amravati Nil in Kondgaon Tahsil,
2. New place site situate at Nil the Sargipal Reserve.,
3. Two sheds in Subject to the condition Gangamunda for giving that they are allowed to be Shelter to the aboriginals used as before for on the, Deshera festival. sheltering aboriginals who came to Jagdalpur for litigation, ceremonies, etc.",
4. Halba-kote Mango tope Nil (near the landing ground),
5. Brindaban Mango Tope Nil,
6. Khadakghat Mango Tope Nil,
7. Khadakghat Coconut Nil Garden,
8. Hikmipara Orange Nil Garden,
9. Hikmipara Mango Tope Nil,
10. Pan Garden near the Nil Power House.,
11. The Rest House at Nil Bailadila,
12. The Shed in Kumhrakote Subject to the condition village where Bahar that they are made Raini festival during available as before to the Dashera, is being held. aboriginals during With an area of about 4 Dashera every year and acres around it. that they will be liable to be resumed on breach of, this condition.,
13. The lands below the Nil Samundar Tank Bund.,

14. Hikmipara Mango Subject to the condition Garden. that the Sunday Market is allowed to be held there as before.,

15. The Palace. Nil Orders on items 2, 3, 4 and 5 of Statement 'B' enclosed with your D.O.N.. SC/127 of 1952, dated the 28th June 1952 will be",

communicated in due course.,

In the agreement regarding inventory, the Maharaja's claim to three trucks and a Fort Mercury Car was accepted. Please report whether these",

vehicles have once been handed over to the Maharaja. If not, please report the particulars regarding make, numbers, etc. of the vehicles which would",

go to the Maharaja according the -,

----- agreement so that orders for their handing over could be issued.,

By order of the Governor,"

Madhya Pradesh,"

K. Krishnan,"

Under secretary to Government,"

Madhya Pradesh, Political and Military Department."

57. As against each of the private property mentioned in Ex.P/82 above, conditions were imposed for some properties. For the two sheds in",

Gangamunda for giving shelter to the aboriginals on the Deshera festival with further condition that they are allowed to be used as before for,

sheltering aboriginals who came to Jagdalpur for litigation, ceremonies, etc. As against the property mentioned at S.No.12 a condition was imposed",

that they are made available as before to the aboriginals during Deshera every year and that they will be liable to be resumed on breach of this,

condition.,

In respect of Hikmipara Mango Garden a condition was imposed that the Sunday market is allowed to be held there as before. It is also mentioned,

that orders on certain items mentioned in statement 'B' shall be communicated in due course. By another communication dated 3-11-1954 (Ex.P/79),

Maharaja's claim for inclusion of Panchgaon Nagri situated in Dhamtari in the list of inventory agreement was admitted. Maharaja's claim to the,

arrears of income which accrued from the said villages was also allowed and a sum of Rs.88,951/- was credited to the revenue of the former Bastar",

State prior to integration.,

58. By another communication dated 2-8-1956 two more properties namely; Rest House at Amravati in Kondagaon Tahsil area 0.76 acres in Makdi,

Revenue Forest and New Palace site situated at the Sarjinal Reserve Forest Area, area 33.36 acres together with the trees, etc. standing on the sites",

were directed to be handed over to the Maharaja of Bastar as his private property.,

59. The condition imposed on user/enjoyment of some of the properties conferring rights on the tribals or holding of Sunday market would again make,

it explicit that if the private properties were not the properties attached to Gaddi, such conditions could not have been imposed upon its user. This",

condition necessarily implies that the properties shall pass on to the successor Rulers intact with the conditions attached. Reading it otherwise would,

make the properties partible being available for disposal violating the rights of tribals or the public at large for holding markets, etc. If the property is",

treated to be available for distribution amongst the legal heirs of Maharaja Pravir Chandra Bhanjdeo, these properties on which the conditions have",

been attached would also become the personal property of the legal heirs. This does not appears to be the intention of the GOI at any point of time to,

deprive the tribals of Bastar of their customary rights attached to some of the private properties of the Ruler.,

60. The documents discussed above and the pleadings of the parties as well, would lead us to an indisputable fact that the properties involved in the",

present suit were private properties of the Maharaja of Bastar.,

61. While the plaintiff/appellant contends that rule of impartibility and primogeniture applies to the private properties of the Maharaja, the",

respondent/defendants would contend otherwise. Plaintiff/appellant also contends that applying the rule of Lineal Male Primogeniture to the Gaddi of,

Bastar State, the eldest male heir of the Ruler inherits both Gaddi and properties. Therefore, the plaintiff is entitled to succeed on this count alone. On",

the contrary, the respondents/ defendants claim to derive title by applying the ordinary law/Municipal law relating to succession and the compromise",

decree passed by the District Judge, Bastar on 17-2-1978 in civil suit No.2-A/1978.",

Case Laws :,

62. The issue as to whether rule of primogeniture would apply to the Gaddi and the property of the former Ruler was the subject matter of,

adjudication in cases decided by some of the High Courts and the Supreme Court as well. We shall now discuss the case law as infra :,

63. In Vishnu Partap Singh v State of Madhya Pradesh and Others¹⁹⁹⁰ (Supp) SCC 43 the Supreme Court observed thus in para 5 (pg. 46) :,

5. Despite the distinction drawn in Article XI, there was in reality no distinction between State property and the property privately owned by a Ruler,"

since the Ruler was the owner of all the property in the State. For the purposes of arrangement of finance, however, such a distinction was practically",

being observed by all Rulers. The apparent effect of the covenant was that all the property in the State vested in the United State of Vindhya Pradesh,

except private property which was to remain with the Rulers. As is evident, the Ruler was required under Article XI to furnish to the Raj Pramukh",

before May 1, 1948 an inventory of all immovable properties, securities and cash balances held by him as such private property. Conceivably, on a",

dispute arising as to whether any item of property was or was not the private property of the Ruler and hence state property, it was required to be",

referred to a Judicial Officer to be nominated by the Government of India and the decision of that officer was to be final and binding on all parties,

concerned. Despite the stern language of Article XI, requiring a Ruler to furnish the list of his private properties by May 1, 1948, the covenant did not",

contain any clause or article providing penal consequences which would or were likely to follow in the event of a Ruler not furnishing the list of private,

properties before that date. Nothing is available in the covenant and none was pointed out to us that if a Ruler failed to furnish an inventory of his,

private properties before May 1, 1948, he was debarred from furnishing it at a later stage and that failure of his part had the effect of divesting him of",

title to his private properties.,

(Emphasis supplied),

64. In Revathinnal Balagopala Varma v His Highness Shri Padmanabha Dasa Bala Rama Varma (since deceased) and Others¹⁹⁹³ Supp (1) SCC,

233 the Supreme Court held thus in paras 64 & 67 :,

64. If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and",

established by him that the said property was held by the sovereign not as a sovereign but in some other capacity.....,

67. The properties in suit having passed on from one sovereign to the other came to be ultimately held by Respondent No. 1 in that capacity. Neither,

any principle nor authority nor even any grant etc. has been brought to our notice on the basis of which it could be held that in the properties of the,

State held by a sovereign an interest was created or came into being in favour of the family to which the sovereign belonged.,

(Emphasis supplied),

65. In *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior v. Union of India and Others* 1971 (1) SCC 85 (also known as privy,

purse case) it has been observed by Honâ??ble G.K. Mitter, J. that â??it would appear that invariably the Rule of Lineal Male Primogeniture",

coupled with the custom of adopting a son prevailed in the case of Hindu Rulers who composed of the bulk of this body.â??,

66. In *His Highness Maharaja Pratap Singh v Her Highness Maharani Sarojini Devi and Others* 1994 Supp (1) SCC 734 the Supreme Court, after",

referring to several of earlier decisions of the Privy Council, Supreme Court and different High Courts and to the well accepted literatures held thus in",

paras 65 to 68 :,

65. Though impartibility and primogeniture, in relation to zamindari estates or other impartible estates are to be established by custom, in the case of a",

sovereign Ruler, they are presumed to exist.",

66. The allied question is whether the Rule of Primogeniture applies only to the Rulership (Gaddi) and not to the other property ? This is precisely the,

argument of Mr. Hingorani. This argument came to be accepted by the learned Single Judge of the High Court of Himachal Pradesh as well as the,

Division Bench of the Delhi High Court in the judgment under appeal. We have already referred to the observations of Lord Tenterden in *Advocate,*

General v Amerchund. We may also now refer to the observations of Bhagawati, J. (as he then was) in *D.S. Meramwala Bhayavala v. Ba Shri*",

Amarba Jethsurbhai.,

â??If the Khari-Bagasra Estate was a sovereign Estate, it is difficult to see how the ordinary incidents of ancestral co-parcenary property could be",

applied to that Estate. The characteristic feature of ancestral co-parcenary

property is that members of the family acquire an interest in the property, by birth or adoption and by virtue of such interest they can claim for right : (1) the right of partition ; (2) the right to restrain alienations by the head of, the family except for necessity ; (3) the right of maintenance ; and (4) the right of survivorship. It is obvious from the nature of a sovereign Estate that, there can be no interest by birth or adoption in such Estate and these rights which are necessary consequence of community of interest cannot exist.,

The Chief of a sovereign Estate would hold the Estate by virtue of his sovereign power and not by virtue of municipal law. He would not be subject to, municipal law ; he would in fact be the fountain head of municipal law. The municipal law cannot determine or control the scope and extent of his, interest in the Estate or impose any limitation on his powers in relation to the Estate.â??,

67. Again, at para 12 it is stated thus:",

â??As a sovereign Ruler he would be the full and complete owner of the Estate entitled to do what he likes with the Estate. During his lifetime no one, else can claim an interest in the Estate, Such an interest would be inconsistent with his sovereignty. To grant that the sons acquire an interest by birth", or adoption in the Estate which is a consequence arising under the municipal law would be to the municipal law would be to make the Chief who is the, Sovereign Ruler of the Estate subject to the municipal lawâ??.,

68. This being the position, the distinction drawn between public and private property seems to be not correct. Reference has been made to the case in", Revathinnal Balagopala Varma (supra) in this regard. In so far as such a concept runs counter to the basic attribute of sovereignty the said distinction, is not acceptable. In this connection, we may refer to Mirza Raja Shri Pushavathi Viziam Gajapathi Raj Manne Sultan Bahadur v. Shri Pushvathi", Visweswar Gajapathi Raj. At page 416 it was observed thus:,

â??It follows from the decision in Shiba Prasad Singh's 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. It may be otherwise in the case of an", estate granted by the Crown subject to descent by primogeniture.â??,

(Emphasis supplied),

67. In the above referred matter of His Highness Maharaja Pratap Singh (supra) the Supreme Court also considered the issue as to whether the,

primogeniture lapsed at the time of accession or merger in the years 1947-48 and has answered the question thus in paragraphs 69 & 70 :,

69. With this, we pass on to the next question whether the primogeniture lapsed in the years 1947-48 ? It is the contention of the respondents that",

Pratap Singh ceased to be governed by primogeniture on 15-8-1947 and in any case, on 20-8-1948 when he ceased to be a sovereign. It is true that",

there was no Rulership after India became a Republic on 26th of January, 1950 but if the estate is impartible in nature it would continue to be",

governed by the Rule of primogeniture. We will refer to Thakore Shri Vinaysinhji v. Kumar Shri Natwarsinhji. At page 134 it is stated thus:,

â??The principle of law that is applicable to a coparcenary property or to the coparceners is inapplicable to an impartible estate or to the holder,

thereof except that an impartible estate is considered to be a joint family property to the extent of the junior members succeeding to the estate by right,

of survivorship. When under certain circumstances the right of a coparcener to take by survivorship can be defeated, no exception can be taken, if the",

right of survivorship of junior members of an impartible estate to succeed to it is defeated by the holder thereof by disposition by a will.â??,

(Emphasis supplied),

70. Again in Rajkumar Narsingh Pratap Singh Deo v. State of Orissa at page 121 it is observed thus;,,

â??As we have just indicated, the customary law which required the Ruler to provide maintenance for his junior brother, can be said to have been",

continued by Clause 4(b) of the Order of 1948 and Article 372 of the Constitution;....â??,

(Emphasis supplied),

68. In His Highness Maharaja Pratap Singh (supra) the Supreme Court has also considered the fact of Section 5 of the Act, 1956 and the",

commentaries contained in Mulla's Hindu Law to the applicability of rule of primogeniture under the Act, 1956 and held thus in paragraphs 71 to 75 :",

71. Section 5 of the Hindu Succession Act, 1956 (Central Act 30 of 1956) states as follows:",

â??This Act shall not apply to-

(i) * * *,

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the,

Government of India or by the terms of any enactment passed before the commencement of this Act ;,

(iii) * * *â??,

72. In Mulla's Hindu Law, Sixteenth Edition at page 766 it is stated:",

â??The exception is limited to the impartible estates of Rulers of Indian States succession to which is regulated by special covenants or agreements,

and to estate, succession to which is regulated by any previous legislation, and the Estate and Palace Funds mentioned in Sub-section (iii).â??",

73. At the stage of Bill, 1954 it was clearly brought out in the Rajya Sabha Debates at pages",

7115 and 7116 as under:,

â??Then there is another clause, Sub-clause (ii) which says:",

'any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the,

Government of India or by the terms of any enactment passed before the commencement of this Act.'

This clause has been put in because, as we know, it is only after the attainment of independence that on a large scale there has been integration of",

States, and there are certain agreements and covenants which have been entered into between the Government and those Rulers of States, and",

some arrangements have been made only very recently with respect to their line of succession. It is a special thing. What it says is : 'any covenant or,

agreement entered into by the Ruler'. Naturally, if we have entered into any such agreement only as recently as 1947 or 1948 and much time has not",

elapsed, it is not proper that by an enactment of a general nature like this we should do something which will set at nought the agreements and the",

covenants which the Government of India has solemnly entered into with those people and on the strength of which they had consented to allow their,

States to be integrated with India. Of course, I agree that probably it is not entirely a socialist pattern or whatever you call it, but as I have been",

always saying, I hold the opinion that we have to proceed by the process of evolution. I do not mince matters.â??",

74. Therefore, it can be said with certainty that this rule continued even after 1947-48.",

75. Under Article 372 the law of succession relating to primogeniture continues until it is repealed. This is the position of law relating to succession.,

(Emphasis supplied),

69. The Supreme Court in *Bhaiya Ramanuj Pratap Deo v Lalu Maheshanuj Pratap Deo & Others* AIR 1981 SC 1937 the Supreme Court held that,

Section 5 (ii) of the Act, 1956 protects an estate which descends to a single heir by the terms of any covenant or agreement entered into or by the",

terms of any enactment inasmuch as Hindu Succession Act is not applicable to such an estate. This section stands as an exception to Section 4 of the,

Act, 1956.",

70. The Delhi High Court in *Maharaja Jagat Singh v Lt. Col. Bhawani Singh & Others* AIR 1994 Delhi 14 held that private properties of erstwhile,

rulers does not become HUF properties by virtue of merger and accession. Section 4 of the Act, 1956 and 26th amendment of Constitution have no",

applicability to such properties and that merger of impartible estate attached to the Gaddi being the private property of the Ruler at the time of merger,

do not become HUF properties. The Delhi High Court held thus at paragraph 10 :,

10. Mr. Parsaran then placed reliance on the 26th Amendment of the Constitution of India. Reliance on 26th Amendment of the Constitution of India,",

to my mind, is misplaced. The 26th Amendment of the Constitution is not retrospective and could not have changed the succession of the property of",

Maharaja Sawai Man Singh by defendant No. 1 which already took place in 1970. Maharaja Man Singh died in the year 1970 whereas the 26th,

Amendment came on the Statute Book in the year 1971, Hence the contention of Mr. Parsaran, cannot be supported from the facts of this case that",

26th Amendment of the Constitution of India invalidated the question of ownership appended to the status as Ruler or that the Status of the Ruler,

having ceased after coming into force the 26th Amendment of the Constitution of India. Further contention of Mr. Parsaran, Senior Advocate for the",

plaintiff that the reason for impartibility is not the custom but the Covenant alleged to be providing for impartibility by accepting the custom. The,

Article XII of the covenant entered between the State of Nabha (Punjab) and the Governor

General of India

Article XII. (1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State Properties)

belonging to him on the date of his making over the administration of that State to the Raj

Pramukh.

(2) He shall furnish to the Raj Pramukh before the 20th day of September, 1948, an

inventory of all the immovable properties, securities and cash balances held by him as

such private property.

(3) If any dispute arises as to whether any item of property is the private property of the

Ruler or State property, it shall be referred to such person as the Government of India

may nominate in consultation with Raj Pramukh and the decision of that person shall be

final and binding on all parties concerned:

Provided that no such dispute shall be so referable after the 30th June, 1949.", "Article 3 of the agreement between Maharaja of Bastar

and the Governor General of India

The Maharaja shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement.

The Maharaja will furnish to the Dominion Government before the 1st day of January 1948 an inventory of all the immovable property, securities and cash balance held by him as such private property.

If any dispute arises as to whether any item of property is

the private property of the Maharaja or State property, it shall be referred to such officer with judicial experience as the Dominion

Government may nominate and the decision of that officer shall be final and binding on both parties.

75. The rule of succession in respect of Gaddi as well as the properties pertaining thereto fell for consideration before the Single Judge of the,

Allahabad High Court in Miss Talat Fatima Hasan (supra), wherein it has been held thus in paragraphs 93 & 94 :",

93. To sum up therefore, as a result of all the above stated facts, circumstance and the legal position, this Court has arrived at a conclusion that the",

rule of succession in respect of the Gaddi of Rampur State as well as the properties pertaining thereto, has all along been the rule of male lineal",

primogeniture, according to which the eldest male heir of the late ruler inherited both the Gaddi and the properties, and the properties had an impartible",

character. On the merger of the State with the dominion of India by means of the instrument of merger dated 15-5-1949 Exhibit 4. the said position,

remained unaffected and the late Nawab (Raza Ali Khan) who declared the properties in suit as his private property in terms of Clause 4 of the said,

instrument, continued to hold these properties, as part of the Gaddi of Rampur State, despite the territories of the said State having been ceded to the",

Government of India, This thus was the position on March 6, 1966 when the succession to the Gaddi and the properties in question opened on the",

death, intestate, of the late Nawab Raza Ali Khan. Both the Gaddi of Rampur State as well as the properties owned by the said ruler, thus continued",

to be governed by the rule of primogeniture and the principle of impartiality, which did not come to an end with the lapse of paramountcy and the",

integration of the State with the dominion of India. The late defendant No. 1 Nawab Murtuza Ali Khan, thus, in accordance with the above said rule of",

inheritance, succeeded to the Gaddi of Rampur as well as the entire property then owned by the late ruler. The said properly in the matter of",

succession was not governed by the Muslim personal Law and the plaintiff, or for that matter no other descendant of the late Nawab, had any right to",

inherit the same or any share therein. The position in this regard also did not change on the abolition of privi purses and cessation of recognition, as",

ruler for the purposes of the Constitution the late Nawab, by the President of India on account of the 26th Amendment to the Constitution in the year",
1971.,

94. The plaintiff thus has failed to establish that she has inherited any share in the properties in suit, moveable or immoveable, as claimed in the plaint",

on the demise of the late Nawab Raza Ali Khan. The creation of the trust named Raza Trust by the late Nawab, and for that matter the grant of",

Jagirs, pensions and making other provisions for such members of the family who are not to inherit any share in the properties does provide a",

circumstance lending support to the theory of succession by the rule of male lineal primogeniture, though it does not render the suit non-maintainable at",

the threshold on that count alone.,

(Emphasis supplied),

76. It is, thus, indisputably and fairly well settled that private property of a Ruler was to remain with him under the covenant/agreement executed with",

the GOI and the said property has to pass on from one Ruler to another in terms of Article 5 of the agreement. It would pass on to the next Ruler,

under the principle of Lineal Male Primogeniture and the private properties would not be treated as the joint family property or HUF property of the,

Ruler. It is also settled that by virtue of Section 5(ii) of the Act, 1956, the provisions of the said Act would not apply to the suit property as under the",

covenant, it would descend to a single heir under the terms of the agreement executed between the Ruler of Bastar and the GOI. It is also settled that",

the Gaddi and the property would pass on to the next Ruler and would thereafter pass on to the legal heirs of the last Ruler.,

77. The private property of the Ruler shall not be treated as HUF property nor the Act, 1956 would apply to the said property for yet another reason",

inasmuch as vide Ex.P/74, which is a letter issued by the Government of the Central Provinces and Berar dated 19.07.1948, it was specifically",

provided that the Muafi Rights created by the Ruler i.e. Maharaja Parvir Chandra Bhanjdeo for the maintenance of his brother in 27 villages are,

allowed. It is, thus, apparent that if the other family members had any right over the private property by birth or by survivorship there was absolutely",

no necessity to create Muafi Rights for the maintenance of the Ruler's brother in 27 villages. It is clearly discernible that the brothers of the Ruler,

were treated as a separate entity at the time of merger and they had no claim to the private property of the Ruler as they were separated by granting,

them Muafi Rights in the lands for their maintenance. The brothers of the Ruler have, thus, no right over the properties of the Ruler which would pass",

on to the next Ruler under law of Primogeniture.,

Validity of the compromise decree :,

78. Another important contention raised by the learned counsel for the appellant is in respect of the validity of the compromise decree passed by the,

District Judge, Bastar, in civil suit No.2-A/1978. The appellant/plaintiff contends that the compromise decree was fraudulently obtained to deprive the",

appellant of the property to which he is entitled by virtue of successor to the Gaddi and the property under the rule of Primogeniture. The decree is,

otherwise not binding because the present plaintiffs/appellants were not arrayed as a party in the civil suit No.2-A/1978.,

79. In course of hearing of the instant appeal, we had summoned the record of civil suit No.2-A/1978 wherein the compromise decree was passed.",

The suit was filed by Vedvati Devi @ Subhraj Kumari (second wife), widow of Maharaja Praveer Chandra Bhanjdeo versus Harihar Chandra",

Bhanjdeo, S/o Vijay Chandra Bhanjdeo and Devesh Chandra Bhanjdeo, S/o Vijay Chandra Bhanjdeo. The prayer made in the suit was only for",

declaration of WILL dated 27-2-1964 as null, void and ineffective. The said WILL was allegedly executed by Late Praveer Chandra Bhanjdeo in",

favour of defendants Harihar Chandra Bhanjdeo and Devesh Chandra Bhanjdeo. No relief was claimed for declaration of title to the property enlisted,

in Schedule 'A' to the plaint, however, compromise application was filed covering almost the entire private property of erstwhile Ruler of Bastar and",

the parties to the said suit partitioned the same amongst themselves. One of the defendant in the present suit namely; Brijesh Bajpai, Advocate, acted",

as guardian ad litem of Minor defendant No.2 Devesh Chandra Bhanjdeo.,

80. The compromise application filed in the said suit recites in para 2 that the parties to the suit shall take half share each in the properties belonging to,

Late Maharaja Praveer Chandra Bhanjdeo. No declaration was issued in the suit in respect of the WILL dated 27-2-1964, therefore, the said plaintiff",

Vedvati Devi abandoned her plea regarding invalidity of the said WILL.,

81. A certified copy of the compromise decree was not placed in the trial Court,

however, as held in *Jaswant Singh v Gurdev Singh and Others* (2012)",

1 SCC 425 once the compromise decree is passed in terms of the compromise deed the same becomes a public document and since copy of the same,

is now available before this Court we shall proceed to examine the validity of the same.,

82. It is settled law that a decree passed by a civil Court binds only the parties thereto and not any third party interest, therefore, the said compromise",

decree neither binds nor effects the rights of the present plaintiffs/appellants. Otherwise also, the suit, which was initially filed for invalidating the",

WILL dated 27-2-1964 was subsequently compromised covering the entire private property of Late Praveer Chandra Bhanjdeo. Thus, the suit filed",

for one purpose was enlarged to cover the entire private property of Ruler of Bastar without impleading the original plaintiff who was the last Ruler,

and male lineal primogeniture having succeeded to the Gaddi and property of Bastar state under the rule of primogeniture.,

83. The decree was clearly obtained by fraud, therefore, in view of the law laid down by the Supreme Court in *A.V. Papayya Sastry and Others v*",

Govt. of A.P. and Others(2007) 4 SCC 221 the decree would be non est being a nullity having no sanctity in the eyes of law. Accordingly, the",

compromise decree dated 17-3-1978 is deserves to be and is hereby declared as void ab initio.,

84. Defending the sale on the plea of bona fide purchasers, the defendants have referred to the provisions contained in Section 41 of the TP Act. The",

provision may save the alienation by a person who was having title pursuant to a decree which was later on set aside, however, in a case where title",

was acquired on the basis of a decree obtained by fraud the alienation would not be saved because fraud vitiates all subsequent action. The decree,

obtained by fraud is void ab initio, therefore, the sellers had no title to pass on to the purchasers.",

85. Both the parties have relied on WILLS executed by Late Maharaja Praveer Chandra Bhanjdeo or his first or second wife, however, none of the",

WILLS have been filed in original before the Court nor any of the attesting witnesses have been examined to prove genuineness of the WILL in terms,

of the requirement of law for proving a WILL as contained in Section 63 of the Indian Succession Act, 1925 and Sections 67 & 68 of the Indian",

Evidence Act, 1872. Thus, claim of either parties on the basis of WILL is not proved and the decision on their respective rights would be governed in",

the manner discussed supra in this judgment on other issues.,

86. Even otherwise, the Government of Madhya Pradesh had issued an order as back as on 20-6-1953, under the approval of the GOI, declaring",

Maharaja Pravir Chandra Bhanjdeo to be mentally incapable of maintaining his estate and the entire private properties were placed under the charge,

of Court of Wards (MP), therefore, the WILLS sought to be enforced by either of the parties to the present suit is of no value as there is ample",

evidence in form of Government orders declaring that Maharaja Pravir Chandra Bhanjdeo was suffering from mental infirmity.,

87. The trial Court has decided the issue No.14 against the plaintiffs holding that the suit suffers from res judicata. On this account it would be suffice,

to mention that there is no judgment of any Court on any issue in any previously instituted suit deciding the same issue on merits which has fallen for,

consideration in the present suit. Therefore, any previous decision dismissing the suit of any of the party for failure of the plaintiff to prosecute the suit",

or by way of compromise would not hit the present suit under the principles of res judicata. The finding on issue No.14 is, thus, contrary to settled legal",

principle.,

88. Trial Court has found, while deciding issue No.20, that the land of Mundi Dongri was the personal property of Late Maharaja Praveer Chandra",

Bhanjdeo and not his private property, however, the plaintiffs as well as the original defendant No.4 Smt. Subhraj Kumari alias Vedvati who was the",

lone member of the Royal family to file written statement amongst several defendants of the family, has admitted in her written statement that the suit",

lands were entered in the list of private properties prepared at the time of vesting of properties of Bastar state in the dominion of India. Thus, in",

between the plaintiffs and the defendants it is an admitted fact that all the suit properties including the land of Mundi Dongri are the private properties,

of Late Maharaja Praveer Chandra Bhanjdeo, therefore, for this reason alone the finding to the contrary recorded by the trial Court while deciding",

issue No.20 is perverse. These findings are set aside to hold that Mundi Dongri was also the private property in the hands of Late Maharaja Praveer,

Chandra Bhanjdeo. Even otherwise, a contrary finding has been recorded while

deciding issue No.23A & 23B that the suit lands were not personal",
property of Late Maharaja Praveer Chandra Bhanjdeo.,

89. The trial Court has also non-suited the plaintiff on the ground that the suit only for declaration is not maintainable, however, the prayer clause in the",
suit would clearly mention that the suit is also for recovery of possession and for setting aside the sale deeds, therefore, the suit is not merely for",
declaration, but for other consequential reliefs, thus, it is maintainable.",

90. Trial Court also holds that there is non-joinder of causes of action or that plaintiffs having not filed the return under the Agricultural Ceiling Act," ,
the suit is not maintainable, but there is no discussion as to under which provision of law the suit is not maintainable for non-filing of return under the",
Agricultural Ceiling Act. Similarly, there is no discussion in the judgment as to which particular cause of action suffers from non joinder. The trial",
Judge appears to have made a generalised statement while deciding these issues, however, on a reading of the entire pleadings and evidence it does",
not appear that the suit either suffers from non joinder of cause of action or is barred under any other law, therefore, we hold that the suit was",
maintainable in its present form.,

91. On the basis of above discussion, we allow the appeal; set aside the judgment and decree passed by the trial Court; and pass the following decree",
in favour of the plaintiffs :,

â?¢ The plaintiffs are declared owner and title holder of the lands and properties shown in Schedule 'A', 'B', 'C', 'D', 'E' & 'G'. They are entitled to",
recover possession of the lands and properties from the respective defendants.,

â?¢ The sale deeds shown in Schedule 'B', 'E' & 'G' to the plaint are set aside. Plaintiffs are entitled to recover vacant possession of the lands covered",
in these schedules.,

â?¢ The compromise judgment and decree passed by the District Judge, Bastar, on 17-2-1978 in civil suit No.2-A of 1978 is declared null and void ab",
initio and is set aside.,

92. Decree be drawn accordingly.,