
(1967) 07 SC CK 0007

In the Supreme Court Of India

Case No : C. As. No. 982 and 983 of 1964

Ranjit Singh Rao(Major)

APPELLANT

Vs

Raja Bai Saheba

RESPONDENT

Date of Decision : 18-07-1967

Acts Referred:

Constitution of India, 1950 — Article 49
Land Acquisition Act, 1894 — Section 2

Citation : (1968) J LJ 108

Hon'ble Judges : M. Hidayatullah, J;C.A. Vaidialingam, J

Bench : Division Bench

Advocate : C.B. Agrawala, P.L. Dubey, G.L. Sanghi, B.D. Gupta, Uma Mehta and A.G. Ratraparkhi, for the Appellant; S.G. Patwardhan and Rameshwar Nath, for the Respondent

Final Decision : Dismissed

Judgement

M. Hidayatullah, J.—These are two appeals by certificate against the common judgment of the High Court of Madhya Pradesh, October 28, 1960 and arise out of a suit filed by one Shrimati Rajabai Sahiba (since deceased) widow of the late Najajirao Phalke, a Jagirdar of the erstwhile Gwalior State. The suit was directed against Major Ranjitsingh Rao Phalke. The Plaintiff and the Defendant are Appellants, each in his own appeal, with the other side as the Respondent.

2. Najajirao Phalke died on January 15, 1938 leaving no Male heir. His estate was admittedly governed by the rule of primogeniture, Najajirao Phalke, it appears, had proposed to adopt a heir to himself, but his application remained pending for sanction till his death. Immediately after the death of Najajirao, the Court of Wards of Gwalior State under directions of the Muntazim Jagirdaran took charge of the estate of Najajirao. The original order was made on February 17, 1938 and the charge was completed on March 7, 1938. Exs. A-19 to A-40 are the lists of the movables which were found with Rajabai Sahiba. All the lists were signed by her and she added that the movable property was in her custody. The Court of

Wards also drew up a list of immovable property which consisted of a residential Bada, a Cinema hall called Chhaya Talkies with two shops attached to the Cinema, eight other houses and fifteen shops, Ex. A-62 showed the position of cash. The lists of articles in the Jamdirkhana and Farashkhana were not drawn up till much later, as these do not appear to have been prepared till 1940. On December 6, 1940, the Muntazam Jagirdaran wrote to Rajabai Sahiba (Ex. P-4) that the Maharaja had not agreed to the proposal for the adoption of Ramchandra Patankar, son of the daughter of Najajirao Phalke but was willing to accord his permission if a boy from the Phalke family was adopted. Rajabai Sahiba appears to have been a lady of considerable determination. She declined to agree to the proposal of the Maharaja with dire consequences to herself. On November 22, 1941, the Maharaja issued an order that the building of the Cinema with its compound should be transferred by the Court of Wards to the Public Works Department and the Public Works Department should pay to the Court of Wards a sum of Rs. 12,000/- to be credited to the account of the Sansthan. The Court of Wards communicated the order of the Maharaja to Rajabai Sahiba but she did not send him any reply. The matters again seems to have rested till we reach the year 1947. On June 14, 1949, the Maharaja made an order that Major Ranjitsingh Rao Patankar (who is the Defendant in the suit) was appointed as the successor of the Sansthan and Jagir of the last Sardar Nejajirao Phalke. The order was communicated by the Jagir Minister to Ranjitsingh Patankar. Two days later, the office of the Muntazim Jagirdaran ordered that the shops near Chhaya Talkies should be taken over by the Court of Wards and the title to the property should be investigated. This order was communicated to Rajabai Sahiba but she took no action. The decision seems to have been taken by July 25, 1947. On June 19, 1947, the Muntazim Jagirdaran informed Rajabai Sahiba that the proposal to adopt a boy of her choice had been rejected by the Darbar and that Major Ranjitsingh Rao Patankar the step-son of Najajirao's daughter was appointed as the successor to the Jagir and the Sansthan. A maintenance allowance of Rs-500 per month to Rajabai Sahiba and Rs. 200/- per month to her unmarried daughter Manoramabai was simultaneously sanctioned. It was stated that the charge of Sansthan and Jagir would be handed over to the successor. Next day, notices were sent to the tenants not to pay rent to Rajabai Sahiba. Rajabai Sahiba left Lashkar for Poona on June 22, 1947, and this news was communicated to the Darbar. On July 3, 1947, the Muntazim Jagirdaran communicated to Rajabai Sahiba the orders of the Maharaja dated June 14, 1947 and also informed her about the Nemnook (maintenance allowance) granted to her and her daughter. Rajabai Sahiba must have known about it earlier, because she had left Lashkar for Poona. On August 8, 1947, the Muntazim Jagirdaran wrote to Rajabai Sahiba at Poona that as she had left Lashkar without obtaining the permission of the Maharaja, the nemnook was being stopped and that she was not to return to Lashkar. On September 10, 1947 the Maharaja wrote a personal letter to Ranjitsingh Rao Patankar saying that the Chhaya Talkies and the shops were thenceforward to belong to him and by a notification dated November 27, 1947, he ordered that Ranjitsingh Rao

Patankar was thenceforward to be known as Ranjitsingh Rao Phalke. The Muntazim Jagirdaran then took over possession of the houses and the shops under the Maharaja's order dated January 19, 1948. Under that order the Public Works Department was asked to return the Chhaya Talkies and the two shops to the Phalke Sansthan and a sum of Rs. 23,000/- and odd lying with (he Court of Wards was to be returned to the Public Works Department. A sale-deed of the Chhaya Talkies and the two shops was executed on behalf of the estate in favour of Ranjitsinghrao Phalke on March 12, 1948. Rajabai Sahiba made a representation to Sardar Vallabhai Patel on November 6, 1948 with no result, and then, after serving a notice, brought the present suit on March 31, 1951. To the plaint, she appended a list of immovable properties Schedule-A and movable properties Schedule-AA which she claimed as the private property of her husband Najajirao Phalke and to which she said, she had succeeded under the general law.

3. It is unnecessary to set out the pleas of the parties. It is sufficient to say that the possession of properties in Schedules A and AA to the plaint was in dispute. Rajabai Sahiba claimed that they were the separate properties of Najajirao and as such she was entitled to them under the general law. Major Ranjit Singh claimed that they were part of the Sansthan and passed to him under the orders of the Maharaja which had the force of law. Pleas in bar of limitation in respect of both movable and immovable properties, and of Section 95 of the Qaward Jagirdaran to the jurisdiction of the civil Court were raised by Major Ranjit Singh and a claim to mesne profits was joined by Rajabai Sahiba to her claim for possession.

4. The District Judge, Gwalior decreed the suit with costs in respect of all the scheduled properties and ordered Maj. Ranjit Singh to place Rajabai in possession of them. Alternatively, he ordered that if any item of the movables was not specifically delivered, its price mentioned in Schedule AA 2 must be paid. He also ordered an inquiry into mesne profits accrued prior to the institution of the suit from the date of taking over of possession of the properties. However, the District Judge held that as the property was handed over in the first instance to the Court of Wards, no claim for mesne profits could be raised for the period of the management by the Court of Wards. The claim for mesne profits of the cinema house and the adjoining shops prior to Major Ranjit Singh's possession was not accepted. In other words, mesne profits were ordered from the date Major Ranjit Singh's possession commenced.

5. Both sides appealed to the High Court. In the appeal of Major Ranjit Singh, Rajabai's claim in respect of movables was held barred by time and the decree on that part of the case was reversed. The order in respect of mesne profits was also modified. Mesne profits were ordered to be determined for 3 years next before the filing of the suit and from the filing of the suit till delivery of possession or till the expiry of 3 years from the date of the judgment of the High Court whichever date be earlier. The case was certified as fit for appeal and both

sides have filed appeals before us.

6. The main appeal is, of course, by Major Ranjit Singh. Mr. C. B. Agarwala draws attention to the orders of the Darbar which mention resumption and regrant of the Sansthan property and argues that on the failure of the heir the Jagir and Sansthan stood escheated. He submits that the whole of the Sansthan (which included the Jagir and non-Jagir properties) was regranted to Major Ranjit Singh by a Darbar order which had the force of law. The argument of Mr Agarwala thus is that the Darbar intended that even non-Jagir property should vest in (he successor and he relies in this connection upon Exs. A-46, A-53 A-51 and P-6, P-7 and P-9, He contends that in all these official orders emanating from either the Maharaja himself or the Muntazim Jagirdaran, the word Sansthan is comprehensively used to include all properties whether Jagir or non-Jagir. He submits that the Qawaid Jagirdaran and the Court of Wards Manual, when they speak of Sansthan, always include Jagir as well as non-Jagir property in the expression. According to him the word was understood by ail concerned to indicate all the property of Jagirdars. In support of this proposition Mr. Agrawala has relied upon the exhibits above-mentioned, particularly Exs. P-6, and 9. The first two are letters to Rajabai Sahiba of June 19 and July 3, 1947 and the Government Gazette dated November 27, 1947 by which the Darbar sanctioned mutation in favour of Major Ranjit Singh at the same time changing his name from Patankar to Phalke. In these three documents Jagir and Sansthan are mentioned together. Mr. Agrawala contends that by Jagir is meant the villages and other prerequisites granted to the Jagirdar and by Sansthan the rest of the property in possession of the Jagirdar. In support of this correction he refers to a congeries of documents such as the documents already mentioned, the accounts books of the Sansthan, receipts passed by tenants, receipts for payment of municipal taxes etc. in which there is mention of Najajirao Sansthan. He also relies upon the evidence of S. Hakim Ahmad, Ex-Jagir Minister (D. W-5) and Kaka Saheb Shirke, Superintendent, Court of Wards who was Nigrahal at that time. He asks the question: what is Sansthan? and suggests the answer that it designates the entire estate movable or immovable of Najajirao. This claim is denied by Rajabai Sahiba and has not been accepted by the High Court and the Court below.

7. It is necessary to say at the start that the arguments that the orders of the Maharaja had the force of law is not correct. The Darbar order are Exs. A-46, A-51 and A-53 and Exs P-6, P-7 and P-9. They direct the taking over of the properties under the Court of Wards and later grant them to Major Ranjit Singh. Mr. Agrawala refers to Madhaorao Phalke Vs. The State of Madhya Bharat, where the history of the Gwalior Darbar and the system of making laws obtaining in Gwalior State is set down following the observations in volume 7 of a compilation of the Ruler Sir Madhorao Scindia. It was there stated as follows:

Broadly speaking all orders and directions issued by the Ruler may be regarded as laws.

Gajendragandkar, J.

(as he then was) held in the case that certain Kalam-bandeers were law. This actual decision has been approved in later cases but the general observations then made were explained as too wide. 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. In *Maharaja Shri Umaid Mills Ltd., v. Union of India* 1963 Supp. 2 SCR 515, *State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala*, and finally in *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa* and *Another*, the decision in the *Kalambandi* case was held to be too wide. In the last case Gajendragadkar C. J. explains his earlier case. 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.

8. Now in Gwalior State of that time succession to jagir property, adoption by the jagirdar, maintenance from the jagir income, grant of judicial and revenue powers to jagirdars and other matters relating to or concerning jagirs and jagirdars were governed by the Qawaid Jagirdaran. Section 95 of these Qawaid barred the jurisdiction of Civil Courts in respect of any of these matters. The question here, of course, is not of the jagir property but whether any of the Schedule properties can be described a jagir property because if they are part and parcel of jagir proper, they must pass to the new jagirdar. If they are not then they will not be governed by the Qawaid.

9. The Qawaid Jagirdaran does not define the word Sansthan. The Court of Wards manual defines sansthandar as a Sardar in enjoyment of jagir forming one or more entire villages or in receipt of cash Muafi or Sardari. The late Najajirao can, therefore, be said to be a sansthandar. But that does not advance the matter. Strictly speaking, Sansthan means a common abode or a place where many persons reside and it is generally used to designate royal town or capital. Even in the case of a paltry jagir there is usually a Bada which is the seat of the jagirdar and which goes by the name Sansthan of Thikana from which follow Sansthandar or Thikanedar. The fact that a Sansthandar can be brought under the Court of Wards and loans to Sansthans are prohibited or controlled does not answer the question whether the jagirdar or Sansthandar can ever possess private property or not. Simply because the Court of Wards manages the jagir and other property, when the Sansthan is placed in its charge, does not lead to the position that the non-jagir property loses this characteristic and becomes jagir. The case for accretion to the jagir was not pleaded. Nor was it argued at any stage. Perhaps (his was because such a case could not be made out.

10. Reliance is placed upon Section 2 of the Qawaid Jagirdaran, which says that the State has direct interest in the preservation of jagir in its entirety. But this speaks of the jagir and there is no provision for including as jagir, the private property of the jagirdar. The Darbar orders are, of course, there. But these orders were passed by the Maharaja in anger at the conduct of Rajabai Sahiba in

disobeying him and were opposed to law. Unless these orders have a legal foundation they cannot bind the Courts.

11. In our judgment the High Court took a correct view of the orders of the Maharaja when it held them to be not binding. The reasons given by the High Court are correct and rather than repeal them we adopt them as our own.

12. The next question is whether the suit was barred by time. It is obvious that the Court of Wards kept the question of title to immovable property open, with the result that with the exception of Chhaya Talkies, two shops and seven houses, the rest of the immovable property remained with Rajabai Sahiba till her departure for Poona in 1947. In respect of those properties no question of limitation could arise in 1951 when the suit was filed. The seven houses were no doubt taken over by the Court of Wards but only for management under the manual. Limitation would really commence when a hostile title was asserted and this was by Major Ranjit Singh when he got into possession- Major Ranjit Singh cannot benefit from the possession of the Court of Wards. The property taken by the Court of Wards under its management was of several kinds. The jagir property was held for the successor but the rest of the property was taken for management. The case in Secretary of State for India v. Krishnaswami Gupta 29 IA 104 (sic) is clearly distinguishable. The case of Central Talkies renamed Chhaya Talkies) is even clearer. Even if hostile title commenced against Rajabai Sahiba, it did only on November 22, 1941 which is the date of Ex. A 53 and the suit on March 31, 1951 was well within time. The High Court was right in holding the claim for possession of immovable property to be within limitation.

13. The claim of Major Ranjit Singh that as he acquired the properties under the orders of the Maharaja, he had a clear title to them begs the whole question. The question is whether the Maharaja's action was legal and binding. It is obvious that the Maharaja or his State did not act under Kanun Husul Arazi (Land Acquisition Act), This was case of seizing property by an executive order which has not been shown to have a legal foundation. The orders of the Maharaja were issued to the Public Works Department to pay a certain sum to the Court of Wards and to the Court of Wards to hand over the property. These orders were reversed before Major Ranjit Singh was designated the successor. The money was returned and the property was restored to the Court of Wards. Thereafter the Maharaja wrote a letter to Major Ranjit Singh to enjoy the property. This is hardly a legal proceeding and it can certainly be questioned in Court of law.

14. As regards the appeal of Rajabai Sahiba in which question of limitation is mooted in respect of the movables it is obvious that the decision of the High Court is correct. The Limitation Act (Qanoon Miyad) was applied in Gwalior State by an Act of 1949. The law of limitation being procedural in character limitation applicable to a suit or proceeding is the law in force on the date of the institution of the suit or proceeding. The suit was filed on March 31, 1951. The possession of Major Ranjit Singh commenced at the latest on August 17, 1947. The suit was thus filed beyond three years. Mr. Patwardhan, however, contends that the

appropriate article to apply is the residuary article and not Article 49 which was held applicable to the High Court. This contention is based on a so called declaration said to be involved in deciding the rival claims. Rajabai Sahiba claimed the property as the self acquired property of her deceased husband and asked for possession 1 here was no question of a declaration here. Every case involves a declaration of rights but that is not the kind of declaration which takes the matter out of Article 49. Mr. Palwardhan relies upon Mohammad Riasal Ali v. Musammat Hasan Banu ILR 20 IA 155. That was a suit by a muslim widow for dower and to recover property as heiress. Here the suit was for recovery of specific movable property said to be wrongfully taken from Rajabai Sahiba, and not a suit to establish a right to inherit the property of a deceased person. To such a suit Article 49 clearly applies. The High Court was right in dismissing the claim.

15. It now remains to consider a few points. Major Ranjit Singh claims the Bada as part of Jagir and relies upon Rajindra v. Raghubanskumar AIR 1918 PC 25. In that case the house was allotted to one Balbhadar Singh who was the Taluqdar of Mahewa for his use as Taluqdar and the right to possession of it as he had, passed to the succeeding Taluqdar and not to the widow of Balbhadar Singh. The position here is different. The house has been held to be the self-acquired property to Najajirao and not part of his Jagir. It must ordinarily devolve upon his widow. Major Ranjit Singh's appeal on this part must fail.

16. The last point to consider is about mesne profits. The High Court has allowed mesne profits for the three years prior to the suit when the property was in possession of Major Ranjit Singh but has disallowed mesne profits for the period earlier and for the period when possession was with the Court of Wards. In both the views the High Court was clearly right. The Defendant was not in possession at any time earlier than when his possession commenced and no claim for mesne profits for more than three years was sustainable.

17. The result, therefore, is that both the appeals are devoid of merits and fail. They will be dismissed. In view of the failure of the appeals there will be no order about costs.