
(2006) 11 RAJ CK 0037
In the Rajasthan High Court

Tajuddin (deceased) through LR.	Vs	APPELLANT
Faqrudin (deceased) through LR.		RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2007) 1 RLW 449

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Kumar Jain, J.—The plaintiff has filed this regular first appeal u/s 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 31st of January, 1981 passed by the Additional District Judge, No. 1 Jaipur City, in Civil Suit No. 67/1977, whereby the suit of the plaintiff for declaration permanent injunction and possession was dismissed.

2. Brief facts giving rise to this appeal are that on 13th of December, 1976 the plaintiff filed a suit in the lower Court wherein it was prayed that a decree of declaration in favour of the plaintiff be passed declaring him Sajjadanashin and Mutwali of Dargah Hazrat Ziauddin Sahib situated near Moti Katla, outside Chaardarwaja in Jaipur City. A prayer for decree of possession was also made in respect of the properties which are in occupation of the defendants. It was also prayed that the defendants be restrained by a decree of permanent injunction not to interfere in the property of Dargah erected on Khasra Nos. 497 to 503.

3. The plaintiff, in his plaint, pleaded that there is one well known Dargah, namely, Hazrat Mian Ziauddin and the plaintiff is its Sajjadanashin, the defendants are in habit to quarrel with the plaintiff about their rights in the Dargah. The pedigree was given in Para 1 of the plaint. It was pleaded that Jaipur His Highness had gifted Seven bigha of land in Khasra Nos. 497 to 503 in Jaipur City to Hazrat Mian Ziauddin Sahib, for the use of residence and for laying

down a garden around. Hazrat Mian Ziauddin Sahib was unmarried and died issueless. On 1 Oth of December, 1906 Hazrat Mohiuddin became Sajjadanashin and he got constructed one Dargah on the said land. Mohiuddin was first Sajjadanashin. However, Mohiuddin was found to be involved in one theft case, therefore, Jaipur His Highness removed him from the post of Sajjadanashin on 23rd of January, 1911 and his brother Kamaluddin was appointed as Sajjadanashin. The Matmi was sanctioned in the name of Kamaluddin vide order dated 4th of December, 1920. Kamaluddin was grand father of the plaintiff. It was further pleaded that Kamaluddin died on 19th of May, 1938 and thereafter there was a dispute on appointment on the post of Sajjadanashin and sanction of Matmi. Thereafter Matmi Rules came into force in 1945 and the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 also came into force. It was also pleaded that the Revenue Board vide its order dated 1st of February, 1974 sanctioned the Matmi of the disputed land in favour of the plaintiff being grandson of Kamaluddin. However, the Revenue Board left open the issue regarding appointment on the post of Sajjadanashin to be decided by the civil Court. Therefore, the present suit was filed.

4. The defendant No. 1 filed his written statement wherein it was pleaded that the defendant No. 1 is working as Mutwali of the Dargah since 1938, therefore, the defendant is in possession of Dargah since then. The pedigree as mentioned in Para 1 of the plaint was denied. The another pedigree was mentioned in Para 1 of the written statement. In additional pleas of the written statement it was pleaded that after the death of Kamaluddin in the year 1938, the defendant No. 1 is working as Mutwali of the disputed property and he is in possession of the same. It was also pleaded that after the death of Kamaluddin, his eldest son Aminuddin, the father of the plaintiff, was appointed as Sajjadanashin and he did not object appointment of defendant No. 1 on the post of Mutwali. It was also pleaded that after the death of Aminuddin, the plaintiff filed a civil suit claiming the post and rights of Sajjadanashin, which was dismissed on merits on 7th of September, 1953 against which an appeal was also preferred by the plaintiff but the same was also dismissed by the Rajasthan High Court on 20th of November, 1958, therefore, the principle of res-judicata is applicable in the present case. It was also pleaded that in 1956 the plaintiff filed another suit for sanction of grant of "chiragbatti" and "nazrana" wherein the defendant No. 1 Faqrudin filed an application for impleading him as a party which was allowed by the lower Court against which a revision petition was preferred by the plaintiff and the same was also dismissed on 10th of July, 1969, therefore, it was prayed that the suit of the plaintiff be dismissed.

5. The defendant No. 2 Badruddin also filed separate written statement on 4th of January, 1977 wherein contents of the plaint were denied. The pedigree mentioned in Para 1 of the plaint was also denied. The grant of Matmi in the name of Ziauddin was admitted. The appointment of Mohiuddin and thereafter Kamaluddin on the post of Sajjadanashin was admitted. It was also mentioned that against the order of the Revenue Board whereby Matmi has been sanctioned

in favour of the plaintiff, the defendant No. 2 has filed a writ petition before the Rajasthan High Court, which is pending. It was also pleaded that the civil Court had already decided an issue about appointment on the post of Sajjadanashin and the suit of the plaintiff in this regard has already been dismissed on 7th of September, 1953.

6. On the basis of pleadings of the parties the learned lower Court framed ten issues on 24th of April, 1978 which have been produced in the judgment of the lower Court.

7. In support of the case, plaintiff Tajuddin examined himself as PW. 1 and produced documentary evidence Exhibit-1 the judgment of the Revenue Board dated 1.2.1974, Exhibit-2 the Judgment of the High Court dated 20.12.1944, Exhibit -3 the judgment of the Jaipur Chief Court dated 22.8.1940, Exhibit-4 the site plan filed with the plaint, Exhibit-5 the map of Jaipur Tehsil, Exhibit 6 & 7 Khasra Girdawri and Exhibit-8 copy of written statement filed by defendant No. 1 in the suit filed by Didar Ali.

8. Defendants examined DW-1 Faqrudin and DW2 Ladli Prasad, and produced documentary evidence Exhibit A-1 the judgment of the District Judge, Jaipur dated 18.9.1946, Exhibit A-2 the judgment of the District Judge dated 7.9.1953, Exhibit A-3 the judgment of the Rajasthan High Court dated 20.11.1958, Exhibit A-4 the order of the Additional Civil Judge dated 23.12.1968, Exhibit A-5 application filed by Tajuddin on 13.9.1969, Exhibit A-6 the judgment of the Rajasthan High Court dated 10.7.1969 in Civil Revision, Exhibit A-7 the order dated 26.7.1900 of the Mahakma Diwani Garbi, Exhibit A-8 the sale deed of Samvat Year 1854 executed by Had Narain, Exhibit A-9 the sale deed in favour of Dargah Executed by Man Singh Tanwar, Exhibit A-10 copy of "patta" by the State Government issued in Samvat 1856, Exhibit A-11 copy of map.

9. The learned lower Court, vide its impugned judgment and decree dated 31st of January, 1981, decided issue Nos. 1, 2, 4, 5, 6, 7 and 9 in favour of the defendant and against the plaintiff. The issue Nos. 3 and 8 were decided in favour of the plaintiff and against the defendants. Consequently, in view of the finding in respect of issue Nos. 1, 2, 4 and 5 in favour of the defendants, the suit of the plaintiff was dismissed. Under these circumstances the present appeal has been preferred on behalf of the plaintiff.

10. During the pendency of the appeal the sole plaintiff Tajuddin died and an "application under Order 22 Rule 3 of the CPC was filed which was allowed vide order dated 3rd of September, 1987 and appellant No. 1/1 Abdul Rashid @ Chand Son of Shri Abdullah Khan was substituted in his place. An application under Order 1 Rule 10 of the CPC was also filed on the basis of the "Will" dated 26th of March, 1987, alleged to have been executed by the appellant in his lifetime, by virtue of which he had appointed a Committee consisting of five members including the substituted appellant Abdul Rashid, to manage the affairs of Dargah. Remaining four members were - (1) Nisar Ahmed S/o Faiz Ahmed, (2)

Farooq Ali S/o Hafiz Rehman Ali, (3) Sufi Mohammad Hanif S/o Mohammad Khan and (4) Mohammad Amin S/o Sufi Mohammad. This Court, vide order dated 1.2.1994 allowed the application under Order 1 Rule 10 of the CPC and above four persons were impleaded as appellants No. 1/2 to 1/5 respectively. It is relevant to mention that the appellant No. 1/3 Sufi Mohammad Hanif also died during the pendency of the appeal on 15.5.1998 and an application under Order 22 Rule 4-A of the CPC for substitution of his legal heirs was dismissed as not maintainable, vide order dated 17.9.1998.

11. During the pendency of the appeal the appellant filed an application under Order 41 Rule 27 of the CPC which was allowed by this Court vide order dated 20.2.1998. The respondent No. 1/2 also filed an application under Order 41 Rule 27 of the CPC on 26.10.2005 and this Court vide order dated 21.11.2005 passed an order that the said application will be considered at the time of hearing of the appeal. During the course of arguments, the said application was not opposed, therefore, the same is allowed and copy of judgment and decree dated 15.3.2005 is taken on record.

12. The learned Counsel for the appellants contended that the judgment and decree passed by the lower Court, dismissing the suit of the plaintiff, is absolutely illegal and contrary to the facts and law, both. He contended that the learned lower Court committed a serious illegality in deciding the issue No. 4 relating to res-judicata against the plaintiff and in favour of the respondent on the basis of Exhibit A-2, the judgment of the District Judge, Jaipur City, Jaipur, dated 7.9.1953. He contended that the suit of the plaintiff was based on the judgment of the Revenue Board dated 1.2.1974 (Exhibit-1), whereby the Matmi, in respect of disputed land, was sanctioned in favour of the plaintiff by the competent authority i.e. the Revenue Board, while exercising the powers under the provisions of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, (hereinafter shall be referred to as "the Act of 1955"). He contended that after coming into force of the Act of 1955 the plaintiff filed a Matmi case under the provisions of the Act of 1955 before the Board of Revenue wherein both the defendants were party and after hearing the plaintiff as well as both the defendants the Revenue Board, vide its judgment dated 1.2.1974, sanctioned Matmi in favour of the plaintiff, therefore, the cause of action for filing the present suit accrued to the plaintiff on 1.2.1974. He contended that the question of Sajjadanashin and Mutwali was left open by the Revenue Board to be decided by the Civil Court, therefore, the present suit was filed. He contended that once the plaintiff is declared as Matmidar u/s 10 of the Act of 1955, then he was entitled to hold the post and work as Sajjadanashin and Mutwali of the Dargah, in dispute, and he was entitled to get possession of the entire property, which is in possession of the defendants and a decree of permanent injunction was liable to be issued restraining the defendants for not interfering in the day-to-day affairs of the plaintiff. He further submitted that a writ petition was filed challenging the order dated 1.2.1974 passed by the Revenue Board by the opposite party and the writ petition was dismissed, therefore, the said order has attained finality. He

further contended that the learned lower Court while deciding issue No. 4 observed that the judgment of the District Judge, Jaipur dated 7.9.1953 was not brought to the notice of the Revenue Board and further that the order of the Revenue Board does not give any right to the plaintiff to raise the same issue afresh by filing a civil suit, which had already been decided vide judgment dated 7.9.1953. He also contended that the learned Court has committed an illegality in not considering the provisions of the Act of 1955 and the judgment of the Revenue Board dated 1.2.1974 (Exhibit-1) correctly. In support of his contention, he referred to the decision in the case of Anwar Khan Mehboob and Co. Vs. State of Madhya Pradesh and Others, and on that basis contended that the principle of res-judicata in the present facts and circumstances of the case is not applicable and the finding of the learned lower Court in respect of issue No. 4 is liable to be set aside.

13. Learned Counsel for the respondents, Shri Rajendra Prasad, supported the judgment of the lower Court and contended that the suit filed by the plaintiff was rightly rejected by the lower Court. He contended that the controversy had already been settled by the competent civil Court vide judgment dated 7th of September, 1953, (of the District Judge, Jaipur) a copy of which was placed on the record by the defendants as Exhibit A-2. He further contended that the judgment of the Revenue Board dated 1st of February, 1974 (Exhibit-1) does not help the plaintiff in any manner. The Revenue Board itself has made a distinction in between "Matmi" as well as the post of Sajjadanashin and while deciding the question relating to "Matmi" it was observed by the Board of Revenue that the question of Sajjadanashin can only be decided by the civil Court. He also contended that the judgment and decree dated 7th of September, 1953 dismissing the suit of the plaintiff for the same relief was further challenged by the plaintiff in the High Court by filing the first appeal but the same was also dismissed by the High Court vide order dated 20th of November, 1958 (Exhibit A-3) for non-deposit of cost of paper book under Rule 205 of the High Court Rules, therefore, the judgment of the District Judge attained finality. He further contended that the appointment to the post of Sajjadanashin is governed by the practice and customs of particular Dargah and the custom in the instant case is of nomination by late Sajjadanashin and approved by congregation on soum day and in absence of nomination, appointment on soum day by congregation. He referred to the judgment of the Jaipur High Court dated 20th of December, 1944 (Exhibit-2) and also the judgment of the High Court dated 10th July, 1969 (Exhibit A-6) passed in the revision petition, wherein observations were given by the High Court that a Sajjadanashin is appointed in accordance with the custom and the mere fact that the State of Rajasthan recognized him as Matmidar is not sufficient to appoint him Sajjadanashin. The aforesaid Revision Petition No. 56/1969 was filed by Tajuddin against the order dated 23.12.1968, whereby the application filed by the defendant Faqrudin under Order 1 Rule 10 of the CPC, was allowed in a suit filed by plaintiff Tajuddin in the year 1968 against the State of Rajasthan, stating himself to be the Sajjadansh in and claiming some amount

on account of expenses for "chiragbatti and also value of 42 gold "Mohars" He also contended that the finding of assumption of jurisdiction by the Revenue Board and its judgment dated 1.2.1974 (Exhibit-1) is without jurisdiction and renders the judgment as nullity and, in support of his contention he referred the case of Idol of Idol of Thakurji Shri Govind Deoji Maharaj Vs. Board of Revenue, Rajasthan, Ajmer and Others, . The learned Counsel for the respondent, therefore, contended that there is no merit in the present appeal and the same is liable to be dismissed.

14. I have considered the submissions of the learned Counsel for both the parties and minutely scanned the impugned judgment as well as the record of the lower Court and also various documents filed by both the parties along with the application under Order 41 Rule 27 of the CPC.

15. The present suit was filed by plaintiff Tajuddin in the lower Court to declare him as Sajjadanashin and Mutwali of well known Dargah Hazrat Ziauddin Sahib situated near Moti Katla, outside Chaardarwaja in Jaipur City. The His Highness, Jaipur had allotted seven bigha of land in Khasra Nos. 497 to 503 in Jaipur City to Hazrat Mian Ziauddin for the use of residence and for laying down a garden around. Hazrat Mian Ziauddin Sahib was unmarried and died issueless. Mohinuddin became Sajjadanashin and he got constructed one Dargah on the said land. Mohiuddin was first Sajjadanashin. However, Mohiuddin was found involved in one theft case, therefore, he was removed from the post of Sajjadanashin by Jaipur His Highness on 23rd of January, 1911 and his brother Karnaluddin was appointed as Sajjadanashin. The present plaintiff Tajuddin is the grandson of Kamaluddin. Matmi was sanctioned in the name of Kamaluddin vide order dated 4th of December, 1920. When Matmi of Mohiuddin was sanctioned by the former Jaipur State in the name of Kamaluddin, Mohinuddin son of Mohinuddin objected but his objection was rejected by the then Ruler on 3.2.1923. Kammaluddin died on 19.5.1938 and thereafter the dispute started on appointment to the post of Sajjadanashin and sanction of Matmi. Both the parties initiated number of legal proceedings in various Courts which went upto the Jaipur High Court. Exhibit-2 is the judgment dated 20.12.1944 of the High Court. Exhibit-3 is the judgment of Jaipur Chief Court dated 22.8.1940. Exhibit A-1 is the judgment of the District Judge, Jaipur, dated 18.9.1946. Exhibit A-2 is the judgment dated 7.9.1953 of the District Judge, Jaipur.

16. After the death of Kamaluddin in 1938, his eldest son Aminuddin became Sajjadanashin. However case of Matmi of Kamaluddin remained pending when the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 came into force and the same was decided by the Revenue Board u/s 4(1)(b) of the said Act vide judgment dated 1.2.1974 (Exhibit-1) in accordance with the provisions of laws of the covenanting State, viz. Jaipur State and, Matmi was sanctioned in the name of plaintiff Tajuddin.

17. The plaintiff's case is based on the judgment of Revenue Board dated 1.2.1974 (Exhibit-1), whereby Matmi was sanctioned in his favour, whereas the

case of the defendants is based on so-called customs of Dargah as pleaded in the written statement. The case of the defendants is that they were appointed as Sajjadanashin and Mutwali as per customs of Dargarhand they are holding the said posts. The learned lower Court framed ten issues. The main issue/dispute in the present suit/appeal is the issue No. 1 as to whether the plaintiff is Sajjadanashin and Mutwali of Dargah Hazrat Mian Ziauddin Sahib, in view of the judgment of the Revenue Board dated 1st of February, 1974. The learned lower Court decided this issue against the plaintiff and in favour of the defendants.

18. Learned Counsel for both the parties have argued the appeal mainly in respect of issue Nos. 1, 2 and 4. Issue No. 4 was in respect of principle of res-judicata and the lower Court recorded a finding that the principle of res-judicata is applicable in the present case as the controversy had already been settled by the Court of District Judge, Jaipur, vide judgment dated 7.9.1953 (Exhibit A-2), and the said judgment of the District Judge was challenged in appeal before the High Court and the appeal of the plaintiff was dismissed by the High Court vide judgment dated 20.11.1958 (Exhibit A-3). Therefore, this issue No. 4 was also decided against the plaintiff. The Matmi of disputed land has already been sanctioned in the name of Tajuddin and present case relates to appointment on the post of Sajjadanashin and Mutwali of Dargah erected on disputed land, therefore, it will be appropriate to refer the definition of Matmi as well as relevant Rules in this regard.

19. The Jaipur Matmi Rules, 1945 (for short, "the Rules of 1945") and the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 are relevant in this regard.

20. "Matmi" has been defined in Sub-rule (3) of Rule 4 of the Rules of 1945, which reads as under:

4. (3) "Matmi" means mutation of the name of the successor to a State grant on the death of the last holder. The person in whose name matmi is sanctioned is called the "matmidar" and the sum payable by him on his recognition as such by the State is called "matalba matmi."

21. The relevant rule as to who is entitled to succeed Matmiare Rules 13 and 14 of the Rules of 1945, which read as under.

13. The eldest real son of the last holder or if such son is dead, such son's eldest real son or eldest real grandson is entitled to succeed, unless in the opinion of the Ruler he is unfitted to succeed by reason of serious mental or physical defect or disloyalty;

Provided, firstly, that in the case of the panchpana sardars of Sheikhawati and the bhomias of Udaipurwati, the grant shall devolve on all the surviving real sons and the real sons or grandsons of predeceased sons of the last holder in accordance with local custom unless in any particular case His Highness the Maharaja Sahib Bahadur has recognized that the ordinary rule of succession by

male lineal primogeniture shall apply;

Provided, secondly, that in the case of a nihang grantee, a chela whose nomination has been approved by Government shall be entitled to succeed; and

Provided, thirdly, that in the case of a tankha grant other than a grant held by an employee of the Bera Khawas chelan of which the holder dies after the 25th October, 1943, his eldest read son shall be entitled to succeed only to one half of the grant and such son's eldest real son to only one fourth of the original grant. In the fourth generation of the holder in possession on the 25th October, 1943, the remainder of the grant shall be resumed.

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

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

Provided, secondly, that in the case of a Jain temple succession shall be sanctioned in favour of a manager nominated by the Panch Jains.

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

Provided, firstly, that a person adopted in another family shall not be allowed to revert to his original family; and

Provided, secondly, that a Raja (Lalji), a khawasal, a tankhadar, an employee of the Bera Khawas Chelan, an employee of the Karkhanejat and a Mina Chowkidar shall not be permitted to adopt.

22. The Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 was enacted by the State Legislative Assembly, which received the assent of the President of India on the 5th day of November, 1955. It was published in the Rajasthan Gazette (Raj-Patra) Extraordinary, Part IV A, dated November 5, 1955. The object of the Act of 1955 is as under:

An Act to validate certain decisions given, and proceedings taken, in respect of matters relating to the resumption of Jagirs in the Covenanting States of Rajasthan, and the recognition, according to law, of succession to the rights and titles of Jagirdars therein, and to provide the forum for the disposal of such cases and proceedings.

23. Sections 4 and 10 of the Act of 1955 are relevant for the purpose of the present case, therefore, they are reproduced as under, for the ready reference.

4. Continuance of pending cases and proceedings. - Notwithstanding as aforesaid, if immediately before the commencement of this Act, any cases or

Proceedings of the nature referred to in Section 3 are pending before any Revenue Court or Officer, or before the Rajpramukh-

(a) all action taken therein before such commencement by any such Court or officer, or by the Rajpramukh, acting, or purporting to act, under the relevant law of a covenanting State, shall be valid and shall be deemed always to have been valid and shall not be liable to be called in question in any Civil Court;

(b) any such cases or proceedings may be continued and completed in accordance with the provisions of the relevant laws of the covenanting States by a Revenue Court or Officer Competent under such laws to deal therewith, subject to the provisions of the Rajasthan Revenue Courts (Designation) Ordinance, 1949 (Rajasthan Ordinance XXXV of 1949);

(c) the orders of the Board of Revenue for Rajasthan passed in such cases or proceedings shall be final, notwithstanding that such laws require any class of such cases or proceedings to be submitted, for the confirmation of such orders, to, or permit, with reference to such orders, the preferring of any appeal, revision, or other proceeding before the Rajpramukh, or the State Government, or any Minister of the State Government, or any other superior authority; and

(d) any such cases or proceedings pending before the Rajpramukh, or the State Government or any Minister of the State Government, or any other authority superior to the said Board, shall be transferred to it for final disposal.

Explanation - Where in accordance with the law of a covenanting State, a report is required to be submitted, and has been submitted, or ordered to be submitted, to a superior authority or Court for the approval or confirmation of orders passed in a case or proceedings for the final disposal thereof, such case or proceeding shall, for the purpose of this section, be treated as pending before such superior Court or authority.

(2) No action taken or decision given under Sub-section (1) shall be liable to be called in question in any Civil Court.

10. Powers of the Board of Revenue. - In every case or proceedings submitted to it for orders under the proviso to Sub-section (2) of Section 6 and in every appeal referred to it u/s 8, the Board of Revenue, after hearing all parties desiring to be heard and after disposing of all objections, if any, lodged u/s 7 or otherwise may-

(a) confirm or set aside the final order or the recommendations made by the (revenue appellate authority) originally or in appeal, or

(b) vary the same, or

(c) direct further inquiry to be made, or additional evidence to be taken in the case or proceedings, or

(d) make such other order therein as may seem to it to be just and proper.

24. The Hon'ble Supreme Court considered the principles of resjudicata in the case of Anwar Khan Mehboob Co. v. State of Madhya Pradesh and Ors. (supra), where the cause of action in subsequent suit was different like present case. The cause of action in the present case is based on the judgment of the Revenue Board dated 1.2.1974 whereby the Revenue Board while exercising statutory powers under the provisions of the Act of 1955 sanctioned Matmi in favour of the plaintiff in accordance with Jaipur Matmi Rules, 1945. The learned lower Court, while deciding issue No. 4 relating to res-judicata did not consider the relevancy and effect of the statutory provisions of the Rules of 1945 and the Act of 1955 and the authority and powers of the Revenue Board u/s 10 of the Act of 1955, and only on the basis of the judgment dated 7.9.1953 (Exhibit A-2) of the District Judge, Jaipur, came to a conclusion that the principle of res-judicata in the present case is applicable. Paragraph 11 of the judgment of the Hon'ble Supreme Court in Anwar Khan Mehboob Co. v. State of Madhya Pradesh and Ors. (supra), is reproduced as under:

(11) Mr. Pathak, however, argued that the earlier decision of this Court involved the assumption of the fundamental fact that petitioner firm's right to property was invaded. He argued on the authority of Hoystead v. Commissioner of Taxation 1926 AC 155 , that such a fundamental fact cannot, in a fresh litigation, be allowed to be ignored. He submitted that it was open to the Government to have demurred to the claim on the ground that no right of property was invaded, but it did not. This may be right but it does not solve our problem. If the Adhiniyam had not been passed and the rights recognized by this Court were again interfered with, it would have been impossible for Government to ask that Chhotabhai Jethabai Patel and Co. Vs. The State of Madhya Pradesh, be reconsidered from the point of view whether a fundamental right to property was involved or not. The fresh litigation would in such a case have been on an identical or similar cause of action and because of the decision in favour of the petitioner firm Government would have been bound by the rule of res-judicata. The situation today is not the same as existed in 1952. The cause of action then was based upon the invasion of the rights of the petitioner firm by and under the authority of the Abolition Act. Today the invasion is by and under the authority of the Adhiniyam and manifestly the two causes of action are not alike. It is worth mentioning that Hoystead's case 1926 AC 155 was cited before the House of Lords in Society of Medical Officers of Health v. Hope 1960 AC 551 but was not followed. It may also be mentioned that in the volume which contains Hoystead's case 1926 AC 155 there is to be found another case of the Judicial Committee Broken Hill Proprietary Co. Ltd. v. Municipal Council of Broken Hill 1926 AC 94 which seems to be in conflict with Hoystead's case. It was argued

before the House of Lords that Hoystead's case 1926 AC 155 was wrongly decided. The House did not pronounce their opinion on this submission but noted the fact that there was this conflict. They did not point out that a decision of the Judicial Committee was not binding on the House of Lords. Lord Radcliffe distinguished Hoystead's case 1926 AC 155 and stated that it was useless to illuminate the only point which was before the House of Lords, namely, the effect of a succeeding valuation list on a decision given with regard to an earlier valuation list. The same reason obtains here also. The earlier case of this Court is useless to illuminate the only point which arises before us, namely, whether by the provisions of the Adhiniyam any right to property as such is being offended. On this question we cannot get any guidance from the earlier decision partly because it did not in express terms decide even on the facts existing in 1952 that right to property was in jeopardy and mainly because the effect of the new law upon the rights such as they are today must be worked out afresh. The cause of action is entirely distinct. For this reason we do not think that the earlier decision operates as *res judicata*, even if it might have been assumed in that case that a right to property was involved.

25. As per the definition of Matmi, as defined in Sub-rule (3) of Rule 4 of the Rules, 1945, it means mutation of the name of the successor to a State grant on the death of the last holder. The object of the Act of 1955 was to validate certain decisions given, and proceedings taken in respect of matters relating to the resumption of Jagirs in the Convenanting States of Rajasthan and recognition, according to law, of succession to the rights and titles of Jagirdars therein, and to provide the forum for the disposal of such cases and proceedings.

26. The Revenue Board, while exercising its statutory powers u/s 4(1)(b) read with Section 10 of the act of 1955, vide its judgment dated 1.2.1974 (Exhibit-1) sanctioned succession of the last holder Kamaluddin son of Imamuddin, in the name of his eldest read grandson, namely, Tajuddin son of Aminuddin, in respect of 7 bighas kham State grant given for the maintenance of a garden by the former Jaipur State, patta dated Shrawan Sudi 4, Samwat 1856 whose khasra numbers have since been delineated in the Judgment of Deewani of former Jaipur State dated 19.2.1928.

27. The Hon"ble Supreme Court has considered the matter relating to sovereign powers in the case of Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, . The Constitutional Bench held that the Firman of Maharana of Udaipur, an absolute monarch, is law. It was held that in the case of an absolute Ruler like the Maharana of Udaipur, no distinction can be made between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and governs the rights of the parties affected thereby. An absolute monarch is the fountain-head of all legislative, executive and judicial powers and it is of the very essence of sovereignty which vested in him that he could supervise and control the administration of public charity. This universal principle in regard to the scope of the powers inherently

vesting in sovereignty applies as much to Hindu monarch as to any other absolute monarch. Therefore, it must be held that the Firman issued by the maharana of Udaipur in 1934 is a law by which the affairs of the Nathdwara Temple and succession to the office of the Tilkayat were governed after its issue.

28. In the case of Tilkayat Shri Govindlalji Maharaj etc. v. State of Rajasthan and Ors. (supra), the Hon''ble Apex Court held as under:

(31) We have referred to these aspects of the matter because they were elaborately argued before us by the learned Attorney-General. But as we will presently point out, the Firman issued by the Udaipur Darbar in 1934 really concludes the controversy between the parties on these points and it shows that the Shrinathji Temple at Nathdwara is undoubtedly a public temple. It is, therefore, now necessary to consider this Firman. This Firman consists of four Clauses. The first Clause declares that according to the law of udaipur, the shrine of Shrinathji has always been and is a religious institution for the followers of the Vaishnava Sampradaya and that all the property immovable and movable dedicated, offered or presented to or otherwise coming to the Deity Shrinathji has always been and is the property of the shrine and that the Tilkayat Maharaj for the time being is merely a Custodian, Manager and Trustee of the said property for the shrine of Shri Nathji and that the Udaipur darbar has absolute right to supervise that the property dedicated to the shrine is used for legitimate purpose of the shrine. The second Clause deals with the question of succession and it provides that the law of Udaipur has always been and is that the succession to the Gaddi of Tilkayat Maharaj is regulated by the law of primogeniture, and it adds that the Udaipur Darbar has the absolute right to depose any Tilkayat Maharaj for the time being if in its absolute discretion such Maharaj is considered unfit and also for the same reason and in the same way to disqualify and person who would otherwise have succeeded to the Gaddi according to the law of primogeniture. The third Clause provides that in case the tilkayat Maharaj is a minor, the Darbar always had and has absolute authority to take any measures for the management of the shrine and its properties during such minority. The last Clause adds that in accordance with the said law of Udaipur, the Rana had declared Shri Damodarlalji unfit to occupy the Gaddi and had approved of the succession of Goswami Govindlalji to the Gaddi of Tilkayat Maharaj and it ends with the statement that the order issued in that behalf on October 10, 1933 was issued under his authority and is lawful and in accordance with the law of Udaipur.

In appreciating the effect of this Firman, it is first necessary to decide whether the Firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the

parties affected thereby. This position is covered by decisions of this Court and it has not been disputed before us, vide *Madhaorao Phalke Vs. The State of Madhya Bharat*, *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, and *Director of Endowments, Government of Hyderabad and Others Vs. Akram Ali*, .

33. It is true that in dealing with the effect of this Firman, the learned Attorney-General sought to raise before us a novel point that under Hindu law even an absolute monarch was not competent to make a law affecting religious endowments and their administration. He suggested that he was in position to rely upon the opinions of scholars which tended to show that a Hindu monarch was competent only to administer the law as prescribed by Smritis and the oath which he was expected to take at the time of his coronation enjoined him to obey the Smritis and to see that their injunctions were obeyed by his subject. We did not allow the learned Attorney-General to develop this point because we hold that this novel point cannot be accepted in view of the well-recognized principles of jurisprudence. An absolute monarch was the fountain-head of all legislative, executive and judicial powers and it is of the very essence of sovereignty which vested in him that he could supervise and control the administration of public charity. In our opinion there is no doubt whatever that this universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu monarchs as to any other absolute monarch. Therefore, it must be held that the Firman issued by the Maharana of Udaipur in, 1934 is a law by which the affairs of the Nathdwara Temple and succession to the office of the Tilkayat were governed after its issued.

29. From the pleading and evidence as well as findings of the lower Court also it is proved that plaintiff Tajuddin was real grandson of Kamaluddin, who was appointed as Sajjadanashin by His Highness of Jaipur. No doubt that earlier Mohiuddin was appointed as Sajjadanashin of Dargah but he was found involved in a theft case, therefore, by the order of His Highness of Jaipur, he was removed from the post and in his place Kamaluddin, the grandfather of the plaintiff, was appointed as Sajjadanashin. Matmi was also sanctioned in the name of Kamaluddin, which was challenged by Moinuddin son of Mohiuddin but his objections were rejected by then Ruler on 3.2.1923. After the death of Kamaluddin, his son, who was father of the plaintiff, namely, Aminuddin was appointed as Sajjadanashin but case of Matmi of late Kamaluddin remained pending and could not be disposed of under the rules of 1945 and the same remained pending when the Act of 1955 came into force and the same was decided by the competent statutory authority i.e. Revenue Board u/s 4(1)(b) of the Act of 1955 vide judgment dated 1.2.1974 (Exhibit-1) in accordance with the provisions of laws of the covenanting State i.e. Jaipur State and Matmi was sanctioned in the name of plaintiff Tajuddin. It is correct that plaintiff Tajuddin had filed a suit in the Court of District Judge, Jaipur, to declare him as Sajjadanashin and the same was dismissed vide judgment dated 7.9.1953 (Exhibit A-2) and the appeal against that judgment was also dismissed by the High Court vide judgment dated 20.11.1958 (Exhibit A-3). But, after the

judgment of the District Judge, the case of Matmi or successor of Kamaluddin was decided by the Statutory Authority while exercising powers u/s 4(1)(b) read with Section 10 of the Act of 1955 and as mentioned above the Revenue Board, its judgment dated 1.2.1974 (Exhibit-1), sanctioned succession of the last holder Kamaluddin in the name of the plaintiff Tajuddin. The judgment of the Revenue Board dated 1.2.1974 (Exhibit-1) was challenged by defendant Badruddin before this Court in S.B. Civil Writ Petition No. 2225/1974 and the said writ petition was dismissed on 21.11.1983, therefore, order dated 1.2.1974 has attained finality. Certified copies of the Writ Petition No. 2225/1974, the reply to the writ petition on behalf of the respondent No. 3 in the writ petition, namely, Tajuddin, and the order dated 21.11.1983, dismissing the writ petition of the defendant Badruddin against the order of the Revenue Board dated 1.2.1974, have been placed on the record along with the application under Order 41 Rule 27 of the CPC on 19.11.1977, which was allowed by this Court vide order dated 20.2.1998. The order dated 1.2.1974 passed by the Revenue board is a statutory order by the statutory authority under the Statute and this was the separate and fresh cause of action for filing the present suit. The Hon"ble Supreme Court in the case of Anwar Khan Mehboob Company v. State of Madhya Pradesh and Ors. (supra) considered the principles of res-judicata and it was held that if two cause of action are separate and distinguishable then the principle of res-judicata are not applicable. The cause of action in the suit, which was decided on 7.9.1953 was altogether different whereas cause of action in the present case was the statutory order dated 1.2.1974, therefore, in these circumstances the learned lower Court committed a serious illegality in deciding the issue No. 4 relating to res-judicata against the plaintiff and thus wrongly rejected the suit on this ground. The finding of the lower Court in respect of issue No. 4 is accordingly reversed and the said issue is decided in favour of the plaintiff-appellant.

30. So far as the issue No. 1 is concerned, the learned Counsel for the defendant-respondent contended that the order dated 1.2.1974 passed by the Revenue Board is illegal and without jurisdiction and in support of his contention he referred to the judgment of the Hon"ble Supreme Court in the case of Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, , where the learned Counsel for the appellant contended that the aforesaid judgment is not at all applicable in the facts and circumstances of the present case. The learned Counsel for the appellant further contended that the above judgment in the case of Sayyed Ali and Ors. v. Andhra Pradesh Wakf Board, Hyderabad and Ors. (supra) was discussed and considered in subsequent judgment reported in Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha, and it was held that the same is not applicable on the question involved in the present case. It is relevant to mention that the order of the Revenue Board was challenged by the defendant Badruddin in the writ petition before this Court, which has already been dismissed, therefore, the judgment of the Revenue board has attained finality. This order has been passed by statutory authority while exercising powers under Statute, therefore, it is binding on all parties. The disputed property is seven big

has of land which was gifted by the then Ruler. After the death of Hazrat Ziauddin, Mohiuddin was appointed as Sajjadanashin, but when he was found involved in theft case, then the then-Ruler removed him from his post and appointed Kamaluddin as Sajjadanashin. The powers of the then Ruler were unquestionable. It is also relevant to mention that there is codified law for declaration of successor of last holder. Even if there is any custom for appointment on the post of Sajjadanashin then the same can not be contrary to prevailing statute and codified law will prevail over the custom. The gifted property by the ruler has to be managed by successor according to law. There can not be two different persons, one as successor and another as Sajjadanashin. Otherwise property in dispute cannot be managed properly, any person who is declared as successor and in whose favour matmi is sanctioned by competent authority under the Statute is entitled to hold the posts of Sajjadanashin as well as Mutwalli also, therefore, after declaration by the Revenue board that Tajuddin, the plaintiff, is successor of the last holder Kamaluddin and succession was sanctioned in favour of Tajuddin then the plaintiff Tajuddin becomes entitled to be declared as Sajjadanashin and Mutwalli of the Dargah in dispute. The finding of the lower Court in respect of issue No. 1 is, therefore, liable to be set aside and the same is hereby set aside and issue No. 1 is decided in favour of the plaintiff Tajuddin and he is declared as Sajjadanashin as well as Mutwalli of Dargah Hazrat Ziauddin Sahib.

31. So far as finding of the learned lower Court in respect of issue No. 2 is concerned the same cannot be allowed to stand after the finding of issue No. 1 recorded in favour of the plaintiff Tajuddin. The finding of the lower Court in respect of issue No. 2 is also set aside.

32. The learned lower Court decided issue No. 5 relating to limitation in favour of the defendant and against the plaintiff, the reasonings given by the learned lower Court for dismissal of the suit being barred by limitation are untenable in the eye of law. The present suit was a suit for declaration and permanent injunction and possession of the property also, so far as prayer relating to declaration and injunction is concerned, there is no period of limitation prescribed for the same and for other prayers including possession, it is relevant to mention that the cause of action in the present case arose to the plaintiff on 1.2.1974 only when the Revenue Board sanctioned the Matmi or succession in his favour and from that date the suit was filed within a period of limitation and the learned lower Court committed an illegality in dismissing the suit being barred by limitation. Therefore, the finding of the learned lower Court in respect of issue No. 5 is also set-aside and the said issue is decided in favour of the plaintiff and it is held that the suit was filed within the period of limitation.

33. The learned lower Court also framed issue No. 7 as to whether the suit is triable by the civil Court or the revenue Court. The lower Court recorded a finding that the land in dispute is still an agriculture land in government record, therefore, the civil Court had no jurisdiction to entertain, try and decide the suit.

It is relevant to mention that both the parties do not dispute that the Dargah has already been constructed on the land, which is situated near Moti Katla, outside Chhardarwaja in Jaipur City. The other constructions have also been raised on the land. The main relief in the present suit was about declaration of plaintiff as Sajjadanashin and Mutwalli of Dargah in dispute, which could be declared only by civil Court and not by Revenue Court, therefore, even if there was any other relief relating to jurisdiction of the Revenue Court then the same was only ancillary relief and cannot be termed as main relief. In these circumstances, I find that the learned lower Court committed an illegality in deciding issue No. 7 against the plaintiff and in favour of the defendant. The finding of the lower Court in this regard is set-aside and issue No. 7 is decided in favour of the plaintiff.

34. Consequently, the issue No. 6 relating to entitlement of the plaintiff for possession of the property in dispute is also decided in favour of the plaintiff.

35. In the result, the appeal is allowed. The impugned judgment and decree passed by the lower Court is set aside. The suit of the plaintiff is decreed. Plaintiffs Tajuddin is declared as Sajjadanashin and Mutwalli of Dargah Hazrat Ziauddin Sahib situated near Moti Katla, outside Chhardarwaja in Jaipur City. The plaintiff will be entitled to possession of the entire land in dispute including Dargah and other property situated thereon. The defendant-respondents are restrained from interfering in the working of the plaintiff-appellants and also in the disputed property.

36. Cost is made easy.