

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 16th January, 2014

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RFA No.44/2009

**MAHARAJA KUMAR KHARAGH SINGH OF NABHA
(DECEASED) THROUGH LR.**

..... Appellant

Through: Mr. Sudhir Chandra, Sr. Adv. with
Mr. Vivek Chaudhary & Mr. Pankaj
Bhatia, Advs.

Versus

**HIS HIGHNESS MAHARAJA PRATAP SINGH OF NABHA
(DECEASED) THROUGH LR AND ORS.**

..... Respondents

Through: Mr. Chetan Sharma, Sr. Adv. with
Mr. Manoj Sharma, Adv. for R-3.
Mr. Akhil Sachhar & Ms. Deepali
Sharma, Advs. for R-4 & R-6.
Mr. Ritesh Aggarwal, Adv. for R-5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the decree dated 19.08.2008 of the Court of Additional District Judge (ADJ), Fast Track Court, Delhi of dismissal of suit No.293/2006 [old suit No.75/1975] filed by the appellant consequent to the rejection of the plaint under Order 7 Rule 11 of the CPC.

2. Notice of the appeal was issued and the Trial Court record requisitioned. The appellant demonstrated a highly lackadaisical attitude in service of notice of the appeal on the respondents (of which there are 37); owing to the said failure and finding that the appellant and the respondent No.1 had died and no steps had been taken to bring their legal heirs on record, the appeal was on 14.09.2010 dismissed as abated. An application for recall of the said order was filed pointing out that the appellant and the respondent No.1 had died during the pendency of the suit and their heirs substituted in the suit itself though not so shown in the memorandum of appeal, with a prayer for filing of fresh memo of parties. The said application was allowed on 17.01.2012 and the appeal restored to its original position.

3. Only the respondents No.3 to 6 appeared in response to the notice issued of the appeal and the appellant filed an application for service by publication of the unserved respondent. Finding that the plaint in the suit from which this appeal arises was rejected only on the application of the defendant / respondent No.3 and further finding that the other respondents despite service had not appeared before the Trial Court also, the service of

the unserved respondents was dispensed with. Upon it being pointed out that some of the unserved respondents / defendants had also died and no steps for substitution of their legal representatives had been taken, the substitution of the legal representatives of the respondents / defendants who had failed to appear before the Trial Court was also dispensed with vide order dated 16.07.2013 and the appeal admitted for hearing and listed in the category of regular matters of senior citizens.

4. The senior counsel for the appellant and the senior counsel for the defendant / respondent No.3 Maharaj Kumar Hanumant Singh and the counsel for the respondents No.4 and 6 viz. His Highness Majaraja Hemant Singh of Dholpur and Maharaj Kumari Snehlata Devi and the counsel for the respondent No.5 Maharaj Kumar Himmat Singh have been heard.

5. The suit from which this appeal arises was filed by the deceased appellant / plaintiff on 27th November, 1974, for partition and for rendition of accounts, pleading:

- (i) that in the year 1923 Maharaja Ripudaman Singh was stripped of ruling powers and was made to leave and sever his connection with Nabha administration by the then British

Government and was compelled to reside in Dehradun district and later on in exile in Kodikanal in South India;

- (ii) that the said Maharaja Ripudaman Singh died in December, 1942 leaving considerable movable and immovable properties acquired with his personal funds unconnected with the State funds, either in his own name or in the name of relations and friends, being benami for the benefit of himself; he had also inherited lot of property, immovable and movable from his father and the four Maharanis of his father – these properties were in Dehradun, Mussoorie, Shimla, Delhi and Nabha, as also overseas in U.K.;
- (iii) that the aforesaid properties continued to be personal properties of Maharaja Ripudaman Singh until his death and he never merged these properties in the impartible estate of the erstwhile Nabha State;
- (iv) that after the death of Maharaja Ripudaman Singh in 1942, the respondent / defendant No.1 being the eldest male member became the Head / Karta of the family and started

looking after the properties and the deceased appellant / plaintiff being also a son of Maharaja Ripudaman Singh also rendered assistance to the respondent / defendant No.1 in the management of the said properties;

- (v) that the respondent / defendant No.1 with the said funds of the family acquired other properties and all of which are also deemed to be joint family properties;
- (vi) that the respondent / defendant No.1 upto the end of the year 1956 or so had been acting as Karta of the family and was liable to render accounts therefor;
- (vii) that in 1957, the respondent / defendant No.1 started claiming all the aforesaid properties as his personal properties and which led to disputes;
- (viii) that however neither the deceased appellant / plaintiff nor other heirs of Maharaja Ripudaman Singh could bring an action for partition and accounts against the respondent / defendant No.1 without the consent in writing of the Central

Government, as the respondent / defendant No.1 was Ruler of the erstwhile Nabha State;

- (ix) accordingly, in or about the year 1958 applications were submitted to the Government of India for permission to sue respondent / defendant No.1 but which permission was denied;
- (x) that the respondent / defendant No.1 in the meanwhile started selling the properties and from the sale proceeds started acquiring other properties in his name;
- (xi) that again permission was applied for to sue the respondent / defendant No.1 with respect to one of the properties viz. “Sterling Castle” at Shimla and though permission was again denied but the deceased appellant / plaintiff and other co-owners nevertheless filed action for joint possession and partition of the said property in the Courts at Shimla and in which a judgment and decree dated 15.10.1973 was passed in favour of the appellant / plaintiff and the respondents / defendants No.7 to 11 holding that the said property was

purchased by Maharaja Ripudaman Singh benami in the name of his friend Dr. Tehl Singh and that succession to this property would be governed by Hindu Mitakshara Law and the same could not be the exclusive property of the respondent / defendant No.1 and negating the plea of the respondent / defendant No.1 of having become the absolute owner of the said property on account of succession under law of primogeniture;

- (xii) another suit was filed by some of the respondents / defendants with respect to another property in the Court at Dehradun in which also vide judgment and decree dated 09.09.1963 it was held that the respondent / defendant No.1 was the Karta of the family and the property belonged to the family and the plea of the respondent / defendant No.1 of having become the sole owner of the property on account of rule of primogeniture was disallowed;

- (xiii) another action was brought in the Courts at Mussoorie with respect to another property and which was pending at the time of institution of the suit on 27.11.1974;
- (xiv) yet another action with respect to yet another property was at the time of institution of the suit pending in the Courts at Dehradun;
- (xv) that the State of Nabha was in the year 1948 merged with Patiala and East Punjab States Union (PEPSU);
- (xvi) that the suit was within limitation as the permission to institute the said suit was granted by the Government vide letter dated 29.11.1971.

Accordingly, the suit for partition of the properties detailed in Schedules 'A' to 'H' of the plaint and for rendition of accounts with respect thereto was filed, impleading besides the respondent / defendant No.1, all the other then heirs of the said Maharaja Ripudaman Singh.

6. The respondent / defendant No.3 applied under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground that the main issue involved in

the suit was, whether the properties were under the exclusive and absolute ownership of respondent / defendant No.1 as ruler of the erstwhile State of Nabha under the rule of primogeniture or were the joint family properties and the said issue had already been decided by the Supreme Court in the judgment dated 17.08.1993 titled ***His Highness Maharaja Pratap Singh Vs. His Highness Maharani Sarojini Devi*** 1994 Supp. (1) SCC 734 and which was binding on the parties.

7. The deceased appellant / plaintiff contested the application controverting that the said issue had been decided in the judgment supra of the Supreme Court and contending that the parties were bound by the judgment of the Allahabad High Court in First Appeals No.75/1964 and 293/1966 wherein it was held that the rule of primogeniture was applicable only to the Gaddi and not to the properties.

8. The learned ADJ allowed the application of the respondent / defendant No.3 under Order 7 Rule 11 of the CPC and rejected the plaint (in the suit from which this appeal arises), finding / observing / holding:

(I) that the Supreme Court in the judgment aforesaid had found:

- (a) that Maharaja Ripudaman Singh ascended to the Gaddi of Nabha in 1911 and was an absolute monarch;
- (b) that in the year 1923, the British Government removed Maharaja Ripudaman Singh and externed and exiled him from the State and Maharaja Ripudaman Singh took up residence in Dehradun which was part of British India;
- (c) that the administration of the Nabha State was taken over and carried on by the British;
- (d) that Maharaja Ripudaman Singh in the year 1927 changed his name to S. Gurcharan Singh;
- (e) that Maharaja Ripudaman Singh was formally deposed only on 02.02.1928 and British Government installed his son i.e. the respondent / defendant No.1 as the ruler of Nabha and the State of Nabha and all its properties came to be vested in the respondent / defendant No.1;

- (f) Maharaja Ripudaman Singh @ S. Gurcharan Singh having been deposed, became a commoner and settled down in Kodaikanal;
- (g) that the respondent / defendant No.1 attained majority on 05.03.1941 and was formally invested with full ruling powers;
- (h) that rule of primogeniture was applicable in the State of Nabha and on 02.02.1928 the respondent / defendant No.1 was installed on the Gaddi by the British Government under the rule of primogeniture;
- (i) that the respondent / defendant No.1 being the ruler, all properties of Nabha State vested in him;
- (j) that at the time when the respondent / defendant no.1 became major and was invested with full ruling powers on 05.03.1941, his father viz. Maharaja Ripudaman Singh @ S. Gurcharan Singh was still alive as he expired only on 12.12.1942 – thus the properties had

vested in the respondent / defendant No.1 on 05.03.1941 not on the death of his father Maharaja Ripudaman Singh @ S. Gurcharan Singh but under the rule of primogeniture;

- (k) that even if it were to be held that the respondent / defendant no.1 became Karta of the family after the demise of Maharaja Ripudaman Singh @ S. Gurcharan Singh, there was no scintilla of evidence to show even *prima facie* that Maharaja Ripudaman Singh @ S. Gurcharan Singh had acquired any property during the time from 02.02.1928 when he was formally deposed as the ruler of erstwhile Nabha State and till his death and whatever properties he was holding till 02.02.1928 being the ruler of Nabha State, were vested in the respondent / defendant No.1 on the day he became the ruler of the said State;

- II.(i) that Sterling Castle being subject matter of the legal proceedings at Shimla was not the subject matter of the

instant suit; the fate of other two properties viz. Ilahi Manzil and 34, Alipur Road, Delhi pleaded to have been acquired by Maharaja Ripudaman Singh @ S. Gurcharan Singh had already been finally decided by the Supreme Court in the judgment supra holding that the said properties belonged to the State of Nabha and were not purchased by Maharaja Ripudaman Singh @ S. Gurcharan Singh from his personal funds;

- (ii) that there was no evidence on record to show that Maharaja Ripudaman Singh @ S. Gurcharan Singh had any personal fund which was unconnected with the State fund and the deceased appellant / plaintiff had not filed any document to show even *prima facie* that any account of separate personal funds unconnected with the State funds was maintained except for a bald averment to the said effect;

- (iii) that in the absence of any specific averment on record, presumption was that all properties were properties of the State of Nabha;
- (iv) there was nothing on record to show even *prima facie* that Maharaja Ripudaman Singh @ S. Gurcharan Singh at the time of his death was in possession of any fund;
- (v) there was nothing on record to show even *prima facie* that the respondent / defendant No.1 had acquired any family fund upon the demise of Maharaja Ripudaman Singh @ S. Gurcharan Singh;
- (vi) that there was nothing on record to show that the construction over the properties purchased benami flowed from personal funds and not from the funds of the State;
- (vii) that there were no specific averments about the manner of acquisition of any of the properties of which partition was claimed;

- (viii) merely the fact that the properties were acquired by Maharaja Ripudaman Singh @ S. Gurcharan Singh during his reign as ruler of the Nabha State did not mean that they were his personal properties;
- (ix) that even though property No.34, Alipur Road, Delhi was the subject matter of the judgment supra of the Supreme Court but the same had again been included in the list of properties of which partition was claimed, showing that the deceased appellant / plaintiff did not approach the Court with clean hands;
- (x) in fact there was no averment in the plaint that the properties were purchased from personal fund or for personal use of the Maharaja;
- (xi) that the judgment of the Allahabad High Court on which reliance was placed by the deceased appellant / plaintiff related to a commoner and related to a property purchased in 1951 out of the personal funds of Maharaja Ripudaman Singh @ S. Gurcharan Singh at the time of

his death and though was considered by the Supreme Court in the judgment aforesaid but held to be not constituting *res judicata*;

- (xii) there was no averment in the plaint of any of the properties with respect to which the suit was filed having been so acquired from the personal funds out of which the property subject matter of the Allahabad High Court judgment had been acquired;

It was thus held that the suit from which this appeal arises was not maintainable and was barred by the aforesaid judgment of the Supreme Court and the plaint thus liable to be rejected;

- (III) (a) even though the respondent / defendant No.3 in application under Order 7 Rule 11 had not taken the ground of the suit being not properly valued for the purpose of court fees and jurisdiction but the appellant / plaintiff in spite of admittedly not being in possession of the properties had paid fixed court fees and not ad valorem court fees;

- (b) relying on *Prakash Wati Vs. Dayawanti* AIR 1991 Delhi 48, *Rani Devi Vs. Ashok Kumar Nagi* AIR 1999 Delhi 109, *Abdul Hamid Shamai Vs. Abdul Majid* AIR 1988 SC 1150 and *Commercial Aviation & Travel Company Vs. Vimla Panna Lal* AIR 1988 SC 1636 it was held that the suit was not properly valued for the purpose of court fees and jurisdiction;
- (c) however since the suit was otherwise held to be not maintainable, it was held that no purpose would be served in giving an opportunity to the appellant / plaintiff to make up the deficiency in court fees and the plaint was rejected.

9. The senior counsel for the appellant / plaintiff though not controverting; a) that the Supreme Court in judgment supra has held the rule of primogeniture to be prevalent in the State of Nabha; b) that there are no averments of any of the properties subject matter of the suit having been acquired by Maharaja Ripudaman Singh @ S. Gurcharan Singh during his tenure as the ruler of the State of Nabha from his personal funds; c) that there is no averment in the plaint of any of the properties with respect to which the suit had been filed having been acquired by Maharaja Ripudaman

Singh @ S. Gurcharan Singh after he had ceased to be the ruler of the State of Nabha; d) that there is no material also on record to show that there was any personal fund of Maharaja Ripudaman Singh @ S. Gurcharan Singh during his regime as the ruler of the Nabha State; e) that there is no material on record to show that any of the properties with respect to which the suit had been filed were acquired as or were the personal properties of Maharaja Ripudaman Singh @ S. Gurcharan Singh, has argued:

- (aa) that even under the rule of primogeniture, other heirs / members of the families used to get grants / maintenance;
- (bb) that in para No.46 of the plaint, a claim for maintenance in favour of the defendant No.12 (who is now the appellant as heir of the deceased appellant / plaintiff) was made and thus it could not be said that there was no cause of action for the suit;
- (cc) that only in trial can it be established whether the properties were the personal properties or not and if it is so established, the appellant / plaintiff would have a share therein and if it is not so established and the properties are held to have devolved on the respondent / defendant no.1 under the rule of

primogeniture, the appellant / plaintiff would have a right of maintenance therefrom;

- (dd) that though the Supreme Court in para No.51 of the judgment aforesaid had referred to *Vishnu Pratap Singh Vs. State of M.P.* 1990 Supp SCC 43 laying down that there was in reality no distinction between State property and property privately owned by a ruler since the ruler was the owner of the properties in the State and under the covenant of acquisition of the States to the Union of India all the property of the State vested in the new State except private property which was to remain with the ruler, but in Para 58 of the judgment had also referred to *Revathinnal Balagopala Varma Vs. His Highness Sri Padmanabha Dasa Bala Rama Varma* 1993 Supp (1) SCC 233 laying down that 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 property was held by the sovereign not as sovereign but in some other capacity; thus an opportunity has to be given to the appellant / plaintiff to

establish that the properties subject matter of the suit were held by Maharaja Ripudaman Singh @ S. Gurcharan Singh even when the ruler of the Nabha State, not as sovereign but in his personal capacity;

- (ee) that the learned ADJ has erred in taking a '*prima facie* view' of the matter for rejecting the plaint and which is not permissible in law;
- (ff) attention in this regard is invited to ***Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success*** I (2004) 9 SCC 512 laying down that weakness of the case pleaded is not a ground for rejection of the plaint;
- (gg) that the judgment aforesaid of the Supreme Court, as evident from Para No.82 thereof, is only with respect to three properties subject matter of that proceeding and thus cannot be *res judicata* qua the other properties in the suit (from which this appeal arises);

(hh) attention is invited to the written statement of the respondent / defendant No.1 to para No.9 of the plaint in the suit to contend that the respondent / defendant No.1 therein had denied that Maharaja Ripudaman Singh @ S. Gurcharan Singh had any personal funds unconnected with the State or that he acquired any of the properties with such funds and it is contended that the same raises disputed question of fact and on which issues were framed in the suit as far back as on 16.02.1982 and the same have to be adjudicated and the plaint could not have been rejected.

10. Per contra, the counsel for the respondent / defendant No.3 and whose contentions have been accepted by the counsels for the respondents / defendants No.4 to 6 also, has argued:

(A) that the deceased appellant / plaintiff in para No.9 of the plaint, written statement where to has been highlighted, has not pleaded Maharaja Ripudaman Singh @ S. Gurcharan Singh to be having any personal properties or personal fund and merely because the respondent / defendant No.1, to take

a proper defence in law, had stated that Maharaja Ripudaman Singh @ S. Gurcharan Singh did not have any personal fund would not, in the absence of any averment in the plaint, give rise to an issue of fact for a trial to be required thereon;

- (B) that Maharaja Ripudaman Singh @ S. Gurcharan Singh, after being deposed as the ruler of the Nabha State, lived and died as a commoner;
- (C) that the respondent / defendant No.1 did not inherit any properties from his father;
- (D) all the properties were vested in the respondent / defendant No.1 by virtue of being the ruler of the State;
- (E) that Maharaja Ripudaman Singh @ S. Gurcharan Singh once exiled was without any property; attention in this regard is invited to para No.34 of the judgment supra of the Supreme Court and upon it being pointed out that the said paragraph is not a finding of the Supreme court but records a submission

of the counsel, it is contended that the said submission was accepted;

- (F) attention is invited to para No.42 of the judgment supra of the Supreme Court framing the points for determination therein;
- (G) that the suit from which the judgment aforesaid of the Supreme Court arises was filed by the wife of Maharaja Ripudaman Singh @ S. Gurcharan Singh and who was held to be not entitled to any share in the estate of Maharaja Ripudaman Singh @ S. Gurcharan Singh;
- (H) attention is invited to the order dated 27.09.1988 in the suit recording the contention of the counsel for the deceased appellant / plaintiff that ‘similar matter is to come up before the Supreme Court on 22.11.1988 and will have substantial effect “on the decision of the applications then pending in the suit” and to the subsequent orders dated 13.02.1989, 21.08.1989 and 11.12.1989 when the suit was adjourned awaiting the judgment of the Supreme Court and it is contended that the judgment awaited was the same judgment

as aforesaid and the appellant / plaintiff after having taken a stand that the present suit would also be governed by the judgment of the Supreme Court, cannot, after the said judgment has gone against him, be permitted to turn turtle and now argue that he is not covered by the said judgment;

- (I) attention is also invited to the order dated 29.03.1995 in the suit posting the suit for arguments, besides on the application under Order 7 Rule 11 of the CPC, also on the following issues out of the issues framed on 16.02.1982, which were treated as the preliminary issues:

- “1. Whether this Court has territorial jurisdiction to try this case against defendants 27,28 and 29?*
- 2. Whether the suit in the present form against defendants 27, 28 and 29 is maintainable?*
- 3. Whether the plaint discloses any cause of action against defendants 27,28 and 29?*
- 4. Whether defendants 27, 28 and 29 are necessary or proper parties?”*

- (J) attention is invited to Para No.10 of the written statement of the respondent / defendant No.1 setting out succinctly the

defence, accepting the principle whereof the judgment of the Supreme Court is based;

(K) attention is invited to the prayer paragraph of the plaint to point out that no relief of maintenance in the event of the properties being governed by the rule of primogeniture has been claimed;

(L) that even if all the properties subject matter of the suit from which this appeal arises were not made subject matter of the previous suit for partition filed by the wife of Maharaja Ripudaman Singh @ S. Gurcharan Singh, also claiming share in the properties, successive suits for different properties cannot be filed;

(M) that there are now more than 30 heirs of Maharaja Ripudaman Singh @ S. Gurcharan Singh and they cannot be permitted to successively sue claiming the same reliefs and once the matter stands settled by the judgment aforesaid of the Supreme Court, no other action by any other heir or with respect to any other property can be entertained.

11. The senior counsel for the appellant / plaintiff in rejoinder has contended:

- (I) that the rejection of the plaint was claimed only on the ground of the judgment aforesaid of the Supreme Court and not on the basis of suit being not properly valued for the purpose of court fees and jurisdiction and appropriate court fees having not been paid on the plaint;
- (II) that the Supreme Court in para No.65 of the judgment supra has held that though primogeniture in relation to zamindari estates has to be established by custom, in case of a sovereign ruler it is presumed to exist and it is for the respondent / defendant No.1 to establish the prevalence of the rule of primogeniture with respect to the suit properties and there can at best be a presumption and an opportunity to repudiate also has to be given;
- (III) that though the pleadings in the plaint may not be precise but are not to be strictly construed;

(IV) that the appellant / plaintiff cannot be left “high and dry”;

12. On my asking, the counsel for the respondent / defendant No.3, after conclusion of hearing, has handed over copies of the judgments dated 24.12.1976 in suit No.394/1966 and in RFA (OS) No.6/1977 decided on 23.05.1980, *inter alia* from which the judgment aforesaid of the Supreme Court had arisen.

13. The counsel for the appellant / plaintiff also, much after the conclusion of hearing and without any permission having been granted in this regard, has handed over copies of the judgments in ***N. Padmamma Vs. S. Ramakrishna Reddy*** (2008) 15 SCC 517 (para No.18) and ***Anuj Garg Vs. Hotel Association of India*** (2008) 3 SCC 1 (paras No.21 & 22).

14. I have considered the rival contentions, gone through the cited judgments and perused the Trial Court record.

15. I will first take up the position as emerging from the judgment supra of the Supreme Court, to see to what extent the same is relevant for adjudication of the present controversy.

16. The said judgment is in two appeals, one arising from a judgment of the Division Bench of the Himachal Pradesh High Court and the other from a judgment of the Division Bench of this Court. The judgment of the Himachal Pradesh High Court was in a suit filed *inter alia* by the appellant / plaintiff herein against the respondent / defendant No.1 herein, for partition and in the alternative for joint possession of a property known as Sterling Castle situated in Shimla. The Single Judge of the Himachal Pradesh High Court held Sterling Castle to have been purchased benami by Maharaja Ripudaman Singh and the same on his death having devolved on the entire joint family and the rule of primogeniture being not applicable to the personal property of Maharaja Ripudaman Singh since it applied only to the property of the State. On appeal, the Division Bench of the Himachal Pradesh High Court reversed the judgment of the Single Judge and held that the appellant / plaintiff herein who was the plaintiff in the suit in the Himachal Pradesh High Court had failed to establish that Sterling Castle was purchased benami by Maharaja Ripudaman Singh from out of his personal funds or that it was on that account his personal property. The judgment of this Court had arisen from a suit filed by the respondent / defendant No.1 herein *inter alia* against the appellant / plaintiff herein for recovery of

possession of property No.34, Alipur Road, Delhi. The Single Judge of this Court held that the appellant / plaintiff herein who was the defendant in that suit had failed to prove that the said property had been acquired from the personal funds of Maharaja Ripudaman Singh or was held or treated as the personal property of Maharaja Ripudaman Singh and had decreed the suit for possession in favour of the respondent / defendant No.1 herein. On appeal, the Division Bench of this Court set aside the judgment of the Single Judge and held the property to be the personal property of Maharaja Ripudaman Singh and to have devolved on his death on all his legal heirs.

17. The Supreme Court, while affirming the judgment of the Himachal Pradesh High Court and setting aside the judgment of the Division Bench of this Court found, / observed / held:

(AA) Nabha was a Princely State in pre-independence India; it was one of the three Phulkian States;

(BB) in the matter of succession to Chiefship, the rule of primogeniture was followed by the Phulkian families; this rule was also followed in the State of Nabha;

(CC) Maharaja Ripudaman Singh was the Ruling Chief of Nabha State in the early twentieth century; his ruling powers were withdrawn by the British Government in the year 1923; he was deposed from the Gaddi in 1928 and was exiled to Kodaikanal;

(DD) that the respondent / defendant No.1 herein upon attaining majority on 05.03.1941 became the Ruler of Nabha State by the applicability of rule of primogeniture;

(EE) that Maharaja Ripudaman Singh resided in Kodaikanal from 1928 till his death in the year 1942;

(FF) that in or about the year 1948 i.e. after the independence of India from British Rule, the State of Nabha acceded to the Indian Union and along with the Rulers of seven other States agreed to merge the State to form what came to be known as PEPSU and on 15.05.1948 executed a Covenant to the said effect with the Government of India under Article XII whereof the Ruler of each Covenanting State was 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

his State to the Raj Pramukh of PEPSU and was in this regard required to 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;

(GG) that the respondent / defendant No.1 submitted an inventory of his personal properties to Raj Pramukh of PEPSU and in which inventory Sterling Castle subject matter of the proceedings at Himachal Pradesh High Court and 34, Alipur Road, Delhi subject matter of proceedings in this Court were included;

(HH) it was the case of the respondent / defendant No.1 that the two properties aforesaid were his exclusive properties as he was the owner thereof by virtue of the same being included in the list of private properties submitted in terms of Article XII of the Covenant aforesaid;

(II) per contra, it was the contention of the appellant / plaintiff that the said properties were always the private properties of the Maharaja and Article XII supra of the Covenant merely prescribed a procedure for recognition thereof and the Covenant did not create or confer a new right and the said private properties were to devolve by the law of

inheritance and all the heirs of Maharaja Ripudaman Singh would have a share therein;

(JJ) Maharaja Ripudaman Singh ascended to Gaddi of Nabha in 1911 and was an absolute monarch; the British Government as the paramount power, in 1923 removed Maharaja Ripudaman Singh – he was externed and made to go into exile from the State and took up residence in Dehradun which was part of British India; a monetary allowance was fixed for him but that also was only partly given; the administration of Nabha State was taken over and carried on by the British; four years after being removed, in 1927, he changed his name from Maharaja Ripudaman Singh to S. Gurcharan Singh; although removed by the British in 1923, Maharaja Ripudaman Singh was formally deposed only on 02.02.1928;

(KK) Maharaja Ripudaman Singh died on 14.12.1942 – the Nabha State he had been divested of 14 years earlier, and whatever little he had left with him, formed subject-matter of his Estate (para No.48 of the Judgment of the Supreme Court);

(LL) that the respondent / defendant no.1 ceased to be a sovereign ruler only on 20.08.1948 on formation of PEPSU;

(MM) that in the pre-independence era though the rulers of the States were subject to British paramountcy yet they were absolute monarchs or sovereigns within their own territory and there was in reality no distinction between the State property and the property privately owned by a ruler since the ruler was the owner of all the property in the State; “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 sovereign but in some other capacity” (para No.58 of the Supreme Court judgment);

(NN) “the distinction drawn between public and private property seems to be not correct insofar as such a concept runs counter to the basic attribute of sovereignty, the said distinction is not acceptable”;

(OO) that though there was no rulership after India became a Republic on 26.01.1950, the rule of primogeniture continued /

survived and the respondent / defendant No.1 continued to be governed thereby (para No.69 of the judgment of the Supreme Court); and,

(PP) that the judgment of the Allahabad High Court related to succession to S. Gurcharan Singh's (earlier Maharaja Ripudaman Singh) estate which acquired the character of Hindu Joint Family.

18. The following position is thus no longer in dispute or amenable for adjudication, in view of the inter-parties judgment supra of the Supreme Court, even if in relation to only three properties:

- (I) Maharaja Ripudaman Singh till the year 1923 was the absolute monarch / ruler / sovereign of the erstwhile State of Nabha and the owner of all properties in the said State and there was really no distinction between what was the property of the State of Nabha and which were the personal properties of Maharaja Ripudaman Singh;
- (II) Maharaja Ripudaman Singh in 1923 was removed as the ruler / sovereign of the erstwhile State of Nabha and was also made to

leave the State of Nabha and was living first in Dehradun and thereafter till his death in the year 1942 in Kodaikanal; during the said time all that he was entitled to was an allowance from the State of Nabha and which too was only partly paid;

(III) Maharaja Ripudaman Singh at the time of his death did leave some monies and out of sale proceeds whereof property known as Ilahi Manzil subject matter of the Allahabad High Court proceedings was purchased and which property has been held to be governed by the law of inheritance as applicable to commoners and not by the rule of primogeniture;

(IV) the respondent / defendant No.1 in 1941 i.e. during the life time of his father Maharaja Ripudaman Singh was anointed as the ruler / sovereign / monarch of the State of Nabha and just like his father Maharaja Ripudaman Singh was the owner of all the properties of the State and there was no distinction between his personal properties and the properties of the State of Nabha;

(V) upon the British rule of India coming to an end, the State of Nabha along with seven other States merged into the State of

PEPSU which acceded to the Dominion of India and the respondent / defendant No.1 ceased to be the monarch / ruler / sovereign – however the rule of primogeniture continued to apply to him; and,

(VI) since earlier there was no distinction between the personal properties of the Maharaja and the properties of the State of Nabha of which the respondent / defendant No.1 had ceased to be the owner / monarch / sovereign, the Covenant aforesaid provided for the preparation of an inventory of personal properties of the Maharaja.

19. I am of the view that in the face of aforesaid settled legal position, for the appellant/plaintiff to make a claim for partition of any property or for accounts thereof against the respondent/defendant No.1, as has been done in the suit from which this appeal arises, it was imperative for the appellant/plaintiff to plead:

(A) that the said properties were not acquired by Maharaja Ripudaman Singh during his regime as the Ruler/Sovereign/Monarch of the State of Nabha and thus there

was no question of their, on the formation of the PEPSU State and accession thereof to the Dominion of India, being treated as the State property or their being required to be mentioned in the list of private properties submitted by the respondent / defendant No.1 in terms of the Covenant;

- (B) that the said properties were not mentioned by the respondent / defendant No.1 in the list of private properties prepared in pursuance to Clause XII of the Covenant aforesaid inasmuch as if the said properties vest in the respondent / defendant No.1 by virtue of being contained in the list of private properties submitted in pursuance to the Covenant, the said properties as per the judgment supra of the Supreme Court would be governed by the rule of primogeniture and would be the exclusive properties of the respondent / defendant no.1 and the appellant / plaintiff would have no share therein; and,
- (C) that the properties with respect whereto the suit was being filed were acquired by the Maharaja Ripudaman Singh after the year 1923 when he had ceased to be the

Ruler/Sovereign/Monarch or after his demise in the year 1942 out of such estate left by Maharaja Ripudaman Singh; or and,

- (D) that the said properties, though acquired during the regime of Maharaja Ripudaman Singh as the Ruler/Sovereign/Monarch of the State of Nabha but out of personal funds as distinct from state funds and were intended for personal use and distinct from state use and used as such and that the income from the said properties was kept and accounted for separately and not merged with the income of the State of Nabha.

20. I am in the plaint, unable to find any such pleading. Rather, the plaint proceeds on the premise that notwithstanding the removal of Maharaja Ripudaman Singh as the Ruler / Monarch / Sovereign of the State of Nabha in the year 1923 and notwithstanding the respondent / defendant No.1 becoming the Ruler / Monarch / Sovereign in the year 1942 i.e. prior to the demise of Maharaja Ripudaman Singh, whatever properties respondent / defendant No.1 has been permitted to keep as her personal / private properties in terms of the Covenant, would be governed by the Hindu law of inheritance. Though the said premise on which the suit is based, does not

furnish or disclose a cause of action in law for the appellant/plaintiff to claim the reliefs in the plaint, in the light of the judgment aforesaid of the Supreme Court. The appellant/plaintiff, in the plaint, has not pleaded that in the erstwhile State of Nabha any distinction was made between the personal or the state properties or that any household funds/accounts as distinct from the state treasury/accounts was maintained, has not pleaded date of acquisition of any of the properties with respect to which the suit was filed; has not pleaded that the properties though acquired during the regime as Ruler/Sovereign/Monarch of Maharaja Ripudaman Singh, were acquired as personal and dealt with as personal as distinct from state properties; has not pleaded that being personal properties, Maharaja Ripudaman Singh even after ceasing to be the Ruler/Sovereign/Monarch, continued to beneficially hold and enjoy the said properties; has not pleaded that any of the properties were acquired after 1923 out of savings from allowance to which only Maharaja Ripudaman Singh was entitled to after ceasing to be the Ruler/Sovereign/Monarch: without appellant/plaintiff pleading so, the question of giving any opportunity to lead evidence to prove non existent pleas does not arise. The counsels for the respondents/defendants are correct in their contention that merely because the respondents/defendants, to put

the matter in correct perspective had pleaded so, will not tantamount to the appellant/plaintiff taking the requisite plea. The onus to prove is on the appellant/plaintiff and the appellant/plaintiff having not pleaded, only on pleading whereof he could have been entitled to the relief, no purpose in putting the suit to trial will be served.

21. I may add that though it is pleaded / argued that a letter of administration of the estate of Maharaja Ripudaman Singh was obtained but it was not pleaded that the properties with respect to which the suit is filed were mentioned in the list of properties with respect where to administration was claimed, as the personal properties of Maharaja Ripudaman Singh.

22. Undoubtedly, the learned ADJ in the impugned judgment has used certain expressions as “there is no evidence on record” and “there is nothing on record to show even *prima facie*” and which expressions are not in consonance with a decision under Order 7 Rule 11 of the CPC but a mere use of erroneous expression of language would not call for setting aside of the order which otherwise is found to be as per law. The Supreme Court in *Abdul Gafur Vs. State of Uttarakhand* (2008) 10 SCC 97 and the Division Bench of this Court in *P.P.A. Impex Pvt. Ltd. Vs. Mangal Sain Mittal* 166

(2010) DLT 84 have held that if on a meaningful, not formal reading, the pleading is found to be manifestly vexatious and meritless, not disclosing a right to sue or defend and implausible, the Court should exercise its power and should not allow it to create an illusion and should not permit it to go to trial. The Supreme Court in *T. Arivandandam Vs. T.V. Satyapal* (1977) 4 SCC 467 and in *Liverpool and London S.P. and I Association Ltd.* supra and in *ITC Limited Vs. Debts Recovery Appellate Tribunal* (1998) 2 SCC 70 has held that proceedings of which there is no possibility of success and/or which are deadwood and are doomed should be shot down at the earliest stage and ought not to be permitted to clog the resources of the Court and at the cost of other deserving matters requiring the attention of the Courts and should not be allowed to be used as a device to harass.

23. The senior counsel for the appellant / plaintiff inspite of being repeatedly asked has not been able to show as to how the appellant / plaintiff in the absence of requisite pleadings has a chance of success. This lis has already been pending for nearly four decades. The bone of contention between the warring parties at the time of institution of the suit has been the subject matter of other legal proceedings culminating in the judgment supra of the Supreme Court. For the appellant / plaintiff to make the principles of

law laid down in the said judgment inapplicable to any of the properties, it was incumbent upon the appellant / plaintiff as aforesaid to make out a case of the same falling in the exception if any permitted in the judgment of the Supreme Court. Not only has such exception not been pleaded, it cannot be proved without documentary evidence. The senior counsel for the appellant / plaintiff during the hearing was unable to show as to how the appellant / plaintiff even if permitted to lead evidence will prove his case to be within such exception.

24. The procedure laid down for the decision of a civil suit, of pleadings, filing of documents, framing of issues etc. does not permit of any surprises. If the appellant / plaintiff can succeed only on the basis of document and not on the basis of oral evidence and has not filed any document, no purpose would be served in allowing oral evidence to be led. The counsels for the respondents / defendants are also correct in their contention that the appellant / plaintiff after seeking adjournments in the suit for several years on the ground that the same will be governed by the judgment then expected of the Supreme Court, cannot now after the said judgment has gone against him, to allowed to have a second chance.

25. As far as the contention of the senior counsel for the appellant/plaintiff, of the other family members governed by the rule of primogeniture being entitled to grants/maintenance, the same is also without any foundation being laid therefore in pleadings. The pleading of claim of defendant No.12 for maintenance was also treating the properties to be governed by the Mitakshara Law and not under the law of primogeniture. The appellant/plaintiff, even after the judgment supra of the Supreme Court, did not bother to amend the plaint to plead a case to the extent permissible as per the said judgment. The appellant/plaintiff is himself to blame for the feeling repeatedly expressed by his senior counsel, of being 'left high and dry'. I am also unable to gauge the applicability of the judgment supra, copies of which were handed over after conclusion of hearing, to the controversy in hand.

26. There is thus no merit in the appeal which is dismissed with costs.

Counsels fee assessed at Rs.30,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2014/‘gsr’..