* **HIGH COURT OF DELHI : NEW DELHI**

\+ **RFA (OS) No.23/2004 & CM No.13060/2004 & CM no.4530/2008**

% Reserved on : 04.06.2010
Pronounced on :19.11.2010

TIKKA SHATRUJIT SINGH & ORS. .....Appellants
Through: Mr. Rajiv Sawhney, Sr. Adv. with Mr. V.K. Tandon, Adv.

Versus

BRIG. SUKHJIT SINGH & ANR. ....Respondents
Through: Dr. Arun Mohan, Sr. Adv. with Ms. Vaishaliee Mehra for Respondent No.1

Coram:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MANMOHAN SINGH, J.

1. The present Regular First Appeal has been filed by the four appellants namely Tikka Shatrujit Singh, Maharaj Kumar Amanjit Singh (Deceased), Smt. Gita Devi and Maharajkumari Preeti Devi against the two respondents namely Brig. Sukhjit Singh and Maharaj Kumari Gayatri Devi under Section 96 of the Code of Civil Procedure read with Section 10 of the Delhi High Court Act against the judgment and decree passed by the learned Single Judge on 03.09.2004 in Suit No. 1052/1977 whereby the suit of the

appellants was dismissed except in respect of the preliminary decree qua exhibit DA and PW-1/1. The appeal was admitted and the status quo order was maintained during the pendency of the present appeal.

2. The respondent no.1 and appellant No.3 are husband and wife and are parents of appellant Nos.1, 2 (sons) and appellant No.4 and respondent No.2 (daughters). The appellant No.2 died intestate and his estate is inherited by his mother appellant No.3 during the pendency of the suit.

3. Originally the Suit was filed by the appellants seeking separation of the shares of the Plaintiffs after the partition of the joint properties. In para 8 of the Plaint, the details of the co-parcenary properties have been given which are as under:

> "(1) double-storey residential house bearing municipal No.90-A, Greater Kailash-I, New Delhi; (2) Commercial Flat No. 101 on the first floor of the building known as Surya Kiran situated at Kasturbal Gandhi Marg, New Delhi; (3) a residential house known as Villa Bouna Vista and Cottage Villa Chalet, servant quarters, garages, etc. located in Village Chuharwal, Distt. Kapurthala; (4) a residential palace in Mussoorie known as 'Chateau' St. Helens, Mussoorie; (5) all movables including furniture, carpets, etc. lying in Villa Kapurthala, Chateau St. Helens , Mussoorie and in property in Greater Kailash; (6) all jewellery and valuables lying in the safes of Chateau, Mussoorie; (7) jewellery lying in locked brief case kept in locker no. 325, Gindlays Bank, 'H' Block, Connaught Placae, New Delhi; (8) jewellery lying in Societies General, Bouleward Haussmann, Paris, France; and (9) shares in joint stock companies, share certificates of which are lying in safe custody with the First National City Bank, Fort, Bombay. It is also pleaded that if there are some (sic) properties which are co-parcenary properties, of which the plaintiffs for the present have no knowledge, if are found, they be also partitioned."

4. Matrix facts stated inter alia in the plaint by the appellant reads as under:

> a) That the plaintiffs and defendants formed Hindu Undivided Family and all of them have been joint in estate and worship upto August 1976 and were joint in mess. Defendant No.1 had deserted the family since August 1976 and has been residing at Gymkhana Club, New Delhi;
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> b) That the details of co-parcenary properties have been enumerated in para 8 of the plaint and it is prayed that if any other co-parcenary properties, of which the plaintiffs for the present have no knowledge, if are found, they be also partitioned;
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> c) That on or about January 13, 1977, the defendant No.1 had filed a suit in this Court against plaintiff No.3, praying for a declaration that the two properties namely, Villa at Kapurthala and the Chateau, Mussorie with all the movables lying therein are his personal and exclusive properties and the property at Greater Kailash, B 90-A is also owned exclusively by him, acquired from his personal funds and the jewelries lying in different places in the properties, enumerated in the plaint is owned by him;
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> d) That the defendant No.1, karta of the Hindu Undivided Family (for short the 'HUF') has set up wrongful claims to the co-parcenary properties and has thus committed a gross misconduct resulting into the plaintiffs' seeking the relief of partition of the joint family/co-parcenary properties. The grandfather of the defendant No.1 had succeeded to the Gaddi of Kapurthala as a male heir, constituting a valuable property right carrying privileges, title and monetary benefits and all the properties of the Gaddi including the income attached to the Gaddi were ancestral properties in his hands and the property acquired by grandfather wit the aid of any impartible estate became ancestral properties, governed by law of inheritance, applicable to the Mitakshara School and the great grandfather of the plaintiffs 1 & 2 had built Chateau St. Helens at Mussorie with the aid of ancestral funds and the properties acquired with the aid of any impartible estate by the great grandfather or the grandfather of plaintiffs 1 & 2 became HUF properties and the defendant No.1 and his father had not acquired any property with the aid of any privy purse and even if they did so, the same also at any rate became HUF co-parcenary

properties as any property acquired wit the aid of impartible estate would become joint property with all the incidents of co-parcenary attached to it and all the jewelleries as well as the pieces of art, etc. are ancestral properties;

e) That some of the properties have been acquired by defendant No.1 from the compensation received by defendant No.1 in respect of the zamindari rights which were ancestral properties and also from the sale proceeds of the palace at Kapurthala."

5. The respondent no.1 (defendant no. 1 in the suit) filed his written statement and counter claim has inter alia taken the following defence:

(a) That the appellant No.3 had no locus standi to represent appellant Nos. 1,2 & 4 but that objection no longer survives inasmuch as the minors had become majors and had elected to pursue the suit and even a statement was made by defendant No.1 stating that respondent No.1 did not dispute

the right of the appellant No.3 to act as next friend of the minor plaintiffs I the present suit;

(b) that no partition could be claimed in respect of impartible estate and that the suit is also not maintainable because the properties in dispute had developed on defendant No.1 by virtue of two Wills dated January 16, 1949 and July 10, 1955 by his late grandfather and father respectively and defendant No.1 is absolute and exclusive owner of the said properties which have been assessed for taxation purposes as his individual properties and the Wills, propounded by the father as well as the Grandfather of defendant No.1 have been duly probated not only in

India but also in England and France and thus cannot be challenged;

(c) that the plaintiff No.3 has taken a plea in his written statement in response to the Suit No.35/77, filed by the defendant No.1, stating that the alienation of the Gaddi and the properties comprising the Kapurthala state was also not permissible by the family custom and the plaintiff No.3 in the said written statement admitted that the Gaddi of Kapurthala and all the properties of the Maharaja for the time being used to devolve on his eldest son according to the rule of primogeniture survivorship;

(d) that in the State of Punjab there existed no right of partition in respect of joint family estates during the life time of the father and the suit has been filed by plaintiff No.3 at the instigation of some other person, namely, Shri Anup Singh when in fact plaintiff No.3 has no right in the properties;

(e) that the defendant No.1 being the only son of Maharaja Paramjit singh of Kapurthala was recognized by the Government of India as a 'Ruler' and he was the recipient of a privy purse of Rs. 2,70,000/- per annum till the enactment of the Constitution (Twenty Sixth) Amendment Act, 1971;

(f) that like the other ruling families of Punjab, succession in the Kapurthala family has always been according to the rule of primogeniture and the laws governing impartible esatates and the properties of the Ruler of

Kapurthala have always devolved in accordance with the rule of primogeniture as an impartible estate and the holder of the same holds such properties absolutely;

(g) that on May 5, 1948 the rulers of various states including of Kapruthala had entered into a Covenant with the concurrence of the Government of India for the integration of their territories into one union by the name of Patiala and East Punjab States Union which also provided that the ruler of each Covenant State shall be entitled to full ownership, use and enjoyment of all the private properties, belonging to him on the date of his making over the administration of that State to the Raj Pramukh and the said Covenant also provided that the privy purse which was to be given under the said Gaddi became impartible and the law of primogeniture applied to it and was accepted by the Government of India.

(h) that Maharaja Jagatjit Singh during his life time had gifted jewellery, valuables and money to defendant No.1 from time to time and the jewelleries/valuables came to defendant No.1 vide the Wills of his grandfather and father are his exclusive properties and in law the property devolved by principle of primogeniture vests in the holder thereof absolutely and exclusively;

(i) that in view of his being employed on active duty with the army involving great risk to his life, the respondent

No.1 had included the name of appellant No.3, his wife as the mere namelender, while acquiring several movable and immovable properties although entire consideration for the same were paid by defendant No.1 with his own money and properties, mentioned in Anex.4 of the written statement and he had been also giving money from time to time to his wife for maintenance and she had purchased various properties from the said funds and in fact has no right or title to the said properties;

(j) that the defendant No.1 has filed a Suit No. 35/77 against the plaintiff No.3, his wife, restraining her from entering the Villa, Kapurthala, the Chateau, Mussorie and from removing the valuables lying in property in Greater Kailash;

(k) that the plaintiff No.3 had caused a cloud on the title of defendant No.1 in respect of his exclusive properties and the properties acquired jointly in the name of plaintiff No.3 exclusively belong to defendant No.1 as plaintiff No.3 had no source of her for acquiring any properties and that the Villa properties stand in the name of plaintiffs 1 & 2 although the entire consideration of the said property was paid by him;

(l) that in respect of the impartible estate, a member of the family can only claim the right of survivorship and the impartible estate is not a co-parcenary property and thus, the suit for partition is not at all maintainable;

(m) that out of the compensation received by defendant No.1 in 1975 for the U.P. Zamindari from the Government of U.P., he had made over some specific assets to the family and declared the said assets as joint family assets and effected partial partition in March 1976 purely with a view to make suitable provision for the members of his family and also for obtaining the tax reliefs;

(n) that the plot of land in respect of House No. B-90A, Greater Kailash-I, New Delhi was purchased and constructed by him from his own personal funds and the same is his self-acquired property and he had voluntarily arranged for the plaintiff No.3 to have one seventh share in the said house and commercial Flat No.101, Surya Kiran, was purchased by him form his own funds and the same is his exclusive and absolute property although he had joined the name of plaintiff No.3, his wife as co-vendee in the sale deed of the said flat and that the entire consideration for the purchase of residential house known as Villa Bouna Vistra and Cottage, Villa Chalet came from his own sources and he is the exclusive owner of the same;

(o) that all the movables lying in Chateau St. Helens at Mussorie absolutely vest in him on the basis of the said Will and the jewelery/valuables are part of his impartible estate and he is the exclusive owner of the shares although name of plaintiff No.3 has been included as joint owner of the shares as mere

namelender and he had acquired those shares with his own money and that he is also the sole beneficiary of the life insurance policies and;

(p) that all the properties of late Maharaja of Kapurthala including the Gaddi have always devolved on the eldest son under the rule of primogeniture as an impartible estate and thus they are not liable to be partitioned and moreover, he had acquired those properties under the Wills and thus, is absolute owner of the said properties and as he acquired those properties in 1955 on the death of his father, i.e., prior to the enactment of Hindus Succession Act, 1956, so he continues to be the owner of the said property exclusively and those properties have never become joint Hindu family properties or co-parcenary properties.

There was also the counter-claim of respondent No.1 alongwith written statement for declaration that he is the absolute owner of the properties. There is also Suit No.35 of 1977 for injunction, damages, etc.

6. The issues were framed on 07.03.1980 but some issues were modified and the modified issues framed on 11.03.1980 are as follows:

1. Whether the properties in the suit are co-parcenary properties? OPP
2 If Issue No.1 is proved, whether the properties are not liable to partitioned? OPD
3 Is the present suit not in the interest of plaintiffs 1 and 2? OPD

4 What are the rights of plaintiffs 3 and 4 and defendant No.2 in the property in dispute in case they are found to be co-parcenary properties and partible ? OPP

5 Did Maharaja Jagatjit Singh make a declaration dated 11.8.1948 declaring Mussoorie Chateau and other associated properties to be his self-acquired properties. If so, to what extent ? OPP

6 Did Maharaja Jagatjit Singh execute a Will dated 16.1.1949 ? If so, to what effect ? OPD

7 If Issue No.1 is proved in favour of the plaintiff, whether Maharaja Jagatjit Singh bequeath the property by Will dated 16.1.1949 ? OPD

8 Did Maharaja Paramjit Singh execute a Will dated 10.7.1955 ? If so, to what effect ? OPD

9 If Issue No.1 is proved in favour of the plaintiff, whether Maharaja Paramjit Singh could bequeath the property by means of a Will dated 10.7.1955 ? OPD

10 What is the nature of the property held by defendant No.1? OPD

11 Relief.

7. There were also subsequent statements by the Learned Counsel for the parties which were recorded on 9th September 2001 curtailing the issues to some extent:-

> "Statement of Mr. Madan Bhatia, Counsel for plaintiffs, and Mr. Arun Mohan, Counsel for defendant No.1 without oath, and of plaintiff No.3 and defendant No.1 on oath:
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> We agree that the properties B-90-A, Greater Kailash, flat No.101, Surya Kiran, New Delhi, and the shares of Continental Devices India Ltd., standing in the joint names of plaintiff No.3 and defendant No.1, were acquired from the sale proceeds of the Jagatjit Palace and Elysee Palace, Kapurthala. It is also agreed that Rs.1,20,000/- in respect of the Villa at Kapurthala was paid to the heirs of Maharani Brinda Devi out of the sale proceeds of the Jagatjit Palace and Elysee Palace. This joint statement is given by the counsel for the parties without prejudice to their contentions as to the character of the Jagatjit Palace and Elysee Palace in the hands of defendant No.1. There were four Life Insurance policies mentioned in clause 4(a) of Memorandum dated 11.3.1975. Two of these policies were to mature in the year 1979, and the other two were encashed (premature) in the year 1980, and the money was placed into the

Hindu Undivided Family bank account with the Punjab & Sind Bank, Janpath, New Delhi by defendant No.1.

Parties are agreed that the above matter can be decided on the question of principle as to the character of the property in the hands of defendant No.1, and the custom prohibiting a son from claiming partition in the lifetime of the father. How-ever, defendant No.1 does not press the plea that the present suit is not for the benefit of the minors. Other pleas remain."

In view of the statement made, issue No.3 was decided in favour of the appellants/plaintiffs in the suit.

8. Issue nos. 1,2 and 10 being inter connected and were decided together.

9. After recording the evidence of the parties, the suit of the plaintiff was decreed vide judgment and decree dated 06.04.1992. The findings of the learned judge in its judgment are:

a. The Will of the grandfather did not exist.

b. The Will of the father was invalid.

c. Custom of impartibility governed by the rule of primogeniture as recognized by Hindu Law did not exist in the family of Kapurthala.

d. Succession of sovereign rulers from the time of Randhir Singh was because of the recognition granted by the British as paramount power.

e. After the merger of the states Maharaja Jagatjit Singh became an ordinary citizen subject to all the laws of the land.

f. When he died his properties developed upon his son Maharaja Paramjit Singh in accordance with the

personal law of the family of Kapurthala which was the Mitakshara Hindu Law.

g. As a sovereign ruler Maharaja Jagatjit Singh held all properties as his private personal properties by virtue of his princely power inasmuch as sovereign rulers owned all properties without any distinction between public or private properties in exercise of their sovereign power.

h. Sovereign rulers were not subject to Hindu Law or any custom. They were above law.

i. Properties in the hands of sovereign ruler were not joint Hindu family properties as sovereign rulers were above law were not governed by Hindu Law. No member of the family could afford to challenge his authority or was in a position to claim protection.

10. Later on the said judgment was reviewed by the same learned Single Judge on 28.04.1995 pursuant to the review applications being R.A. No. 09/1992, 03/1993 in Suit No. 1052/1997 and 35/1977 filed by the respondent no.1. In the review applications, it was contended by the respondent no.1 that the important point about the presumption in favour of the existence of a custom of primogeniture in the family has not at all adjudicated by the learned Single Judge who had in his order dated 28.04.1994 held that it was a crucial point raised by respondent no.1 (defendant no.1 in the suit). The learned Single Judge after referring various decisions, pleading and material, allowed the

review applications in respect of issue nos. 1, 2, 4, 5, 10 and 11. The review as regards issue nos. 6 to 9 was rejected and the issues were decided against the respondent no.1. The matter was put by the learned Judge for hearing of the Suit.

11. The matter was subsequently heard by another Hon'ble Judge. By the impugned judgment dated 03.09.2004, the learned Single Judge dismissed the Suit of the appellants except in respect of exhibit DA and PW-1/1, the preliminary decree was passed. Exhibit DA and PW-1/1 are two family settlements entered into between the appellants and respondent no.1 in which he admitted that he is the Karta of the Joint Hindu Family and appellant nos. 1 and 2 continued co-parcenary. The two documents are by way of partition of the UP Zamindari Bonds which were given to the family on abolition of Oudh Zamindari i.e. one of the properties declared by Maharaja Jagatjit Singh as one of the private properties on the merger of the state.

12. The learned Single Judge in his judgment has not dealt with the effect of the two Wills as it was felt by the learned Single Judge that they were in any event not covered by the surviving issues and it was sovereign state.

13. The present appeal has been filed against the judgment and decree dated 03.09.2004. The respondent no.1 filed the cross-objection in the appeal under Order 41 Rule 22 of the Code of Civil Procedure thereby praying that the findings given by the learned Single Judge in its judgment and decree dated 06.04.1992 which were not reviewed in its order dated 28.04.1995 with regard to the Wills be set aside and it be held that the two Wills marked X-

8 and Ex.D-11 are the last valid wills of the two Maharajas. The said cross-objections were numbered as CM No. 11751/2005.

14. By the impugned judgment and decree the learned Single Judge, after discussion on issue nos. 1,2,4,5, 10 and 11 had given the following answers:-

1. Whether the properties in the suit are co-parcenary properties? OPP

   Held: No

2 If Issue No.1 is proved, whether the properties are not liable to partitioned? OPD

4 What are the rights of plaintiffs 3 and 4 and defendant No.2 in the property in dispute in case they are found to be co-parcenary properties and partible ? OPP

Held: Answers to issue No.2 and 4 are not required in view of answer to issue No.1.

5 Did Maharaja Jagatjit Singh make a declaration dated 11.8.1948 declaring Mussoorie Chateau and other associated properties to be his self-acquired properties? If so, to what effect? OPD

Held: Yes, but the Mussorie estate was personal and private property of Jagatjit Singh. The property covered by the declaration dated 11th August, 1948 is governed by primogeniture.

10 What is the nature of the property held by defendant No.1? OPD

Held: The suit properties except properties covered by Ex. DA dated 11th March, 1975 and Ex. PW1/1 dated 26th March, 1976 are not joint family properties and are exclusively owned by Defendant No.1 by inheriting them according to the custom of primogeniture.

11 Relief.

Held: The surviving Plaintiffs are not entitled to any relief except of reasonable maintenance in accordance with the custom of primogeniture and a preliminary decree qua Ex. DA & PW 1/1 entitling each of the sons and the wife of defendant No.1 to receive their 1/4th share each of Ex. DA & PW1/1.

15. The above said answers to the issues are on the basis of findings arrived by the learned Single Judge while dismissing the suit in the impugned judgment in para 85, 88, 95, 96, 97, 104 to 106, 112, 113, 121, 133, the same reads as under :

> "85. In my view these are sufficient pleadings so as to permit the defendant No.1 to urge and prove the custom of primogeniture. While proving the custom of primogeniture, the defendant No.1 cannot be precluded from referring to a custom in the Kapurthala family. The above extracted pleading of the defendant No.1 in my view, is sufficient to enable the defendant No.1 to aver and prove custom.
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> 88. After considering the position of law laid down by the Hon'ble Supreme Court in Jaikrishan Nagwani & Others Vs. Brotomarics Enterprises Pvt. & Others 1987 Suppp. SCC 72 to the effect that the decision on an issue at an interlocutory stage is not binding at the final hearing stage and since the order of Justice Talwar dated 9th March, 1981 is indisputably of an interlocutory nature, I hold that the defendants are not precluded from proving and urging the rule/custom of primogeniture and the order of 9th March, 1981 does not come in the way of the defendant No.1.
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> 95. The above documents in addition to the oral evidence adduced on behalf of the defendant successfully establish the sovereign character of the erstwhile Kapurthala State. Consequently, the plaintiff's plea that the rulers of Kapurthala were merely Jagirdars or Chiefs and not Rajas is wholly without substance and even though the plaintiffs though required to, had not substantiated this plea, the defendant No.1 by his evidence has established conclusively that Kapurthala was a sovereign State. The above documents and testimony on behalf of defendant No.1 clearly prove that the custom of primogeniture was invariably prevalent in Hindu Sovereign States all across India and certainly in Punjab. This is also proved by the Administrative Reports which indicated that bearing a few

exceptions, in cases of Hindu Rulers, the custom of primogeniture invariably prevailed.

96. While it is not conclusive of the legal position, it is significant that the plaintiff had herself pleaded in the written statement in Suit No. 35/77 filed by the defendant No.1 against her for alienation of 'Gaddi' and properties, that the partition of Kapurthala estate was not permissible according to the family custom. Similarly in Ex. D-6 the plaintiff No.3 herself had described that the defendant No.1 was the exclusive owner of the estate of Kapurthala and held it as his exclusive personal property. The plaintiff's further plea was that the customary rule of primogeniture in respect of properties of sovereign rulers and in respect of succession the 'Gaddi' of Kapurthala were imposed by the British paramountcy and could not be equated with the family custom recognizable in law. The plaintiff pleaded that a custom must not only be ancient and invariably followed but must evolve through a conscious and voluntary acceptance by the family over generations. The succession of Randhir Singh after the annulment of the Will of his father, Sardar Nihal Singh was only through the British intervention and not on account of any custom. In any event the rule of primogeniture even if prevalent came to an end upon the independence of India on 15th August, 1947. It was also pleaded that no reference can be made to the other rulers of India and Punjab. It was further pleaded that the Order dated 11th August, 1948 (Exhibit D-1) of Maharaja Jagatjit Singh brought an end to the custom of primogeniture even if it existed. I am of the view qua the Kapurthala ruling family the custom of primogeniture Kapurthala State can not obviously be prior to the founding of the erstwhile Kapurthala State. The defendant no.1 by the tracing out the history of Kapurthala at least since Bhag Singh's reign has demonstrated that the custom of primogeniture was prevalent and followed in Kapurthala. Similarly the declaration of 11th August, 1948 only was in relation to the Mussorie Estate and could at best be required to be confirmed to the property enumerated therein even if the plaintiff's plea about the Mussorie property

is accepted and could not bring to an end the custom of primogeniture qua the rest of the properties.

97. The plaintiffs have not led any evidence to substantiate their plea of the imposition of primogeniture by the British. The rule of primogeniture was clearly a customary one and not based on my statutory provisions or any Act or order passed by the British in the exercise of their paramountcy. The plaintiffs have largely relied upon Ex. PW1/51 which is the book 'Rajas of Punjab'. Even otherwise any statement in a book is not conclusive of this issue. In fact it is the defendant No.1, who has successfully demonstrated and proved the widespread prevalence of the custom of primogeniture in the Kapurthala family. He has further proved that Kapurthala was a sovereign state leading to a presumption of primogeniture not rebutted by the plaintiffs. In any event the plaintiff has not discharged the burden of proving that the properties were coparcenary and that Kapurthala State was different from the other 510 Hindu rulers of that time. From Bhag Singh's time the succession via Fatesh Singh has been to the eldest son notwithstanding the dispute raised by Amar Singh qua the succession of Nihal Singh. Nihal Singh attempted to make a will by dividing the property into 3 portions for inheritance by his 3 sons Randhir, BIkram and Suchet. The will of Nihal Singh was annulled again leading to succession of the eldest son Randhir Singh. Randhir Singh was also succeeded by his eldest son Kharak Singh and consequently the averred leanings of his younger brother Harnam Singh towards christianity and the date of such leaning is of no avail as the eldest son Kharak Singh without any dispute did succeed Randhir Singh. Kharak Singh was succeeded by Jagajit Singh the only son. Jagajit Singh was succeeded by the eldest son Paramjit to the exclusion of the other two sons Ajit and Karamjit without any dispute and eventually the defendant No.1 succeeded Paramjit Singh. Thus it would be seen that barring the dispute raised by Amar Singh and the making of the will by Nihal Singh which was annulled by the British, succession had always been by the

eldest son to the exclusion of the other sons and such successions have been accepted by the other siblings. The test of antiquity not being satisfied by the custom pleaded by the defendant No.1 cannot extend to having the custom existing beyond the reign of the Kapurthala State. Since I have held the Kapurthala state to be a sovereign state the tests of customs qua zamindari which is subject to the law of the land cannot be applied. As per the position of law laid down in 1994 Supp. 1 SCC 734 para 65, Pratap Singh Vs. Sarojini Devi for a sovereign state primogeniture was presumed to apply, whereas for Zaminidari they were to be established by custom. Thus even by the presumption which flowed from the finding of the existence of a sovereign state in Kapurthala, primogeniture existed by virtue of such presumption. The version of the history of Kapurthala state given in the book Rajas of Punjab by Lepal H. Griffin (Ex. PW 1/51), cannot be given more primacy then the Administration Reports which have been termed to be a valuable piece of evidence in para 8 of the judgment of the Hon'ble Supreme court in Jagat Singh vs. State of Gurajat and ors. reported as 1968 (1) SCWR 347. Assuming the two versions i.e. that as per Ex. PW 1/51 the book on Rajas of Punjab and the Administration Report, differ this court has no option but to accept the statements made in the Administration Report Ex. X-22 to X-27 and not the version given in Ex.PW 1/51 which no doubt at page 550 supports the statement of the plaintiff that it was the Governor General who on a visit to Kapurthala created Nihal Singh as a Raja. From Ex. X-22 for the year 1867-68 which described Ranbir Singh as a Raja governed by primogeniture upto Ex. X-27 for the year 1917-18 which described Jagajit Singh as Maharaja. It is clear that Kapurthala was a sovereign state governed by primogeniture. The custom of primogeniture had been followed even prior to Nihal Singh in the case of his father Fatesh Singh. I am also satisfied that the evidence and texts produced by the defendant No.1 showed that the custom of primogeniture in general had an origin as ancient as the founding of the Kapurthala State and was not imposed by the British

as contended though not proved by the plaintiffs. At best Ex.PW 1/51 demonstrates that Nihal singh was conferred the title of Raja by the Governor General. In my view this also does not detract from the plea of the plaintiff that Nihal Singh's predecessors were Rajas and succession had even then been according to primogeniture. Even if it assumed that the British titled Nihal Singh as a Raja does not prove that Nihal Singh was not already a Raja tracing his descent from his ancestors who were also rulers according to the custom of primogeniture.

104. Having examined the factual matrix and having come to the conclusion that the family custom of primogeniture stood established in the family of Defendant No.1 Sukhjit Singh, it would be necessary to examine the legal principles enshrined in judicial pronouncements including those of the Supreme Court. This would be necessary because the dispute between the parties is to be determined in the light of the post merger position in law, particularly, in view of the enactment of the Hindu Succession Act, 1956.

105. Impartibility is an attribute attaching to property which derogates against the normal rule of devolution by survivorship amongst coparceners in the case of joint family property. A partition cannot be claimed in respect of such property. Impartibility is maintained by following rules such as primogeniture or ultimogeniture. Impartibility and, consequently, the precise rule that is followed primogeniture, ultimogeniture, or the like are essentially matters of custom. In Shiba Prasad v. Prayag Kumari: AIR 1932 PC 216 which is the leading case on impartibility, the Privy Council held that [p.222]:-

"Impartibility is essentially a creature of custom."

And, if a confirmation was at all required, the Supreme Court, in K.K.Y. Varu & Ors. v. S.K.Y. Varu & Ors reported as (1969) 3 SCC 281, clearly held that [p.296]:-

"The law regarding the nature and incidents of impartible estate is now well settled. Impartibility is essentially a creature of custom."

106. Impartibility of an estate, if not established by custom, can only be claimed on the basis of some specific statutory provision. In the present case, it has been contended on behalf of the defendant No.1 that the suit properties were impartible (a) because of custom as prevailing in the ruling family of the erstwhile princely state of Kapurthala and, (b) because of Article XIV of the instrument of accession dated 20th August, 1948 read with the provisions of Section 5 (ii) of the Hindu Succession Act, 1956. On the other hand, the plaintiffs contend that no such customs of impartibility/primogeniture existed and, in any event, Section 4 of Section 5(ii) of the said were not applicable.

112. Clearly, for an estate to be covered under Section 5(ii) of the Hindu Succession Act, 1956, it is essential that the covenant or agreement or statute must by its terms and by its own force declare that the estate would descend to a single heir. In the present case, Article XIV of the Instrument of Accession merely kept "alive" the custom (without indicating what that custom was) and that too only with regard to succession to the "gaddi" of the State. This article by its terms or by its own force does not declare that any estate would descend to a single heir. Consequently, a custom sanctioning the rule of primogeniture entailing impartibility of the suit properties, would not be saved by the provisions of section 5(ii) of the said Act.

113. As a result, by virtue of section 4 of the said Act, to operate the custom relating to impartible estates and primogeniture would cease to operate and would stand abrogated. However, such custom would not cease ipso facto upon the coming into operation of the said Act in 1956, but whenever succession opened out for the first time after the commencement of the act in 1956. This is clarified by the Supreme Court in the case of Revathinnal Balagopal Varma (supra) as under [para 19]:-

> "In other words, while the Act may have immediate impact on some matters such as, for e.g. that covered by Section 14 of the Act, its impact in matters of succession is different. There the Act only provides that, in the case of any person dying after the commencement of the Act, succession to him will be governed not by customary law but only by the provisions of the Act."
>
> The aforesaid position of law laid down by the Hon'ble Supreme Court has a material bearing on the decision of the present suit.
>
> 121. Clearly, then, the factum of recognition of Defendant no.1 as the successor to the "gaddi" of the erstwhile state of Kapurthala has no effect whatsoever on the manner and mode of succession to the private and personal properties of late Maharaja Paramjit Singh, which must depend upon the personal the personal law of succession (in this case, Hindu law).
>
> 133. In view of my findings that the Mussorie estate is private and personal and not HUF co parcenary property, such property also passed from Jagatjit Singh, defendant No.1 to Paramjit Singh and from Paramjit Singh to Sukhjit Singh in accordance with proved custom of primogeniture and is not accordingly liable to be partitioned.
>
> Mr. Arun Mohan, learned Senior counsel, for defendant No.1 had stated that under law defendant No.1 is/was liable to provide reasonable maintenance in accordance with primogeniture to his wife and sons."

16. The finding in respect of granting partly relief in favour of appellant by passing the preliminary decree qua exhibit D-1 and PW-1/1 have been arrived in the impugned judgment on the basis of finding arrived in paras 103 & 130 which reads as under:

> "103. In this respect the defendant No.1 in his evidence deposed that some of the capital was placed in the hands of children to case the impact of the estate duty upon the possible demise of defendant No.1. He

had also clarified that no other property except those mentioned in Ex. PW1/1 & Ex. DA would constitute HUF properties. The remaining properties referred to in clause 9 have been explained on the basis that it was to ensure the survival of HUF qua such properties and its continuance as a stepping stone for further throwing in or accretion of the other assets. Significantly the defendant has deposed that even after the partitions effected by Deeds Ex.PW1/1 & PW1/2 tax returns were filed by defendant No.1 both as an individual and as a Karta of the joint Hindu Family. In my view, the above factors of individual and Joint Family returns after the two partitions by virtue of Ex PW1/1 and Ex PW1/2 and indeed the assessment of the Defendant No.1 as an individual under the Wealth Tax and Income Tax proceedings establish that the property was not coparcenary as claimed by the plaintiffs demonstrate that the HUF was created for a limited extent and for a specific purpose of tax management and would only operate qua these 2 Exhibits and the other properties not covered by the two deeds continued to remain impartible. Thus the defendant No.1 is bound by the two deeds Ex.PW1/1 & Ex. PW1/2 (Ex.DA) and cannot wriggle out of the effect of such declaration. Furthermore the plaintiff No.3 was unable to sustain her plea that she had contributed certain properties to the coparcenary claimed by her as she was not able to establish any source of independent funds and had only been able to prove her ownership of one half of the property at 30 Sunder Nagar and certain TISCO shares.

130. Therefore, since the defendant No.1 had voluntarily made a declaration by virtue of Ex. PW 1/1 dated 26th March, 1976 and Ex. DA dated 11th March, 1975 to the effect that properties enumerated in the said declaration were joint Hindu family property, the defendant No.1 cannot avoid the effect of such declaration and is bound by it. Therefore, the plaintiffs are entitled to a preliminary decree of partition in respect of the properties enumerated in Ex. PW.PW1/1 and Ex. D.A."

17. The crux of main case of the Respondent No. 1 is as under:

i. Kapurthala was a Princely State. The Ruler was a sovereign. His Constitutional position was the same as that of the other 510 Hindu Rulers of that era.

ii. There was never any joint Hindu family / coparcenery. Further, there was never any partition.

iii. For succession, the rule of Primogeniture prevailed in the family, by virtue whereof, the eldest son succeeded to the entire property and others were granted only maintenance.

iv. For a sovereign Ruler, this is what the law also presumes. There is no Mitakshara Survivorship and no Mitakshara Succession.

v. Maharaja Jagatjit Singh ascended the Gaddi of Kapurthala in 1877, and ruled the 630 square miles of this Princely State as its Sovereign Ruler.

vi. In 1948, he ceded the State, and retained for himself some immovable and movable properties.

vii. The lapse of paramountcy [15.08.1947], Merger of the State [20.08.1948], or the ushering in of the Constitution [26.01.1950], did not create any coparcenary.

viii. On 19.06.1949 Maharaja Jagatjit Singh died leaving him surviving three sons and two widows. By reason of will X-8 otherwise by means of Primogeniture and thereby everything was succeeded to by Maharaja Paramjit

Singh. Maintenance allowances were given to the youngers, and continued to be given until 1972.

ix. Maharaja Paramjit Singh died on 19.07.1955, whereupon Respodennt No.1 succeeded to the property again by Will Ex. D-11 and /or otherwise by means of Primogeniture in any case whereof the respondent no. 1 became the absolute owner of the properties.

18. Undisputedly, in between 15th August, 1947 and 20th August, 1948 the Kapurthala state was merged in the PAPSU by virtue of a covenant signed by the emperors of different states. In that respect Maharaja Jagatjit Singh was sovereign ruler. The question which requires consideration before this court is as to what was the nature of the properties held by Maharaja Jagatjit Singh during his lifetime. It cannot be denied that after Maharaja Jagatjit Singh became an ordinary citizen of this country he became subject to the laws of this country and the question that remains to be determined is as to whether on his demise on 19.06.1949 his succession was to be governed by which law.

19. In the present case we have to decide as to whether the properties in question are co-parcenary properties or not. It is also necessary to decide whether the Rule of Primogeniture governed Hindu Rulers and applied to the Kapurthala.

HISTORY OF KAPURTHALA

20. The former Princely State of Kapurthala lay in the Jullundur Doab tract of the Punjab, bounded in the North by the River Beas and in the South, by the River Sutluj. The area of

Kapurthala State was 630 sq. miles. A Taluqdari (*Zamindari*) of 730 sq miles, an area in Oudh (U.P.) was also owned by the Rulers of Kapurthala.

21. The Genealogical Table of the Kapurthala family in the usual form is on the Court record as Ex.D-2.

22. We may add here that the historical facts, there is really no dispute by the parties though the appellants maintain that it was always a joint Hindu family and the *karta* was designated as a Ruler.

23. **Baba Jassa Singh Sahib (1718-1772-1783)**

The real founder of the Kapurthala Dynasty is said to be Baba Jassa Singh Sahib. As a young man, Jassa Singh Sahib lived for several years in Delhi with his mother under the care of Mata Sundari, the widow of Guru Govind Singh the Tenth Sikh Guru. On Jassa Singh's departure from Delhi, to return to the Punjab. By 1761, Baba Jassa Singh was undoubtedly the chief leader among the Sikhs in North of the Sutluj. In 1764, Baba Jassa Singh led the Sikh Army during the sack of Sirhind. Baba Jassa Singh contributed his entire share of Rs.9,00,000/- from the sack of Sirhind for the rebuilding of the Golden Temple at Amritsar.

24. In 1780 he conquered Kapurthala and made it his headquarters. Baba Jassa Singh died in 1783. He had neither a son nor a nephew, and Sardar Bhag Singh, a second cousin then in his thirty-sixth year, succeeded to the estate. There was a daughter married to Sardar Mohr Singh of Fatehabad, but a daughter and a daughter's son were not reckoned among the legal heirs.

Sardar Bhag Singh (1747-1783-1801)

24.1 Sardar Bhag Singh who succeeded as the Chief of Kapurthala, consolidated his position in various expeditions in and around the Doab. In 1796, Sardar Bhag Singh joined the Kanheyas, then led by Sadda Kour, one of the remarkable women in Punjab history and the mother-in-law of Maharaja Ranjit Singh, in their attack upon Sardar Jassa Singh Ramgharia, the old enemy of his house, who had entrenched himself at Miani, but did not succeed in defeating him. Sardar Bhag Singh died in 1801. He left behind one son Sardar Fateh Singh.

Sardar Fateh Singh (1784-1801-1836)

24.2 Sardar Fateh Singh succeeded as the Third Ruler of Kapurthala. His first act was to form an alliance, with Ranjit Singh, who had just gained possession of Amritsar. The young Chiefs exchanged turbans, and swore on the Granth Sahib to remain friends for ever.

Sardar Fateh Singh died in October 1837. He left behind the following:

	Name		*Relation*
i	Rani Sada Kaur	-	Widow (first)
ii	Rani Rattan Kaur	-	Widow (second)
iii	Nihal Singh	-	Elder son
iv	Amar Singh	-	Younger son

All the properties of the late Chief devolved upon and were taken exclu-sive ownership and control of, by Sardar Nihal Singh, the late Chief's elder son. As per the case of respondent

no.1 as per PW/1/51 and documents exhibited as D-61 to 64 the succession therefore was as follows:

i	Sardar Nihal Singh	All the properties of the Chief as also the Chiefship yielding about Rs. 12,00,000/- annually.
ii	Rani Sada Kaur	Maintenance
iii	Rani Rattan Kaur	Maintenance
iv	Kr Amar Singh	Maintenance,

Raja Nihal Singh (1816-1836-1852)

24.3 In 1836, Raja Nihal Singh succeeded as the Fourth Ruler of Kapurthala. In 1845 during the first Anglo-Sikh War, Sardar Nihal Singh's troops sided with the Sikh Armies and fought against the British at Aliwal and Budowal. As a result, after the defeat of the Sikh Armies in 1846, Sardar Nihal Singh lost his Cis-Sutluj territories as escheat to the victorious British Government. The Jalandhar Doab Territories however, continued in clear sovereignty with Sardar Nihal Singh. This severe loss ensured that in the second Anglo-Sikh War of 1849-1850, the Kapurthala troops took the field in support of the British. Raja Nihal Singh remained aloof from politics and administered his territories well. Raja Nihal Singh died in 1852. He left behind the following persons:

	Name		*Relation*
i	Rani Pratap Kaur	-	Widow (first)
ii	Rani Mai Hiran	-	Widow (second)
iii	Randhir Singh	-	First son
iv	Bikrama Singh	-	Second son

v Suchet Singh - Third son

vi Bibi Kaur - Daughter

All the properties of the Ruler, were taken exclusive ownership and control of by Raja Randhir Singh, to the exclusion of his younger brothers and the surviving wives. Consequently, the succession in the Kapurthala family was as follows:-

i) Raja Randhir Singh	The rulership, the entire State, yielding something in excess of Rs.6,00,000 per annum as revenue. Raja Randhir Singh also succeeded exclusively to all the personal properties of the late Ruler.
ii) Rani Sada Kaur	Nothing
iii) Rani Mai Hiran	Nothing
iv) Kr Bikrama Singh	Rs.60,000/- per annum, awarded as a final settlement by the Secretary of State for India in adjudication on the Will of the late Raja Nihal Singh.
v) Kr Suchet Singh	As above
vi) Daughter	Was married to the Sardar of Nikandpur.

Raja Randhir Singh (1831-1852-1870)

24.4 In 1852, Raja Randhir Singh succeeded his father as the Fifth Ruler of Kapurthala. In 1857 Raja Randhir Singh rendered distinguished personal service, both in the Punjab and in Oudh, at

the head of his troops. Raja Randhir Singh died in 1870. He left behind the following persons:

	Relation		*Name*
i	Elder son	-	Kharak Singh (born 1849)
ii	Second son	-	Harnam Singh (born 1851)
iii	Daughter	-	(born 1851)

The entire State of Kapurthala and all the properties of the late Ruler were taken exclusive ownership and control of by Raja Kharrak Singh. The succession was as under :

i	Raja Kharak Singh	The entire Raj yielding an annual revenue of about Rs.7 lakhs and all the personal properties of the late Ruler, including the Taluqdari in Oudh yielding Rs.12,00,000 per annum as income.
ii	Kr Harnam Singh	Maintenance allowance.

Raja Kharak Singh (1849-1870-1877)

24.5 Raja Kharak Singh (the Sixth Ruler)'s reign was uneventful. A male child (Maharaja Jagatjit Singh) was born on 24.11.1872.Raja Kharrak Singh died in 1877. He left behind the following persons:

	Name		*Relation*
i	Rani Anand Kaur	-	Widow (died 1897)
ii	Jagatjit Singh	-	Son (born 1872)
iii	Harnam Singh	-	younger brother

He left behind the following properties :

a Immovable property in Kapurthala and Oudh, such as the Jalao Khana Palace and the Elysee Palace in Kapurthala.

b The Oudh Taluqdari.

c Movable property and valuables.

The resultant succession was:

i	Maharaja Jagatjit Singh	The entire State of Kapurthala then yielding an annual revenue of about Rs.14 lakhs plus all properties of the Ruler, including personal effects as also the Taluqdari of Oudh which yielded an additional revenue of Rupees 12 lakhs
ii	Rani Anand Kaur	Nothing, except Maintenance.
iii	Kr Harnam Singh	Maintenance allowance of Rs.36,000/- eventually or approximately only 1/70th of the patrimony.

Maharaja Jagatjit Singh (1872-1877-1949)

24.6 Despite the two grand-uncles and the two uncles, the five-year-old Jagatjit Singh succeeded as the Seventh Ruler of Kapurthala. He assumed full ruling powers on 24.11.1890.

The builder of modern day Kapurthala, who ruled the State for almost six decades. As a progressive secular Ruler, he built for his Muslim population, which comprised the majority of the State's population prior to 1948, the finest place of worship in

the State – a Mosque built on the pattern of the Koutoubia Mosque in Marrakesh, Morocco. During the reign of Maharaja Jagatjit Singh, some of the most well-known architectural structures were erected in and outside the State. These comprised:

a Prominent buildings existing in 1872

i Jalao Khana or Old Palace.

ii Panj Mandir

iii Randhir College

b Buildings built or purchased after 1872

i Elysee Palace

ii Villa Palace

iii Chateau Mussoorie (St Helens Cottage already existed when the property was bought by Maharaja Jagatjit Singh in 1885. Source of this information is from the National Archives of India Foreign and Political Department, Intl October 1885, Proceedings 107-109, Part B, and the attested copy of the Sale Deed submitted to Court by respondent no.-1)

iv Jagatjit Palace Kapurthala

v State Gurudwara and Mai Maharani Mandir

vi State Gurudwara Shri Ber Sahib at Sultanpur Lodi

As per the case of respondent No.1 Maharaja Jagatjit Singh also gifted from time to time – as a maintenance grant – to his younger sons, State Officials and others, lands, cash awards or properties by means of 'Hiba Namas' or gift deeds, or 'Sanad Sultani's also known as Royal gifts or Orders.

In the 1920s, Maharaja Jagatjit Singh thrice represented India at the League of Nations at Geneva.

15.08.1947 – 20.08.1948

24.7 On 14 / 15.08.1947 the British paramountcy lapsed. One year later, on 5.05.1948, the Merger Agreement was signed by Maharaja Jagatjit Singh for ceding / merging Kapurthala State into the Union of PEPSU. The Merger Agreement, also known as the Covenant, is Ex.D-23. The Ruler's sovereignty came to an end. On 19.06.1949, Maharaja Jagatjit Singh died. He left behind the following among others:

	Name	*Relation*
i	Maharani Lachhmi (Bushair)	Senior Widow
ii	Maharani Prem Kaur	Second Widow
iii	Tikka Paramjit Singh	Eldest son (born 1892)
iv	M K Karamjit Singh	Second son (born 1896)
v	M K Ajit Singh	Third son (born 1910)

24.8 As per case of the respondent no. 1 at this point of time (19.06.1949, in fact 20.08.1948 onwards), Maharaja Jagatjit Singh was no longer the owner of the State of Kapurthala. He was the owner of only what he had retained for himself at the time of the Merger on 20.08.1948. These came to be called 'Private Properties'.

24.9 The question is of the character of the holding prior, and subsequent, to 19.06.1949: (1) whether as joint Hindu family (coparcenary) or absolute; and (2) the mode of succession Mitakshara Survivorship / Succession, or Will / Primogeniture. The respondent no.1 submits that on account of the Will of Maharaja

Jagatjit Singh (X-8), and alter-natively, the Rule of Primogeniture, Maharaja Paramjit Singh succeeded exclusively. Position with regard to the matter of fact succession was:

<table>
<tr><td>Maharaja Paramjit Singh (eldest son)</td><td>The Palaces, the Oudh Taluqdari and all personal cash balances, jewellery, valuables and other properties of the late Ruler. Worth almost Rs.70 lakhs.</td></tr>
<tr><td>Maharani Lachhmi @ Bushair (widow)</td><td rowspan="8">No interest in land or properties or other assets at all.
Only maintenance allowances of varying amounts, all totalling approximately Rs.1,08,000/- per annum or 1/60th of the patrimony.</td></tr>
<tr><td>Maharani Prem Kaur (widow)</td></tr>
<tr><td>M.K. Rani Mahijit (widowed daughter-in-law)</td></tr>
<tr><td>M. K. Karamjit Singh (younger son)</td></tr>
<tr><td>M. K. Ajit Singh (youngest son)</td></tr>
<tr><td>R. K. Arun Singh (grandson)</td></tr>
<tr><td>R. K. Martand Singh (grandson)</td></tr>
<tr><td>Sukhjit Singh (grandson)</td><td>Nothing</td></tr>
</table>

Maharaja Paramjit Singh (1892-1949-1955)

24.10 On 19.06.1949, Maharaja Paramjit Singh took over as the Eighth Ruler of Kapurthala. Six years later, on 19.07.1955, Maharaja Paramjit Singh passed away.

He left behind the following persons:

	Name	*Relation*
i	Rajmata Lachhmi (Bushair)	...(widow) Dowager step mother
ii	Rajmata Prem Kaur	...(widow) Dowager step mother
iii	Maharani Brinda ...	First wife (widow)
iv	Maharani Stella ...	Third wife (widow)
v	Tikka Sukhjit Singh	Son (born 1934)
vi	M K Indira Devi ...	Daughter
vii	M K Sushila Devi ...	Daughter
viii	M K Ourmila ...	Daughter
ix	M K Asha Kaur ...	Daughter

Brigadier Sukhjit Singh/respondent No.1 (1934-1955-???)

24.11 On 19.06.1955, 21-year-old 2nd Lt. Sukhjit Singh succeeded as the Ninth Ruler of Kapurthala. Sukhjit Singh continued with the Indian army, and fought the 1965 and 1971 wars with Pakistan on the battlefront which earned him the combat award of a Maha Vir Chakra (MVC). As per the case of the respondent no.1, he in order to pay the Estate Duty, had sold Jagatjit Palace and Elysee Palace and with the balance sale proceeds property B-90A GK-1 and a commercial flat were purchased.

25. An order was issued by the President on 6.09.1970 'De-recognising' respondent no.1 as the Ruler of Kapurthala. The

Parliament enacted the Constitution (26th Amendment) Act 1971. Articles 291 and 362 were repealed; a new Article 363A was added, and the definition of a 'Ruler' in Clause (22) of Article 366 was reworded. It came into effect on 29.12.1971. Thereafter, the Rulers of Indian States (Abolition of Privileges) Act [54 of 1972] was also passed.

26. Before dealing with the rival submissions of the parties, we have to see as to what is the meaning of rule of primogeniture and under which circumstances the rules of primogeniture applies and is different with law of succession and its presumption.

Primogeniture

'Primogeniture' is a rule of succession. It is applicable to impartible estates. It was applicable to Rulers and Monarchs. By this rule, the eldest son or the first born son succeeds to the property of the last holder to the exclusion of his younger brothers. According to the ordinary rule of succession, all the sons of the father are entitled to equal shares in his estate. The rule of succession by which the first born son succeeds to the entire estate, to the exclusion of the other sons, is called Primogeniture. It denotes a rule of succession by which the eldest among the heirs, male or female, succeeds to the estate to the exclusion of other heirs. This is simple primogeniture in contradistinction to lineal male primogeniture. Lineal Male Primogeniture means a continual descent to the eldest male member of the eldest branch. If a person died, leaving him surviving a grand-son by a predeceased eldest son and a younger son, the latter would succeed if simple Primogeniture prevailed but the former would

succeed, if succession was governed by the rule of Lineal Male Primogeniture.

27. The argument of the Appellants are that there was a distinction between public and private property of a sovereign Ruler and that the private property was held as a karta of a coparcenary.

28. The Supreme Court in Civil Appeal No.534 of 1983, **Revathinnal Balagopala Varma Vs. His Highness Shri Padmanabhadasa Varma (Since deceased) and others**, and Civil Appeal No.535 of 1983. **Indira Bayi and Others Vs. His Highness Sri Padamanabhadasa Varma** (since deceased), decided on November 28, 1991. It is held by the Apex Court that one incidence of the property held by a sovereign was that there was really no distinction between the public or State properties on the one hand and private properties of the sovereign on the other; and the other incidence was that no one could be a co owner with the sovereign in the properties held by him. The Supreme Court also emphasized that when they are speaking of the property of an absolute sovereign there is no pretence of drawing a distinction, the whole of it belong to him as sovereign and he may dispose of it for public or private purpose in whatever manner he may think. The Apex Court in fact approved a decision of the Gujarat High Court in **D.S. Meramwala Bhayala Vs. Ba Shri Amarba Jethsurbhai** (1968) Gujarat Law Reporter Vol. 9 page 609. It is useful to quote some relevant portion of the said judgment which have ample bearing on the point arising in this case :

> "There is, therefore, no doubt that the Khari-

Bagasara Estate was a sovereign Estate and the Chief of the Khari-Bagasara Estate for the time being was a sovereign ruler within his own territories subject to the paramountcy of the British Crown prior to 15th August, 1947 and completely independent after that date.

If the Khari-Bagasara Estate was a sovereign Estate, it is difficult to see how the ordinary incidents of ancestral co-parcenary property could be applied to that Estate. The characteristic feature of the ancestral coparcenary property is that members of the family acquire an interest in the property by birth or adoption and by virtue of such interest they can claim four rights : (1) the right of partition; (2) the right to restrain alienation by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. It is obvious from the nature of a sovereign Estate that there can be no interest by birth or adoption in such Estate and Therese rights which are the necessary consequence of community of interest cannot exist. The Chief of a sovereign Estate would hold the Estate by virtue of municipal power and not by virtue of municipal law. He would not be subject to municipal law; he would in fact be the fountain head of municipal law. The municipal law cannot determine or control the scope and extent of his interest in the estate or impose any limitations on his powers in relation to the Estate. As a sovereign ruler he would be the full and complete owner of the Estate entitled to do what he likes with the Estate. During his lifetime no one else can claim on interest in the Estate. Such an interest would be inconsistent with his sovereignty. To grant that the sons acquire an interest by birth or adoption in the Estate which is a consequence arising under the municipal law would be to make the Chief who is the sovereign to make the Chief who is the sovereign ruler of the Estate subject to the municipal law. Besides, if the sons acquire an interest in the Estate by birth or adoption, they would be entitled to claim the rights enumerated above but these rights cannot exist in a sovereign estate. None of these rights can be enforced against the Chief by a remedy in the municipal courts. The Chief being the sovereign ruler, there can be no legal sanction for enforcement of these rights. The remedy for enforcement of these rights would not be a remedy at law but resort would have to be taken to force for the Chief as the sovereign ruler would not be subject to municipal law and his

> actions would not be controlled by the municipal courts. Now it is impossible to conceive of a legal right which has no legal remedy. If a claim is not legally enforceable, it would not constitute a legal right and, therefore, by the very nature of a sovereign estate, the sons cannot have these rights and if these rights cannot exist, in the sons, it must follow as a necessary corollary that the sons do not acquire an interest in the Estate by birth or adoption……
> ……..Now it was not disputed on behalf of Meramvala that if prior to merger the Estate did not partake of the character of ancestral coparcenary property, the properties left with Bhayawala under the merger agreement would not be ancestral coparcenary properties; if Meramvala did not have any interest in the Estate prior to merger, he would have no interest in the properties which remained with Bhayavala unde the merger agreement. It was not the case of Meramvala and it could not be the case since the merger agreement would be an act of State that as a result of the merger agreement any interest was acquired by him in the properties held by Bhayavala. Bhayavala was, therefore, the full owner of the properties held by him and was competent to dispose of the same by will……
> ……The argument of Mr. I.M. Nanavati, however, was that the effect of applicability of the rule of primogeniture by the parmount power was that the rights of coparceners under the ordinary Hindu law were eclipsed : these rights were not destroyed but they remained dormant and on the lapse of paramountcy, the shadow of the eclipse being removed, the rights sprang into full force and effect. This argument is wholly unsustainable on principle……

From this judgment, it is clear that the characteristics of ancestral coparcenary property: (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance and (4) the right of survivorship, are not applicable to the properties owned by the sovereign ruler and that the son does not acquire any interest in such properties either by birth or adoption and even after the state of the sovereign ruler has merged with India, the character

of his properties does not change. In the case of Revathinnnal Balagopala Varma the Supreme Court referred to all the earlier decisions which have been referred and concluded that there is no distinction between the private and public properties owned by the sovereign ruler and the incidents of ancestral or coparcenary properties are not at all applicable to such properties held by the sovereign ruler. It is also held in this judgment that the mode of succession does not make any difference. As soon as one sovereign ruler succeeds another, all the incidents of sovereignty are then possessed by the successor sovereign ruler. In the said case also, the sovereign before surrendering his sovereignty entered into a covenant gave an option to the sovereign ruler to furnish a list of such properties which he wanted to retain as personal properties.

29. The distinction between 'public' and 'private' property, reference was also made by respondent No.1 to the judgments in **1994 Supp. 1 SCC 735** *Nabha* case and the other judgments referred to therein. See ***Advocate General of Bombay vs Amerchund*** (1830) Vol 1 Knapp's PC 329 (=12 ER 340,'45), ***Vishnu Pratap Singh vs State of M.P.*** 1990 (Supp) SCC 43, White Paper on Indian States (para 157), *Meramwala case* Vol.9 (1968) G.L.R. Gujarat 609 and *Travancore case* 1993 Sup-1 SCC 233 wherein the argument was rejected by the court particularly in Nabha case, where it has been ruled that it shall continue as law under Article 372 of the Constitution of India.

30. The custom of Primogeniture for *Zamindars* evolved as an exception to the general customs of Mitakshara survivorship and Mitakshara succession. However, the *Zamindars* did not have

any sovereign power i.e., power to lay down the law. The Princes wielded sovereign powers and, therefore, they (all the Princes but with a rare exception) had applied the Rule of Primogeniture which then had taken the shape as the law promulgated by them as a sovereign Ruler.

31. The Rulers of Kapurthala (1782 to 20.08.1948) were sovereign Rulers is a part of Constitutional and legal history of India. Before the learned Trial Judge, the Appellants argued that the Kapurthala family were only *Zamindars* and not Sovereign Rulers, but the learned Single Judge found them to be Sovereign Rulers. The finding of the Trial Judge that they were Sovereign Rulers has not been seriously assailed in appeal. In fact, in the arguments before the Division Bench, this contention was given up by the learned counsel for the appellants.

32. Undisputedly, Maharaja Paramjit Singh was recognised by the Government of Dominion of India as the Ruler of Kapurthala, and thereafter, on Maharaja Paramjit Singh's death (19.07.1955), the Government of India recognised respondent no.1 as the Ruler under the Constitution of India by Notification. respondent no.1 continued to be so recognised till (along with 500+ other Rulers) he was de-recognised by the 26th Constitutional Amendment in 1971-72.

33. Being a sovereign ruler, no incidence of coparcenary or Joint Hindu family could be applied to the properties held by him and the junior (sons), had no right by birth. The judgment of Bhagwati, J. in ***Meramwala's case*, Vol.9 (1968) I.L.R. Gujarat 966 = Vol.9 (1968) Gujarat Law Reporter 609** and the judgment of a Division Bench of the Kerala High Court in

Travancore case 1983 Kerala Law Times 408. In *Thakore Vinay Singh's [Mohanpur] case*, 1988 Sup SCC 133 = AIR 1988 SC 247 the Supreme Court held that there was no coparcenary, and in ***Vishnu Pratap Singh vs State of Madhya Pradesh*** 1990 Sup SCC 43 wherein it was held that the Ruler was the absolute owner of all properties. The Supreme Court judgment 1993 Sup-1 SCC 233 in appeal from the Kerala High Court, and in the *Nabha case* 1994 Supp-1 SCC 734 = JT 1993 (Supp) SC 288 are conclusive on this aspect.

34. Going back into Indian History, long before the British Rule, the best example of authority on the rule of Primogeniture, which the respondent No.1 cites before this Court, is none other than the decision that Lord Ram would succeed to the kingdom of Ayodhya after the demise of Raja Dashrath in total exclusion of his younger brothers Bharat, Lakshman and Shatrughan. Lord Rama was the eldest son or as the legalistic term goes, the first born. Since this was a Ruling Family; they were ruling the Kingdom of Ayodhya; there was no coparcenery, there was no partition and there was no suit.

35. It appears from the material produced by the appellants on record that 'Maintenance Grants' were being given by the Ruler to his younger brothers. Similarly, an 'Allowance' was given to the elder son and to the younger sons. If the quantum of the allowance is to be examined, the elder son was the recipient of a larger amount than the younger sons, or even his uncles (Ruler's brothers). This again indicates Primogeniture: See ***Chattar Singh vs Roshan Singh;*** *AIR 1946 Nagpur 277.*

36. Some of the Princely States, prior to their merger into the Dominion of India, had enacted formal legislation in the name of the Ruler. These 'Succession Acts', specifically stated that the Rule of Succession appli-cable to their respective families, would be the Rule of Primogeniture.

37. The following is the list of some of the cases came to the Court after 1950, matters relating to Primogeniture in the Princely States:

i) ***Darbar Shri Vira Vala Surag Vala Vadia vs State of Saurashtra***; (AIR 1967 SC 346 [Vadia]

> 1 .. .. there was in Kathiawad a State of the name of Vadia, succession to the Rulership of which was by primogeniture.

ii) In ***Prabir Kumar Bhanja Deo vs State of Orissa*** *(ILR 1969 (Orissa/Cuttack Series) 794,'* the question before the DB was relating to Keonjhar a Princely State in Orissa. After stating the genealogical table and noting that Primogeniture prevailed, and also noting that "*Pachchis Sawal*" was a document of high authority relating to customs prevailing in these States and had stood the field for over 150 years, returned a finding

> It will thus be apparent from the aforesaid two questions and answers that in Keonjhar State, where succession was governed by the custom of lineal primogeniture, the junior members of the Raj family were not entitled to any interest in the Rajgi (the Raj State). They had only a right of maintenance. ... ...

iii) ***M.K. Ravinderbir Singh vs M.K. Gajbir Singh*** CO 61/1960 Punjab & Haryana High Court. This judgment, though based on a compromise, is relevant as an instance of the custom of Primogeniture being followed after the commencement of the Constitution in respect of the property left behind with the Ruler at the time of merger in 1948.

iv) This question has been dealt by the Supreme Court judgment in the *Privy Purses case*, where Mitter J was pleased to observe: [1971 SC page 530,'96 = 1971-1 SCC 85,'219]

> It would appear that invariably the rule of lineal male Primogeniture coupled with the custom of adopting a son prevailed in the case of Hindu Rulers who composed of the bulk of the body.

v) ***Thakore Vinayasinhji AIR Vs. Kumar Shri Natwar Sinjhi-1988 SC 247***

> It is not disputed that the Raj Estate, of which the deceased appellant was the Ruler, is impartible and that the rule of primogeniture, which is one of the essential characteristics of an impartible estate, is also applicable.

vi) ***R.K.Rajindra Singh vs State of Himachal Pradesh*** *(1990) 4 SCC 320* [Bushahr]

> 3 .. The plaintiff's father Raja Padam Singh having died in April 1947, his elder son Tikka Vir Bhadra Singh born to his first wife Shanta Devi succeeded to the Gaddi under the rule of primogeniture ....

vii) ***State of Punjab vs Brig Sukhjit Singh*** *1993-3 SCC 459* [Kapurthala]

11(2).. .. It's ownership and possession in the hands of each succeeding heir apparent by primogeniture was demised perpetually ...

11(3) .. property settled on a title holder for keeping the family name alive perpetually and vesting it in each succeeding heir apparent by the rule of primogeniture.

viii) In ***H.H.Maharaja Pratap Singh vs H.H.Maharani Sarojini Devi***, 1994 Supp -1 SCC 734 = JT 1993 (Supp) SC 244 the Supreme Court says: [Nabha]

Though impartibility and primogeniture, in relation to zamindari estates or other impartible estates are to be established by custom, in the case of a sovereign Ruler, they are presumed to exist.

observed that Ruler in question was governed by customary law.

38. It further appears from the work entitled *Annals and Antiquities of Rajasthan*, (Oxford University Press, 1920. Reported in 1978 by M N Publishers, New Delhi – 110048) Colonel James Todd, a former Political Agent to the Western Rajputana States, says:

... The law of Primogeniture prevails in all Rajpoot sovereignties; the rare instances in which it has been set aside, are only exceptions to the rule.

39. **Presumption, and how it operates**

It is evident that 'sovereigns' what has passed as law into the law of the land, is that primogeniture and not Mitakshara,

applies. Presumption makes the fundamental basis for Evaluation of Evidence. The weighment thereof has to take place in that light.

i) In ***Baboo Gunesh Dutt Singh vs Maharaja Moheshur Singh***, Vol. VI [1854-7] Moore's Indian Appeals 164) the Privy Council had held:

> We apprehend that the principle upon which we are about to pro-ceed in this case admits of no doubt or question whatever. By the general law prevailing in this district, and indeed generally under the Hindu Law, estates are divisible amongst the sons, when there are more than one son; they do not descend to the eldest son, what are divisible amongst all. With respect to a *Raj* as a Principality, the general rule is otherwise and must be so. It is a Sovereignty, a Principality, a subordinate Sovereignty and Principality no doubt, which, in its very nature excludes the idea of division in the sense in which that term is used in the present case. ....

ii) In the *Ramnad case*,(ILR Vol XXIV [1901] Madras 613,' 35 a Division Bench of the Madras High Court relied upon the character of the estate as a Raj or Principality as one of the factors for coming to the conclusion that the estate was impartible, and went on further to hold that once the estate was held to be impartible, primogeniture applied as a consequence.

iii) The Privy Council judgment in ***Martand Rao vs Malhar Rao***, AIR 1928 PC 10 in so far as 'sovereignty' or

'principality' is concerned, far from sounding a discordant note, reiterates the presumption of impartibility. Their Lordships were unable to accept that the Amgaon Estate was in the nature of a Raj, and therefore impartible. They, after holding that Amgaon estate was not 'sovereign', ruled:

> ... are such that they could not possibly be classed as appertaining to the category of sovereign or semi-sovereign chiefs whose possessions were necessarily impartible.

iv) And, in ***Kochunni vs Kuttanunni***, AIR 1948 PC 47,' 50 (after holding the State in dispute to be sovereign), on the question of presumption, laid down:

> ... there could, therefore, be no question of his proving, as the High Court has required him to do, that the properties in his possession were impartible.

40. In ***Salig Ram vs Maya Devi***, AIR 1955 SC 266,'68 Col 2; and in ***Jai Kaur vs Sher Singh***, AIR 1960 SC 1118,'21 the Supreme Court held Rattigan's work to be a book of unquestioned authority. The Rule of Primogeniture only prevails in families of ruling chiefs or Jagirdars whose ancestors were ruling chiefs.

i) In ***Mohd. Yusuf vs Mohd. Abdullah*** AIR 1944 Lahore 117 a Bench of the Lahore High Court had held that, the onus shifts on to that party who challenges recitals in the manual of customary law, to establish that what has been recited in the manual, is incorrect.

41. As discussed above, Primogeniture, as a rule for succession, applied to the Rulers, the *Zamindars* etc. While examining, we have to first ask ourselves the question: Whether we are dealing with a sovereign or a non-sovereign estate?

42. The contention of the appellants is that no proper plea has been raised with regard to any such custom applicable to Maharaja Jagatjit Singh or the ruling family of Kapurthala. According to him Mitakshara Hindu Law was applicable and it does not matter if Maharaja Paramjit Singh was recognized as a ruler by the President of India. In view of the terms of covenant, Maharaja Jagatjit Singh was not subject to the Mitakshara Hindu Law at the time of his death as Maharaja Paramjit Singh inherited the estate of Maharaja Jagatjit Singh when the said estate became ancestral in his hand. The family of Kapurthala was always governed by Mitakshara School of Hindu Law All sikhs Fall within the definition of Hindu therefore, are govenred by the said law. According to the appellants there was a time when the ancestors of the Kapurthala family were not the rulers in any form and as such were governed by the Mitakshara law. The existence of a custom is a pure question of fact which is to be decided on the basis of evidence proved on record and not on the basis of presumption, it has to be determined pertaining to such a custom of the ruling family of Kapurthala ruler referring to other states and reference of text and decisions. In the present case as per the case of appellants, no custom prevailing for the family of Kapurthala. The rule of primogeniture and impericable estate and the Gaddi of Kapurthala was imposed on the family by the British in the

exercise of their political power and it cannot be equated with the family custom as recognised by a Hindu Law.

43. As regard the Mitakhshara joint Hindu family is concerned, it is averred by the appellants that it is a creature of law and arose out of a relationship known as spinda relationship which is confined to birth, marriage or adoption and comprising of a body consisting of persons, male or female. The coparcenary is also a creature of law and cannot be created by an act of the parties. The moment two coparceners come into existence in a jonit Hindu family, a coparcenors in the Joint Hindu family at any point of time, the joint property would belong to coparcenry and would be known as co-parcenary property.

44. It is submitted by the appellant that Maharaja Paramjit Singh inherited the property of Jagatjit Singh on his death on 19th June, 1949 and the said property was obviously ancestral in the hands of Paramajit Singh and similarly respondent No.1 inherited the property of Paramajit Singh on his death on 19th July, 1955 and such property was ancestral in the hands of respondent No.1. While some of the suit properties remained in the same form in which they were inherited by defendant No.1, the other suit properties were acquired form the nucleus of those properties/funds, which were inherited by defendant No.1. The suit property does not comprise of any self-acquired property by respondent No.1.

45. It is also the case of the appellants that on 20th February, 1950 on the marriage of respondent No.1 with the appellant No.3, a joint Hindu family comprising of respondent No.1

and the original appellant No.3 came into existence by operation of law and respondent No.1 was the karta of the said properties. On the birth of appellant No.1 on 27th December, 1961 a coparcenary consisting of respondent No.1 and the appellant No.1 came into existence by operation of law with respondent no.1 as the karta of that coparcenary. Consequently, all the suit properties became co parcenary properties by operation of law and appellant No.1 required interest in those properties by birth upon his conception. Same was the case upon the birth of original plaintiff No.2 born on 10th May, 1966 who got added to the above co-parcenary. On 28th May, 1990 Survajit Singh, son of appellant No.1 also became a member of the said co-parcenary upon his birth.

46. The Hindu customs recognised by the Courts are - (1) local, (2) class, and (3) family customs. The 500 and odd Hindu Rulers would certainly form a 'class'. (See ***Mohan Lal vs Sawai Man Singh***. AIR 1962 SC 73,'5 = 1962-1 SCR 702)

i) In ***Shimbhu Nath vs Gayan Chand***, ILR XVI [1894] Allahabad 379 a Bench of the Allahabad High Court held that where a custom alleged to be followed by any particular class of people is in dispute, judicial decisions in which such custom has been recognised as the custom of the class in question are good evidence of the existence of such custom.

ii) In ***Mohesh Chunder Dhal vs Satrughan Dhal***, Vol. 29 [1902] Indian Appeals 62 the Privy Council held:

> "To prove custom of lineal primogeniture as the rule of succession:-

The High Court relied on the oral evidence, which was very fully discussed in the Court of first instance. There was abundant evidence to show that it was well understood in the family, and in families belonging to the same group, that no descendant of a younger branch could take until all the elder branches were exhausted. But there again no witness was able to point to an actual instance in which, in cases of collateral relationship, the rule had either been followed or departed from. The evidence, of course, would have been much stronger if the witnesses had been able to cite instances confirming their view. But still the evidence is not to be disregarded. The High Court relied principally on certain decrees relating to disputes in families, belonging to the same group, in which it was decided that the rule of succession was lineal primogeniture. These decrees do not, of course, bind the parties to the present suit, but they go a long way to shew the prevalence of the custom among families having a com- mon origin, and settled in the same part of the country. Lastly, the High Court relied on the precedence conferred or marked by the titles of honour given to the sons of the reigning Raja in order of seniority, a precedence which would naturally be attached to the lines of descent traced from them."

iii) In ***Kunhanbi vs Kalanthar***, XXVII [1914] Madras Law Journal 163,'63 a bench of the Madras High Court held:

> "When the fact of the existence of a custom amongst a particular class of people has been repeatedly proved in the courts, the courts have power to take judicial notice of it."

iv) In the ***Pittapur case*** **AIR 1918 PC 81** the Privy Council was concerned with custom governing a non-sovereign *Zamindari*. The Judicial Committee relied upon judgments relating to other Zamindaris and held:

> "When a custom or usage, whether in regard to a tenure or a contract or a family right, is repeatedly brought to the notice of a the Courts of a country, the Courts may hold that custom or usage to be introduced into the law without the necessity of proof in each individual case. It becomes in the end truly a matter of process and pleading. Analogy may be found in instances in the law Merchant or in certain customs in copyhold tenure. In the matter in hand their Lordships do not doubt that the right of sons to maintenance in an impartible Zamindari

> has been so often recognised that it would not be necessary to prove the custom in each case."

47. There were, in the pre-1950 era, thousands of Zamindaris in India. The basic difference is that they did not enjoy sovereign ruling powers and were merely land owners with the right to collect land revenue. Many of these impartible estates the succession to which was also governed by Primogeniture.

48. The holder of such impartible estates (non-sovereign ones) may not always be an absolute owner and it could well be a family property, yet the one who succeeded to the impartible estate by Primogeniture had the right to transfer *inter vivos* or by a Will. See *V T S T Thevar vs V T S S Pandia Thevar* AIR 1965 SC 1730.

(i) In the Travancore case [*Revathinnal Balagopala Varma vs His Highness Shri Padmanabha Dasa Bala Rama Varma*], 1993 Sup-1 SCC 233 a three-Judge Bench of the Supreme Court observed:

> ... ... It is suggested that the observations in that case run counter to the catena of decisions in the case of impartible estates relied on by Sri Nambiar but this is not correct. If the estate dealt with in that case had been an ordinary impartible estate, the decision should perhaps been quite different. But once the distinction is borne in mind that the estate was a sovereign estate and its chief a sovereign ruler, the real import of the decision becomes clear. It establishes beyond doubt that the acquisitions by a sovereign ruler cannot be claimed to be joint family property.

(ii) In ***D.S. Meramwala Bhayala v. Ba Shri Amarba Jethsurbhai*** ILR (1968) 9 Gujarat 966 it was held:

> (paras are excerpted) Against a judgment of the then Supreme Court of Bombay an appeal was taken up before the Privy Council and the judgment of the Privy Council was reported in *Elphinstone v. Bedreechund* 12 E R 340 = 4 MIA Supp 50. .....
>
> This being the law with regard to the powers of a sovereign and the legal status of the properties held by him there can be no manner of doubt that till the sovereignty of the Maharaja of Travancore had ceased he was entitled to treat and use the properties under his sovereignty in any manner he liked and his will in this regard was supreme. ...
>
> If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him that the said property was held by the sovereign not as a sovereign but in some other capacity. In the instant case apart from asserting that the properties in suit belonged to a joint family and respondent 1 even though a sovereign ruler, held them as the head of the family to which the property belonged, the appellant has neither specifically pleaded nor produced any convincing evidence in support of such an assertion. It has been urged on behalf of the appellants that only the eldest male offspring of the Attingal Ranis could, by custom, be the ruler and all the heirs of the Ranis who constituted joint Hindu family would be entitled to a share in the properties of the Ranis and the properties in suit were held by respondent 1 as head of the tarwad even though impartible in his hands. This plea has been repelled by the trial court as well as by the High Court and nothing convincing has been brought to our notice on the basis of which the presumption canvassed on behalf of the appellant could be drawn and the findings of the courts below reversed. ...
>
> The properties in suit having passed on from one sovereign to the other came to be ultimately held by respondent 1 in that capacity. Neither any principle nor authority nor even any grant etc. has been brought to our notice on the basis of which it could be held that in the properties of the State held by a sovereign an interest was created or came into being in favour of the family to which the sovereign belonged.

49. The law which applied to the former Rulers was different than that applied to the non-sovereign States. The distinction in application was again explained by the Supreme Court in ***Nabha case Pratap Singh vs Sarojini Devi*** 1994-Supp(1) SCC 735,'49 para 65 in the following words:

> "Though impartibility and primogeniture, in relation to zamindari estates or other impartible estates are to be established by custom, in the case of a sovereign Ruler, they are presumed to exist."

50. A table depicting the difference between the Ruler of an Indian State on the one side and the holder of an impartible Zamindari on the other.

	Ruler of an Indian State		*The holder of a Zamindari*
1.	The Ruler (Sovereign) would be the absolute owner of the State and its properties. None else would have any interest or share in his property.	1.	The holder of a Zamindari, as distinct from the Ruler of an Indian State, may hold it as an impartible estate. If it is ancestral, he holds it on behalf of the family, and although there would be no right of partition, his interest will not be that of an absolute owner, which a sovereign ruler was. It would have been family property and of the type understood by the series of decisions in that regard.
2.	Primogeniture would be presumed to apply as a Rule for succession.	2.	Primogeniture would not, repeat not, be Presumed to apply, but will have to be proved as a Custom.

3.	He would have been signatory to a Covenant / agreement ceding his State first (15.8. 1947) to the Dominion of India on three subjects, external affairs, com-munication & defence. And thereafter – by the Covenant or the Merger Agreement ceding the administration of his State to the Union or other Govern-ment prior to 26.1.1950.		He would not have been a party to any of the items 3 to 5 in the first column. This establishes the difference in status between a former Ruler on the one side and a Zamindari on the other. This in turn, makes all the difference to the applicable law.
4.	After 26.1.1950, he would be re-cognised as a Ruler of a former Indian State by the President of India under Article 366 of the Constitution.		
5.	He would be receiving an ann-ual privy purse for the amount fixed by the Ministry of States.	3 to 5	
6.	On his death, succession	6.	If the he dies after

	to his estate (properties) would be covered by the first part of the exception under Section 5(ii) and therefore not affected by the 1956 Act. If he dies after 17.6.1956, it would make no difference to the succession which will still be by primogeniture.		17.6.1956, succession to his estate shall not be by primogeniture. It will be as per Section 8 of Hindu Succession Act.
7.	He would be De-recognised as a Ruler by the 26th amendment.	7.	Since he was never recognised as a Ruler, there is no question of 'Derecognition'.

51. Numerous documents were filed in the trial court by the parties. As recorded in the impugned judgment the parties had confined to limited documents only. The documents relied upon by the parties in the trial court and discussed in the impugned judgment which have a bearing on the cardinal issue of primogeniture and its applicability to the State of Kapurthala, the same are referred as under :

I. <u>The appellant mainly relied upon the following Exhibits :</u>

(i) exhibit PW 1/51 is a book entitled as "Rajas of the Punjab" which is relied upon by the appellant inter alia to demonstrate that Harnam Singh one of the Rajas of Kapurthala

had converted to Christianity and imposition of primogeniture by the British Paramountcy.

(ii) the appellants have also relied upon the order of 11th August, 1948 passed by Jagatjit Singh which declared that the Mussoorie Estate was his private and personal property and would descend to his heirs as their private and personal property.

(iii) family settlements marked as X-8 and D-11 were also relied upon by the appellant to submit that in this family settlement reference was to HUF.

II. The respondents have relied upon the following documents :

(a) D-61 is a document dated 14th July, 1837 which shows a jagir of Rs.27,000/- per annum given by Raja Nihal Singh to Kr. Amar Singh, the younger brother by way of maintenance. This demonstrated that Umar Singh who was described as Koer accepted only the maintenance from the Raja and laid no claim to the Gaddi and the property of the State of Kapurthala.

(b) D-62 is a similar document on behalf of Koonwar Amar Singh seeking issue of payment of expenses from his elder brother Sardar Nihal Singh Bahadur. This letter clearly records the allegiance and submission of Amar Singh to Nihal Singh.

(c) D-63 is a letter dated 19th September, 1837 from Maharaja Ranjit Singh to his son directing him to make over the estate of yielding Rs.30000/- per annum to Kr. Amar Singh, his younger brother, for maintenance. This also records that Umar Singh will thereafter have no further concern with Ranjit Singh. This letter also demonstrated the pivotal position of the elder son

lending to the exclusion of the other siblings.

(d) Ex. D-64 is a translated letter dated 24th March, 1840 written by the Sher Singh brother of Maharaja Sher Singh to Sardar Nihal Singh of Kapurthala regarding the complaint of Amir Singh is respect of the enjoyment of his jagir. This letter also recorded a final settlement by which Nihal Singh was asked to make over the jagir worth Rs.30,000/- for the subsistence of Koer Amar Singh. This letter also demonstrated the primacy of the elder brother.

(e) D-23 is the merger agreement by which the rulers of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsin and Nalhagarh formed into Patiala and East Punjab States Union.

(f) D-1 is the letter/order dated 11th August, 1948 of Maharaja Jagatjit Singh declaring that the share of Mussoorie estate comprises of the private and personal property of Jagatjit Singh and devolves on the heirs and successors of Maharaja Jagatjit Singh as their private and personal property.

(g) Ex.D-17 is the Succession Certificate proceedings before the Sub Judge, First Class under the Indian Succession Act dated 4.2.1956 where Major Sardar Kirpal Singh, the Private Secretary to Maharaja Sukhjit Singh deposed that on 10th July, 1955 in Mussoorie, Maharaja Paramjit Singh executed a Will (Ex.PA) in favour of Maharaja Sukhjit Singh, the then Tikka Sukhjit Singh. He deposed to the then soundness of mind of the maker of the Will and attestation of Shri Shanti Sagar. He also deposed that the laws of primogeniture applied to the ruling family of Kapurthala.

(h) Ex.D-13 and D-15 is the application and the evidence of Major Kirpal Singh which record that Maharaja Jagatjit Singh was

succeeded by Maharaja Paramjit Singh being his elder son and only son succeeded the father and others were entitled only to allowances. He also deposed that Maharaja Sukhjit Singh was the only heir of Mharaja Paramjit Singh after his death in July, 1955. The application for succession certificate averred that the law of primogeniture applied to the family of Sardar Jagatjit Singh of Kapurthala.

(i) Ex. X-22 to X-27 are the Adminsitrative Reports from 1867-68 to 1917-18 demonstrating that primogeniture invariably prevailed in Kapurthala apart from the other Hindu states of Punjab.

(j) A perusal of the Ex.D-22 (Memo of Indian States) shows that Kapurthala family has been indicated as a family which follows primogeniture in the said Administrative Reports. References are to be found to the name of Sh. Randhir Singh for the year 1667-68, Kharag Singh for the year 1874-75, Jagatjit Singh for the year 1882-83 and for Jagatjit Singh again for 1892-93. These contemporaneous documents clearly indicate that primogeniture was noted as prevalent in the Administrative Reports in respect of Estate of Kapurthala. It is also indicated in the administrative report of the 1910-11 that the male heir of Jagatjit Singh was Paramjit Singh. Similar notation was also made for the year 1917-18.

(k) Ex. D-22 is the Memorandum of Indian States published by the then Government of India and the relevant portion of the said document in relation to Kapurthala reads as follows :

> "4. His Highness has four surviving sons, the Heir Apparent, Tikka Raja Paramjit Singh (born on the 16th May, 1892), Major Maharaj Kumar

> Amarjit Singh (born1893), Maharaj Kumar Karamjit Singh (born 1895) and Maharaj Kumar Ajit Singh (born 1907)...."
> "He was made a C.I.E. in 1935. His Highness has been permitted to call his heir apparent the "Tikka Raja" instead of "Tikka Sahib. A son and heir was born to the Tikka Raja in October, 1934, and was named Rajkumr Sukhjit Singh."

The defendant No.1's counsel sought to rely upon the said statement to show that the Government of India also officially regarded defendant No.1 as the heir apparent thus demonstrating the existence of primogeniture.

(l) Ex. D-59 is the deed "HIBA NAMA" is a gift registered on 9th February, 1924 by Maharaja Jagatjit Singh to his sons younger to Paramjit Singh, Mahait Kuamr, Major Mahijet Singh, Mahait Kumar Karmjit and Maharaj Kumar Ajit Singh. This gift deed describes Paramjit Singh Vali Ahad, i.e. proclaimed successor.

(m) Ex. D-6 is the writing of plaintiff No.3 which according to the defendant No.1 acknowledged primogeniture and reads as under :

> "Moncisur R. Axleroud
> Director,
> Societe General (Sogegarde)
> 4 Avenue Raymond Poincare, Paris 16
> France
> Dear Sir,
>
> I write to inform you that my husband, Maharaja Sukhjit Singh of Kapurthala, will personally bring you this letter by hand.
>
> This is to authorize you, on presentation of this letter, to hand over to Maharaj Sukhjit Singh of Kapurthala, all his jewellery and valuables, lying with the Societe General (Sogegarde) for safe custody, in our joint names, details of which are attached separate.
>
> All these items in your safe custody in our joint names, are the exclusive and personal property of Maharaja Sukhjit Singh of Kapurthala, having been inherited by him from his later Father, the late Maharaja Paramjit Singh of

Kapurthala who died in 1955 and who bequeathed his entire estate in India and abroad by a will dated 10th July, 1955, to Maharaja Sukhjit Singh of Kapurthala. This will was probated in India England and France, entirely in Maharaja Sukhjit Singh's favour. Being a serving officer in the Indian Army, on active services, only as a precaution, has this arrangement for the safe custody of his personal valuables, in his absence, been made by me and my name added jointly to his for the safe custody of his jewellery and valuables, which will continue to remain as always, his exclusive personal property fully taxed in his sole hands.

Yours faithfully,

Sd/-
(GITA DEVI)
Maharani of Kapurthala"

According to the respondent No.1's counsel this letter of the plaintiff No.3 clearly contains the admission of the appellant No.3 that the entire estate of Kapurthala was inherited by the respondent No.1

(n) Ex. D-37 is the certificate given by the Ministry of States, Government of India dated 8th July, 1949 certifying that upon the death of the Maharajs of Kapurthala, Paramjit Singh succeeded to the Gaddi as the son and the heir and assumed full powers as the ruler an was entitled to all funds, shares, government securities and other properties held by various banks and concerns as held by his late father Maharaja Jagajit Singh in the dominion of India.

(o) Exh. D-9 is the succession certificate in favour of Maharaja Paramjit Singh in respect of the estate of the deceased Maharaja Jagatjit Singh.

(p) Exh. D-14 is the statement of Dewan Pyare Lal, Advocate dated 6.2.1965 which indicated that Maharaja Paramjit Singh inherited the entire estate of Kapurthala upon the death of Maharaja Jagatjit Singh and that in the family of Maharaja Sahib

only the eldest son becomes the ruler.

(q) Exh. D-12 is the judgment dated 5th November, 1965 by Senior Sub Judge. The said order records that Paramajit Singh succeeded to the estate of Kapurthala upon the death of Maharaja Jagatjit Singh on 19th June, 1949 on the basis of right of primogeniture and upon the death of Maharaja Paramajit Singh on the basis of succession certificate obtained by Maharaja Sukhjit Singh, issued notice to the general public as per the publication in Tribune. Significantly this was granted after notice to the younger sons of Jagatjit Singh i.e. Karamjit Singh and Ajit Singh. There was no resistance to the application. The succession certificate was granted in favour of defendant No.1 Sukhjit Singh.

(r) Exh. D-16 is the succession certificate under Section 372 of Indian Succession Act granted in favour of defendant No.1, Sukhjit Singh in respect of assets of Maharaja Jagatjit Singh Bahadur who died on 19th June, 1949.

(s) Exh. D-27 is the estate duty assessment order dated 30th August, 1961 which shows that the property owned by Maharaja Paramajit Singh was owned in an individual capacity and the estate duty was charged as an absolute estate passing to absolute successor and not a successor of interest in coparcenary as provided by Section 34 (1)(c) of the Estate Duty Act 1953.

(t)(i) X-22- Table LB-2(vi) for the year 1867-68, relating to Raja Randhir Singh, in which a column exists for showing whether the family follows primogeniture. Kapurthala is shown as so following.

(t)(ii) X-23-Table No.6 for the year 1874-75 relating to Raja Kharak Singh, excerpted only for Kapurthala, with a similar

column on primogeniture as given in (i) above, again stating that the family follows primogeniture.

(t)(iii) X-24-Relating to Maharaja Jagatjit Singh. Item No.5 of the Table for the year 1882-83, excerpted only for Kapurthala as given in (ii) above. The column shows that the family follows primogeniture.

(t)(iv) X-25 – Again relating to Maharaja Jagatjit Singh. Item 5 of the table for the year 1892-93, is similar to (iii) above, with the column once again showing that the family follows primogeniture.

(t)(v) X-26 – This is an extract of Item No.5 for the year 1910-11, pertaining to Maharaja Jagatjit Singh. The column in this extract now reads as 'Name and Age of Male Heir' under which is given the name of 'Paramjit Singh, age 19 years (1910)'.

(t)(vi) X-27 – This again, is an extract of Item No.5 for the year 1917-18 pertaining to Maharaja Jagatjit Singh. Once again the column for the year 'Name and Age of Male Heir' shows Paramjit Singh, age 26 years.

(t)(vii) Exh. X-1 is the settlement with Maharani Stella widow of Maharaja Paramjit Singh dated 19th April, 1962 which describes the defendant No.1 as His Highness of Maharaja Sukhjit Singh of Kapurthala. The settlement granted a payment of Rs.64,000/- to Maharani Stella plus other sums of money which led to the abandonment of the suit filed by Maharani Stella in France.

The counsel for the respondent No.1 submitted that if the property was coparcenary as per the appellants contention, then Maharani Stella would have had life interest in the estate on 19th July, 1955 which would have enlarged under Section 14 (1) of the Hindu Succession Act to absolute interest which would then

have been 1/3rd of the estate and the fact that she settled only for continued maintenance shows that Kapurthala Estate was not a joint family property.

(u) Ex.D-35 is the letter of M/s Khanna and Annadhanam, Chartered Accountant dated 16th August, 1962 giving the view of Shri Vishwanath Shastri on primogeniture applying to defendant No.2. Of similar effect is Ex. D-34 which is the letter of the said chartered accountant dated 1st May, 1977 stating that the property had devolved under the Wills and could not be HUF.

(v) PW 1/1 and DA are the family settlements relied upon by the plaintiff showing assets of the HUF properties. The case of the learned counsel for the respondent is that at best only the specific assets described in the aforesaid documents can be treated as HUF and no other assets can be imbued as HUF.

(w) Ex. D-36 is the letter of plaintiff dated 20th evening stating that she does not have any money.

(x) Ex. D-48 is a civil suit filed by the respondent No.1 seeking restoration of certain jewellery items and restraint order against the defendant No.3, Smt. Geeta Devi. The plaint also seeks a mandatory injunction in respect of the keys of a flat located in the Kapurthala Villa, Mussoorie Chateau and the matrimonial home at Greater Kailash, New Delhi.

(y) Ex. D-26 shows the respondent No.1's shares in the companies.

(z) Ex. D-43 are the tax returns of respondent No.1 in respect of FDRs. Strong reliance has been placed on the contemporaneous documents X 18 to X 21, PW-4/59 to PW-4/62, PW-4/72 to PW-4/78 by the counsel for the defendant No.1 which

documents are the wealth tax returns which show that the properties were described as individual properties by defendant No.1 and not as co parcenary properties.

(aa) Ex. D-21 discloses the gazette notification dated 4th August, 1956 which reads as follows :

> "Govt. of India
> Minsitry of Home affairs
> New Delhi-2, the 4th August 1956
> **ORDER**
>
> No.F3/19/55-Poll.III In pursuance of Clause (22) of Article 365 of the Constitution of India the President is hereby pleased to recognize His Highness Maharaja Sukhjit Singh as the Ruler of Kapurthala with effect from the 19th July, 1955 in succession of His late Highness Maharaja Paramajit Singh.
>
> Sd/- V. Viswanathan
>
> Joint Secretary"

(bb) This notification clearly shows that the Govt. of India recognized Sukhjit Singh defendant No.1 as the Ruler of Kapurthala and successor of Late Mahajara Paramajit Singh. Similar is the tenor of letter dated 10th August, 1955 issued by the Joint Secretary, Ministry of Home Affairs to the appellants.

(cc) Ex. X-8 is the Will of Maharaja Jagajit Singh the relevant portion of which reads as follows :

> "Tikka Raja paramajit Singh being my eldest son will succeed to all my personal estates. These estates have always devolved on the eldest so according to the rule of primogeniture. He will of course be succeeded by his eldest son.
> In order to remove all doubt I bequeath the above properties to Tikka Raja paramjit Singh and after him to his eldest son Maharaja Kumar Sukhjit Singh.
>
> (Sd) Jagatjit Singh
> Kapurthala
>
> 16th January, 1949

MAHARAJA”

52. Now we shall also discuss the documents referred in Paras 47 and 48 as well as other relevant documents produced by the parties in the trial court and rival submissions of the parties.

53. So far it was Reports regarding Punjab States. To show that Primo-geniture applied invariably to the former Rulers (from all over India), apart from what the Supreme Court observed in the *Privy Purses case*, AIR 1971 SC page 530,’96 = 1971-1 SCC 85,’219 photocopies of the Administration Reports from other parts of the then Indian sub-continent were also submitted. These are:

1. Photocopy of the relevant pages from the Report on the Administration of the Madras Presidency during the year 1880-81. Cover page plus 3 pages.

2. Photocopy of the relevant pages from the Report on the Administration of the Central Provinces for the year 1892-93. Cover page plus 2 pages.

3. Photocopy of the relevant pages from the Kathiawar Administration Report for 1899-1900. Cover page plus 11 pages.

4. Copy of the relevant portion of the Report on the Administration of the North West Provinces and Oudh for the year 1900-01.

5. Copy of the relevant portion of the Report on the Administration of the Central Provinces for the year 1900-1901.

6. Copy of the relevant portion of the Report on the Administration of the Madras Presidency for the year 1899-1900.

7. Copy of the relevant portion of the Report on the Administration of the Bombay Presidency for the year 1900-1901.

54. The *Meramvala* Vol.9 (1968) I.L.R. Gujarat 966 = Vol.9 (1968) Gujarat Law Reporter 609 judgment also places reliance on such Reports to hold that primogeniture applied to the Princely State in question before that court. The Administration Reports were prepared till about 1919. Thereafter, the official annual publication was the Memoranda on the Indian States. These Reports are by themselves enough to conclusively prove that Primogeniture prevailed in Kapurthala. Yet, appellants persisted with their contention– Kapurthala was always a joint family with the *karta* being called the Maharaja.

55. Ex.D-22 is a photocopy of the cover page and pages 221 to 241 of the Memo for the year 1940, of which para 4 at page 231 is excerpted below:

> 4. His Highness has four surviving sons, the Heir-Apparent, Tikka Raja Paramjit Singh (born on the 16th May 1892), Major Maharaj Kumar Amarjit Singh (born 1893), Maharaj Kumar Karamjit Singh (born 1896), and Maharaj Kumar Ajit Singh (born 1907). The second son, Maharaj Kumar Mahijit Singh (born 1893), died in April 1932. All His Highness's sons received their education in England. Maharaj Kumar Amarjit Singh

was made an Honorary Captain in 1918, and Honorary Major on the 18th January 1930. He served with the Indian Corps in France and Flanders for about a year during the Great War, and in 1928 was selected as British Staff Officer to accompany General Gouraud, Military Governor of Paris, during a three months' tour in India. He was A.D.C. to His Excellency the Commander-in-Chief. He was made a C.I.E. in 1935. His Highness has been permitted to call his heir-apparent the 'Tikka Raja' instead of the 'Tikka Sahib'. A son and heir was born to the Tikka Raja in October 1934, and was named Rajkumar Sukhjit Singh.

Two Memos of Indian States (1938 and 1940) in original as also the original White Paper on Indian States were filed.

56. All official records noted Tikka Raja Paramjit Singh as the Heir Apparent which shows prevalence of Primogeniture. The entire body of official records, when referring to:

i. Paramjit Singh (born 1892 - died 19.07.1955);

ii. Mahijit Singh (born 1893 - died 1932);

iii. Amarjit Singh (born 1893 - died 1943);

iv. Karamjit Singh (born 1896 - died 1973); or

v. Ajit Singh (born 1910 - died 1982),

has always recorded Paramjit Singh (till 1949) as Tikka Raja and / or Heir Apparent while his younger brothers were not given any such status. Nowhere has he (Paramjit) been referred to without either Tikka Raja or Heir Apparent. Similarly, nowhere has he been referred to as only *Waris* (Heir) or as a 'Maharajkumar'.

57. After 19.07.1949, Paramjit Singh came to be recorded as Maharaja while his brothers continued as Maharajkumar. None of the other four brothers (only two survived 1949) have been referred to as Heir Apparent or Tikka Raja or other than simply 'Maharaj-kumar'. So much so that post-19.07.1955 when 2nd Lt. Sukhjit Singh came to be recorded as the 'Maharaja of Kapurthala', uncles Karamjit Singh and Ajit Singh continued to be referred to as Maharajkumars.

58. It is held in many decisions that the grant of maintenance shows that the property is not joint property. Reliance is placed on the following passage from ***Raja Chattar Singh vs Diwan Roshan Singh***: AIR 1946 Nagpur 277

> that the practice of granting allowance for maintenance to junior members of the family indicates the impartible nature of the estate and the existence of a custom of succession by rule of primogeniture.
>
> And also upon *Meramwala* Vol.9 (1968) I.L.R. Gujarat 966 = Vol.9 (1968) Gujarat Law Reporter 609 case
>
> Since the rule of primogeniture was applied to the estate ... therefore, during his lifetime made a grant called Kapal Giras of village Khari in favour of Valeravala for his maintenance. ... Or else the grant of maintenance in favour of Valeravala would be entirely unnecessary and inexplicable ...

The Supreme Court judgments in *Raj Kumar Narsingh Pratap Singh Deo vs State of Orissa*, AIR 1964 SC 1793,'99 *Prabir Kumar Bhanja Deo vs State of Orissa*, ILR 1969 (Orissa / Cuttack

Series) 794,'90 and also in the *Vadia case*, AIR 1967 SC 346 where the terms 'Primogeniture', 'Heir Apparent', and 'Maintenance', with respect to a Princely State of Gujarat are recorded.

59. The evidence on the file re-garding the factum of the payment of maintenance grants, to the junior members of the Ruler's family in Kapurthala State.

a Translation of a letter dated 19th September 1837 from Maharaja Ranjit Singh addressed to S. Nihal Singh asking the Sardar to make over to Kr. Amar Singh a maintenance jagir of Rs.30,000/- per annum Ex.D-63.

b Translation of a letter dated 24th March 1840 from Maharaja Sher Singh of the Punjab to Sardar Nihal Singh about the maintenance Jagir for Kr. Amar Singh Ex.D-64.

c Translation of the 'Razeenama' deed between Kr. Amar Singh, younger brother of Raja Nihal Singh dated 4th July 1837, expressing gratitude for a maintenance jagir of Rs.27,000/- per annum Ex.D-61.

d Translation of a Deed dated 22 Har, 1994 Vikrami, executed by Kr. Amar Singh, accepting his maintenance Ex.D-62.

e Gift Deed [Hiba Nama] is Ex.D-59

Gift Deed

60. Gift Deed [Hiba Nama] is Ex D-59. It is respectfully submitted that it is relevant for two things: (1) Heir Apparent; and (2) Maintenance.

i Waliahad means 'heir apparent'. This description was conclusive of primogeniture.

ii This means maintenance allowances were already being given in cash and as a supplement thereto, these lands were being granted.

iii (line 6) This shows that the three sons (grantees) were younger to the heir apparent and formed a different class.

iv (line 6 end) Which means for the maintenance of the future generations of the three Maharajkumars. This again points towards primogeniture.

v (page 2 line 1) Indicates that a single heir would be other than the three younger sons, who were the beneficiaries under the grant. If primogeniture did not prevail, and the younger sons were to succeed under Mitakshara Law, then the whole purport of this document and this sentence, falls.

If primogeniture had not applied, the Ruler would not have so written. This document is signed by Tikka Raja Paramjit Singh, who is described as: Tikka Raja Heir Apparent, Kapurthala State.

1949 (and 1964) Succession documents

61. The 1949 'matter of fact Succession' on the death of Maharaja Jagatjit Singh. This was based on Will X-8 / Primogeniture. The 1950 proceedings and grant of Succession Certificate dated 18.8.1950 Ex.D-9 to only one son, the eldest, also shows Primogeniture. So also the grant of a subsequent Certificate in 1965 Ex.D-16, where it was, also so stated, in the petition and the judgment.

In 1964, Major Kirpal Singh appeared as a witness in the Court of the Senior Sub Judge, Kapurthala in proceedings relating to a supplementary Succession Certificate with regard to the Estate of Maharaja Jagatjit Singh and his statement, in those proceedings, which is given Exhibit D-15. The law of Primogeniture applies to this ruling family. The two younger sons of Maharaja Jagatjit Singh were noticed by the Court in the 1964 proceedings. There was a public notice as well.

62. **1955 Succession documents**

Like with 1949, the 1955 'matter of fact Succession' (on the death of Maharaja Paramjit Singh) is a clincher when it comes to deciding (and rejecting) the claim. This was based on Will D-11 / Primogeniture. There is also the evidence of Major Kirpal Singh, (since deceased) recorded by the Court at Kapurthala in Succession Certificate proceedings before the Court of Shri Hari Krishan Mehta, SJIC, Kapurthala. This Court file has been summoned from Kapurthala and is on the record of this hon'ble High Court. The statement, Ex.D-17, is as under:

The law of Primogeniture applies to this Ruling Family.

The appellant no.3 was asked following questions in cross-examination :

Qn. May I take it that all these persons succeeded to his estate in equal shares ? *(The question refers to the heirs of Maharaja Paramjit Singh who died on 19th July 1955.)*

Ans. No. They did not succeed to his estate in equal shares.

Qn. Can you point out any document by which S.Partap Singh and Raja Sir Daljit Singh partitioned out from the Kapurthala family?

Ans. As far as I know, it was their father and their uncle who had been given a certain amount, details of which can be found in the book, Ex.PW1/51, which I have already tendered in Court. I have not seen any other document apart from the book which refers to certain documents.

I cannot refer to any book or document apart from Ex PW1/51 which states about any partition between Raja Randhir Singh, Kr Bikram Singh and Kr Suchet Singh. It would be possible for me to refer to some other documents which are in the possession of my husband but as I have no access to them, it is not possible for me to do so.

Qn. Can you refer to any document or passage in any book in history on the Kapurthala family in which there may be any mention of any properties of Raja Randhir Singh going over to Harnam Singh ?

Ans. I have no access to any such document.

Qn. Is it your case that there was a family partition in the life time of Maharaja Jagatjit Singh ?

Ans. My case is that there were partitions in the family even before the life time of Maharaja Jagatjit Singh.

Qn. Can you refer to any document which might have recorded any partition in the life time of Maharaja Jagatjit Singh ?

Ans. As I have no access to any documents although they may be in existence, I am unable to refer to these.

Qn. May I take it that there was never any partition between the various persons that you have mentioned in answer to previous question at any time prior to 15 August, 1947 ?

Ans. As I have stated already that they were all living independently with their own properties, jagirs, moneys, jewellery and were all receiving, including the grand children, each allowances from Maharaja Jagatjit Singh before 15th August, 1947.

Qn. May I take it that all the properties that you have enumerated above devolved upon Maharaja Paramjit Singh, Maharajkumar Karamjit Singh and Maharajkumar Ajit Singh, the three surviving sons of Maharaja Jagatjit Singh in equal shares on the death of Maharaja Jagatjit Singh ?

Ans. As the surviving sons of Maharaja Jagatjit Singh had already received during his lifetime the properties, houses, movables, jewelleries and cash, remaining properties were not divided between the three sons alone but between different members of the family also. For instance Maharajkumar Rani Mahijit the widow of Maharajkumar Mahijit Singh, received Wycliffe in Mussoorie and Maharaja Paramjit Singh also sold some land in Fatehabad and gave her the money. Maharajkumar Karamjit Singh who had also received

properties and valuables and moneys during the lifetime of his father claimed and was given Rs 2,25,000/- by Maharaja Paramjit Singh. Sunnyside was given to Maharajkumar Karamjit Singh and St Helens Cottage in Mussoorie was given to him to live for his lifetime. 3, Mansingh Road, New Delhi was sold by Maharaja Paramjit Singh. Villa in Kapurthala was given to Maharani Brinda and the last surviving consort of Maharaja Jagatjit Singh, Rani Bushair was given the Elysee Palace to reside in for her life time.

Qn. May I take it that all these persons succeeded to his estate in equal shares ? *(The question refers to the heirs of Maharaja Paramjit Singh who died on 19th July 1955.)*

Ans. No. They did not succeed to his estate in equal shares.

Qn. Of all the various persons mentioned in the pedigree table filed by you, Exhibit D/3, can you tell us of any document by which partition amongst any of them might have been effected at any time ?

Ans. As members of Hindu Undivided Family they did not claim because they were always given some properties and assets and were treated fairly. I have no access to any documents showing a partition.

Qn. On 4th March 1981, you stated that “The Chiefs and Jagirdars of Punjab were always Joint Hindu Family”. Can you refer to any document by which any partition was effected at any time between any Chief or Jagirdar of Punjab ?

Ans. I have no knowledge of any documents.

Qn. Can you refer to any passage in any books which refers to there having been a partition amongst the families of Chiefs and Jagirdars of Punjab at any time ?

Ans. No, I cannot.

Qn. Kindly state the year and the document by which the property in Mussoorie, known as Wycliffe was given by the late Maharaja Jagatjit Singh to the widow of his second son, Maharajkumar Rani Mahijit Singh ?

Ans. I have no knowledge of any such document nor can I give the year. I am only aware that the family of Maharajkumar Rani Mahijit Singh is living in that house uptil today.

Qn. Please give any reason why no member of the family sought partition against Maharaja Paramjit Singh and instead, put pressure through the Ministry of Home Affairs as has been stated by you ?

Ans. I cannot give the reasons of others action. However, the members of the family had received a very fair and just portion during the life time of Maharaja Jagatjit Singh. At the time of the demise of Maharaja Jagatjit Singh his last surviving consort was very old and it would be unthinkable for her to take any independent action. The only member of the family who was able to voice a protest on behalf of the others was Maharajkumar Karamjit Singh and he did this very strongly and with the approval and backing of the other members of the

family managed to claim and get some allowances which they were receiving during the lifetime of Maharaja Jagatjit Singh.

Qn. Can you tell any reason as to why when Maharaja Paramjit Singh according to you was treating nobody nicely, no member of the family claimed a partition of the alleged Joint Hindu Family properties, i.e. the Villa Kapurthala, Jagatjit Palace and Chateau Mussoorie etc.?

Ans. I have already stated that some members of the family received a just portion during the lifetime of Maharaja Jagatjit Singh, father of Maharaja Paramjit Singh. In fact, Maharaja Paramjit Singh did not wish Maharajkumar Rani Anar Devi, his sister-in-law, to have the property known as Wycliffe in Mussoorie. After a brief court action he was compelled to give it to her. He was also compelled to give Maharajkumar Karamjit Singh Rs.2,25,000/- before he agreed to sign the succession certificate. He was also compelled to allow Maharajkumar Karamjit Singh to have the property rights of St Helens Cottage in Mussoorie. He was also compelled to allow Dowager Maharani Bushair the right of residing in the Elysee Palace in her life time. Some moneys were also given separately to Maharajkumar Rani Anar Devi. Maharajkumar Ajit Singh had been born from a Spanish Rani who had separated from Maharaja Jagatjit Singh many many years ago. He was brought up abroad and hardly resided in India. He did not wish to be embroiled in any unpleasantness and, therefore, after the house at

Mussoorie had been secured for her and the Cottage at Mussoorie had been secured for Maharajkumar Karamjit Singh and the house of Elysee Palace at Kapurthala had been secured for the Dowager Maharani Bushair and the maintenance allowances which they used to have during the lifetime of Maharaja Jagatjit Singh had been secured for them through the efforts of Maharajkumar Karamjit Singh, there was nothing more in dispute. As the Head of State recognised Maharaja Paramjit Singh as the next Karta this matter had to be agreed to by the other members of the family and this is what I meant when I said that it was Maharajkumar Karamjit Singh who signed the succession certificate. I have no idea where the succession certificate which I have referred to was signed by Maharajkumar Karamjit Singh.

Qn. I put it to you that the consent to succession certificate that you are referring to was given in case No. 69 instituted on 23rd June, 1950, before Sub-Judge 1st Class with special powers, Kapurthala ?

Ans I have no idea.

63. **Appellants oral evidence**

The Appellant's case, both in their pleadings and evidence, is that the Kapurthala family was always a coparcenary. Baba Jassa Singh was the first Karta and after the successive incumbents to the 'kartaship', the burden of managing the family had fallen on the shoulders of Maharaja Jagatjit Singh who became the *karta* in 1877. After his decease, the 'kartaship' devolved on S.Paramjit Singh and thereafter, on S.Sukhjit Singh.

The evidence recorded is as under:

Qn. May I take it that in 1945 there was no joint Hindu family of which Maharaja Jagatjit Singh may have been a Karta ?

Ans. Maharaja Jagatjit Singh was a Karta of joint Hindu family in 1945. The members of that family comprised of his wives, his sons and children of his sons.

Qn. Please state whether according to you, the receipt of this revenue (the revenue of the State of Kapurthala) was individual property in the hands of Maharaja Jagatjit Singh or ancestral property in the hands of Maharaja Jagatjit Singh ?

Ans. Maharaja Jagatjit Singh was Karta of the family. This revenue was a receipt of the family.

Qn. Please state whether according to you the receipt of the income from the Avadh Jagir by Maharaja Jagatjit Singh was his personal property or as Karta of any joint family ?

Ans. According to me, Maharaja Jagatjit Singh was Karta of the family. The revenue from the Avadh Jagir was received by him as Karta of the family.

Qn. Can you state if the word 'Karta of the family' was used in any document or book with reference to anybody in the Kapurthala family during the period 1783 to 1955 ?

Ans. I have not read any book in the colloquial language and most of the books that I have read with regard to our family history have been written in English. The head of

the family has been referred to as the Chief or Sardar which I expect is equivalent to Karta in Hindu Law.

Qn. Can you state about any document or any book or any Government communique in which the Kapurthala family or members thereof was at any time, i.e. between 1783 to 1955, referred to as, “Joint Hindu Family”, or “Hindu Undivided Family” ?

Ans. There may be some reference to this family in the book Ex. PW1/51. On the other hand Baba Jassa Singh left no son so a member of his family S. Bhag Singh succeeded as Karta. He having only one son, S.Fateh Singh received the title of Karta from his father, but I cannot refer to any other book or document.

Unable to state when and how the coparcenary was formed ?

Qn. When was the joint family, of which you are seeking partition, formed ?

Ans. In my opinion we were always a joint family.

Qn. Can you tell me the year ?

Ans. If my personal experience is being asked, I say, from the date of my marriage.

Qn. May I take it that there was no joint family in Kapurthala State prior to your marriage ?

Ans. There was always a joint family in Kapurthala State prior to my marriage. According to me Maharaja Jagatjit Singh was head of the joint family. I am seeking partition of the same family. Raja Kharak Singh was father of Maharaja Jagatjit Singh. According to me Raja Kharak

Singh was also head of Joint Hindu family. Before that Raja Randhir Singh was head of the family. Before Raja Randhir Singh, Raja Nihal Singh was head of the family.

Qn. On 3rd March, 1981 in your statement, you had stated that on 20th July, 1955, defendant No 1 was Karta of the family of which the other members on that day were the two sisters of defendant No 1 and Maharani Brinda Devi and Maharani Stella. Please state that this joint status had existed for how many years without any interruption to that date ?

Ans. I had stated that the founder of this family was Sadhu Singh. He was not a Chief; he was not a Ruler neither was he a conqueror. He was a simple man who founded four villages in the vicinity of Lahore. He was a Majha Sikh and he had four sons. He was Karta of his family. I had mentioned in great detail the persons who became Karta after him. I may add that Baba Jassa Singh who for his personal integrity became not only Chief of the Ahluwalia "Misal" acknowledged leader of the other Sikh "Misals", neither was he a King or a Chief. He was, in fact, a Jagirdar and until Kapurthala was taken by Baba Jassa Singh, it was a Jagirdari of Rai Ibrahim. Sardar Bhag Singh was the next Karta and Sardar Fateh Singh followed him but Sardar Fateh Singh was, in fact, a Jagirdar of the Court of Lahore and his very existence depending upon the favour of the Court of Lahore. The next Karta Raja Nihal Singh lost a great many of the

estate some of which were restored by the British. In fact, it was the British who gave the title of Raja to our family who were Jagirdars. The title of Maharaja was bestowed by the British on Maharaja Jagatjit Singh, great grandfather of our sons and Maharaja Jagatjit Singh was Karta of this family and he made a declaration in which he had listed his private properties. These properties were acquired with the help of inherited ancestral properties and by his declaration itself he made it quite clear that these properties descend to Maharaja Paramjit Singh as Karta and not as his exclusive individual properties. Maharaja Paramjit Singh by his Will also made it quite clear that he did not intend Maharaja Sukhjit Singh to hold these properties as his personal exclusive properties but these properties were to go to him as Karta for the benefit of himself and the other members of his family.

Qn. Can you give any reason why after the death of Raja Nihal Singh, Raja Randhir Singh became the Ruler and not Bikram Singh and Suchet Singh ?

Ans. The reason that I can give is that Raja Randhir Singh was the eldest son of Raja Nihal Singh. It is correct that Raja Randhir Singh had two sons, Raja Kharak Singh and Raja Harnam Singh. Raja Kharak Singh became the ruler as he was the eldest son.

64. **Respondent's oral evidence**

The Chief Secretary of Kapurthala State (at the time of merger in 1948), Mohan Lal Puri, appeared as DW-4.

Qn. Can you state if the succession amongst the Ruling Family of Kapurthala is governed by any custom, if so, what is that custom ?

Ans. The ruling family of Kapurthala was governed by the custom of the rule of Primogeniture. The elder son succeeded to the throne and the properties of the Ruler.

65. Dewan Pyare Lal, Advocate (who had been the counsel of one of the sons of Maharaja Jagatjit Singh in the succession case and also otherwise, familiar with the Ruler's family), appeared as DW-2 and said:

Qn. Kindly state if you know as to whether the succession amongst the Ruling Family of Kapurthala has been and is governed by the rule of Primogeniture or not ?

Ans. The rule of Primogeniture governs the devolution of succession in the Royal Family of Kapurthala.

66. Respondent No.1 had come in the witness box as DW-6 and stated:

The Rulers of Kapurthala have always been governed by the law of Primogeniture. The nature of the properties held by the Rulers of Kapurthala from time to time has always been absolute individual impartible estate. Among the Rulers of Kapurthala before 1975, there was never any Hindu Undivided Family or any partition.

> Late Maharaja Jagatjit Singh was my grandfather. He was the Ruler of Kapurthala for over six decades until his demise in 1949.

67. That Maharaja Jagatjit Singh was a sovereign ruler and his sovereignty extended over 630 square miles of territory known as the Princely State of Kapurthala, cannot be a matter of dispute. In fact, both the appellants and respondents are *ad idem* on it. This Sovereignty continued to be wielded by Maharaja Jagatjit Singh till 20.08.1948. Maharaja Jagatjit Singh was an absolute monarch. He was the supreme legislature, the supreme judiciary and the supreme head of the executive.

Being a sovereign ruler, no incidence of coparcenary or Joint Hindu family could be applied to properties held by him and the juniors (sons), had no right by birth. See the judgment of Bhagwati J in *Meramwala's case*, Vol.9 (1968) I.L.R. Gujarat 966 = Vol.9 (1968) Gujarat Law Reporter 609 and the judgment of a Division Bench of the Kerala High Court in *Travancore case*. 1983 KLT 408 In *Thakore Vinay Singh's [Mohanpur] case*, AIR 1988 SC 247 the Supreme Court held that there was no coparcenary, and in ***Vishnu Pratap Singh vs State of Madhya Pradesh*** AIR 1990 SC 522 they were pleased to hold that the Ruler was the absolute owner of all properties. The Supreme Court judgment in appeal from the Kerala High Court, and in the *Nabha* case 1994 Supp-1 SCC 734 = 1993 Sup-1 SCR 607 are conclusive.

68. The series of judgments culminating with the *Nabha case*, where the Supreme Court said:

> "Though impartibility and primogeniture, in relation to *Zamindari* estates or other impartible estates are to be established by custom, in the case of a

> sovereign Ruler, they are presumed to exist squarely applies. The plaintiffs say nothing why this dictum – a statement of general law – by the Supreme Court, is not applicable here. Incidentally, Nabha was also one of the eight Rulers who were signatory to the Covenant Ex.D-23 by which their sovereignty was ceded and PEPSU inaugurated."

69. Maharaja Jagatjit Singh being a Sovereign Ruler, a Presumption (of impartibility-Primogeniture) could be raised. If Kapurthala was a mere *Zamindari* – then no 'Presumption' will be available and it will be for the respondent to prove by evidence that the custom of impartiblity-primogeniture existed. In other words, it was for the appellants to show that Kapurthala is an exception and this burden is a very heavy one. Where once the sovereign status could not be disputed, firstly, the appellants had to prove an exception to the general rule – of Primogeniture. Secondly, even if there was no such presumption, there was overwhelming documentary evidence that Primogeniture prevailed in Kapurthala.

70. No such suit for declaration or partition was filed. Appellants have not pointed out any suit for partition in the post-merger and pre-17.06.1956 period. There is no reported judgment either. The consistent view is that it can be said with certainty that this rule (Primogeniture) continued even after 1947-48. Under Article 372, the law of succession relating to Primogeniture continues until it is repealed.

71. There are two periods: (1) pre-merger; and (2) post-merger, i.e., post-20.08.1948. No one can dispute the proposition that Maharaja Jagatjit Singh was enjoying sovereign powers and if he wanted to, he could convert the State and its properties into

HUF properties. He did not do so. All he did was execute: (1) Ex.D-1; and (2) Will X-8.

72. The appellants say Ex.D-1 converted the Mussoorie property to HUF by applying a hitherto unheard of interpretation to the words 'heirs and successors' whereby they argue that this Declaration converts the property to HUF. It does not help the case of the appellants because that (clause of the Covenant) would have been needed to be called in to aid should the Government of India wielding after 20.08.1948 sovereign legislative powers sought to pass a law which altered the customary law of succession.

73. The argument of the appellants that there was a distinction between public and private property of a sovereign Ruler and that for the private property was held as a *karta* of a coparcenary, is again untenable. A similar argument was rejected by the Court in the *Nabha* case, where the Supreme Court formulated the Question as:

> The allied question is whether the Rule of Primogeniture applies only to the Rulership (Gaddi) and not to the other property ?

And, after relying upon a series of judgments and the White Paper on Indian States, laid down:

> This being the position, the distinction drawn between public and private property seems to be not correct.

In view whereof, this argument of the appellants have no force.

74. At this time [20.08.1948] there was a segregation of properties. Certain properties were retained by Maharaja Jagatjit

Singh which were termed (at this juncture), as private properties. A list thereof was prepared by him and submitted to the then Ministry of States.

75. Whether Primogeniture was stamped out (extinguished) by Maharaja Jagatjit Singh on 11.08.1948 by Order Ex.D-1, I submit upon here, but the fact remains and the mention is made here only to complete the narration, because that Order is nine days before the cesser of sovereignty and the Appellants argument have the following :-

> Even if Primogeniture had not been stamped out on 11.08.1948, by Ex.D-1, it ceased to apply on 20.08.1948.

Maharaja Jagatjit Singh, ceased to be a sovereign, when he ceded his State to PEPSU on 20.08.1948. The appellants, relying upon the maxim *Cessat Ratio Cessat Lex*, say that even if primogeniture applied, and also applied to private property, once the need thereof, came to an end, primogeniture in any case came to an end. In other words, according to them, all the Hindu Rulers (including Maharaja Jagatjit Singh) ceased to be governed by primogeniture, when they ceased to be Sovereigns in 1948-49 [20.08.1948 in this case].

76. The appellants state that till that date the members of the joint family could not have gone to Court, but henceforth every member became entitled to seek partition. In *Meramwala's* case, the Division Bench speaking through Bhagwati J, (as his Lordship then was) had rejected a similar argument. In that case Bhayawala had died on 17.09.1953, long after the merger (or

cesser of sovereignty) and yet, Primogeniture was found to have applied. The plaintiffs' argument regarding 'applicability', 'survival (or dormancy) and resumption' of the personal law by which the ancestors of the Rulers were governed prior to their wielding of sovereignty, is wrong on principle and unsupported by precedent. The proceedings of the legislature in relation to Section 5 of the Hindu Succession Act, also indicate that primogeniture applied to the Rulers, who, after 1948-49, were 'Ruling over no territories' but only holding properties and some privileges.

i) In ***Rajkumar Narsingh Pratap Singh Deo vs State of Orissa*, AIR 1964 SC 1793 Gajendragadkar** CJ speaking for the Court observed:

> .. .. as we have just indicated the customary law, which required the Ruler to provide maintenance for his junior brother, can be said to have been continued by clause 4(b) of the Order of 1948 and Article 372 of the Constitution .. ..
>
> It is plain that though the customary law requiring provision to be made for the maintenance of the appellant is in force.

The Supreme Court was referring to the years 1950-51, and if they found that the customary law in question – maintenance to the youngers where Primogeniture prevails – had continued past the merger agreement into the post-Constitution era (thereby implying that the rights of the junior members \ brothers did not spring back by reason of the merger). In *Privy Purses* case, at page 596, where it was said that the President had to recognise a Ruler by applying the customary law.

ii) In ***Prabir Kumar Bhanja Deo vs State of Orrisa*** ILR 1969 (Orissa / Calcutta series 794) the question before the DB was

relating to Keonjhar a Princely State in Orissa. After stating the genealogical table and noting that Primogeniture prevailed, and also noting that "*Pachchis Sawal*" was a document of high authority relating to customs prevailing in these States and had stood the field for long years, returned a finding:

> It will thus be apparent from the aforesaid two questions and answers that in Keonjhar State, where succession was governed by the custom of lineal primogeniture, the junior members of the Raj family were not entitled to any interest in the Rajgi (the Raj State). They had only a right of maintenance. … …

The turn of events in 1947-48 did not put an end to this rule. On the contrary, it continued as law under Article 372 of the Constitution of India.

77. Even after the integration of States in 1948-49, the Government of India, in several matters pertaining to succession in the erstwhile Princely States, recognised the existence of this rule. The Hindu Succession Act, 1956 specially provided Section 5(ii) so as to continue this rule.

78. After 15.08.1947, S.Jagatjit Singh's grand-uncle Raja Sir Maharaj Singh son of Raja Harnam Singh (Born 1878 -died 1959, and great-great-great-grandson of Sardar Bhag Singh, the second Ruler of Kapurthala) – or failing him the other senior direct lineal male descendants of Sardar Bhag Singh did not come forward with a claim to become the *karta* (and be called Maharaja of Kapurthala) in the lifetime of Maharaja Jagatjit Singh itself, being the senior-most male.

Whether any act of Maharaja Jagatjit Singh or any other event converted the property into joint Hindu family property?

79. The Appellants case that at a Darbar on some day after 20.08.1949 and before 19.06.1949, Maharaja Jagatjit Singh declared that he was no longer the absolute owner and he threw everything into the HUF hotch-pot – the Larger HUF or the Medium HUF is a separate issue – (as many people did with part of their property in the post-constitutional era to reduce the incidence of taxation), in which event, consequent to such declaration, all the family members would have acquired vested interest and then on his decease (19.06.1949), there would be survivorship (cesser of interest). The subsequent events speak for themselves. Therefore, the extinguishment of Primogeniture, revival of rights and other theories of the appellants are liable to be rejected.

80. Inasmuch as there being no dispute about the concepts of Mitakshara succession and joint property per the law as it stood in the pre-17.06.1956 era, and the plaintiff's-appellants' case being that it was always a joint family where the *karta* was designated as the Ruler – partition/s being a separate issue – it is also necessary to classify the 'family' by its size (number of members).

> "It is also to be noted that none of the collaterals came forward with a claim to become the *karta* (and be called Maharaja of Kapurthala) on the ground of being the senior-most male in the lifetime of Maharaja Jagatjit Singh itself. Similarly, none of the other males or even the widows brought any suit for

partition. The fact that all this did not occur, by itself proves there was no HUF."

81. We now come to 19.06.1949 when Maharaja Jagatjit Singh [1872-1877-1949] breathed his last. He left behind two widows, three sons, and one widow of pre-deceased son.

82. Appellants case as noted earlier, is that on 19.06.1949, the succession was:

i per Mitakshara Survivorship as distinct from Succession;
ii (*alternatively*) per Mitakshara Succession, (absolute ownership)

and not by Primogeniture or Will. It is also their case that if the property was not HUF from before, it was, in any case, converted to coparcenary as of this day, i.e., by reason of Mitakshara Succession.

83. The Respondent's case is that it was neither Mitakshara Survivorship nor Mitakshara Succession, but succession by Will X-8, or failing proof of that Will, by Primogeniture. It is also the Rspdt's case that as a matter of fact, the eldest son Maharaja Paramjit Singh received everything, and no share of property was received by the collaterals (or even the younger sons of Maharaja Jagatjit Singh, except that they and the widows did receive maintenance), which matter of fact succession:

(1) proves Will X-8 / Primogeniture, and (2) disproves Mitakshara Survivorship and / or Mitakshara Succession.

84. To test the Appellants' contention, let us first assume that Maharaja Jagatjit Singh was the *karta* of an HUF (coparcenary) – large (Great) or Medium.

If the appellants contentions of the HUF from before, or revival of rights on 15.08.1947 / 20.08.1948, were to be accepted, then the larger HUF (coparcenary) would comprise all the descendants of Sardar Bhag Singh, the second Ruler of Kapurthala – the (supposed) *Great Kapurthala Coparcenary*.

In such an event, the male members of the family would have had vested interest from prior to Maharaja Jagatjit Singh's death, and each one would have also been free from before, to sue for partition.

85. If the appellants' (alternative) contention of the HUF in any case being created on or after 20.08.1948 and being in existence on 19.06.1949 were to be accepted, the 'Medium' HUF (smaller) would comprise Maharaja Jagatjit Singh's branch, i.e., his wives, three sons, widowed daughter-in-law, and all the grandchildren. Each one would have been free from before, to sue for partition.

Hindu Mitakshara Survivorship postulates a pre-existing coparcenary where all the members have a vested right in the property from prior to Maharaja Jagatjit Singh death (19.06.1949). The Survivorship principle of the pre-17.06.1956 era proceeds on the basis that on death, the existence of the deceased gets subsumed but the coparcenary continues to exist.

86. If Mitakshara Intestate Succession:

The next contention of the appellants– of the 1949 succession being Mitakshara intestate, i.e., no Will or Primogeniture.

> Mitakshara intestate succession on 19.06.1949 would mean inheritance (or receipt) of property by the three sons as joint-tenants, and per *stirpes* and not per *capita*. All grandsons would also get interest from that point of time (19.06.1949) itself. In common parlance, it is referred to as 'ancestral property', i.e., property which by reason of inheritance stood converted to HUF. The widows (after 1937) would have got life interest. This was the law prior to 17.06.1956.

87. To test this contention of the appellants, we proceed on the basis that Maharaja Jagatjit Singh was not the *karta* of an HUF (coparcenary) – large or small – and an absolute owner, but we assume that he was not governed by the rule of Primogeniture, but by Mitakshara (as Hindu commoners of north India were prior to 17.06.1956). In that event, and assuming he died intestate, as per the customary law (*Shastric* Hindu law) then prevailing, the following:

i	Tikka Raja Paramjit Singh	-	Eldest son
ii	M.K. Karamjit Singh	-	Second son
iii	M.K. Ajit Singh	-	Third son

The three grandsons – Tikka Raja Sukhjit Singh, R.K. Arun Singh and R.K. Martand Singh – would have got vested interest on this day (19.06.1949) itself.

88. The two widows (Maharani Bushair and Maharani Prem Kaur) and the widowed daughter-in-law (M.K. Rani Mahijit Singh) would have got life interest under the 1937 Act. The granddaughters (Indira and Asha Kaur) would have become 'members' with a right to maintenance and marriage expenses,

which ‘membership’ would have ceased on their marriage. Therefore (in such event), by operation of law, all of them (that is, all the three sons along with their wives and sons) would become part of the Kapurthala joint family on 19.06.1949 itself, and unless a partition takes place at which they get equal shares, their rights are not lost.

89. The fact that the two younger sons did not claim as coparceners, and instead received only maintenance, shows, and shows conclusively, that it was the Will X-8, and the rule of Primogeniture, that prevailed. There is no evidence on record or proof by the appellants to show Mitakshara Survivorship/ Succession. On the contrary, the evidence produced and proved by the respondent No.1 establishes :

(1) absence of Mitakshara Survivorship or Mitakshara Succession; and

(2) succession by Will/Primogeniture.

90. Further, if ‘Mitakshara inheritance’ had taken place in 1949, there could have been no Succession on 19.07.1955, but only ‘Survivorship’, at which, not Sukhjit Singh, respondent No.1 but his uncle M.K. Karamjit Singh, would have become the *karta*. This did not happen. See Chapter 11 *infra*. Furthermore, as per the law, all the widows would have got limited or life interest (under the 1937 Act), and since all six survived 17.06.1956, their interests would have stood enlarged on 17.06.1956 by virtue of Section 14(1) of the Hindu Succession Act. And, since it is admitted to have not occurred – the evidence on record also shows

that it did not occur – it stands proved that the succession in 1949 was by Will / Primogeniture, and not by Mitakshara.

91. The matter of fact succession – by the eldest son (Paramjit Singh) alone, with only 'maintenance' to the brothers (younger sons) – or the events that transpired subsequently (19.07.1955, 17.06.1956) more than establish that on 19.06.1949 there was: (1) no HUF; (2) no survivorship; (3) no Mitakshara intestate succession; but Will X-8 or Primogeniture.

92. The documents as referred earlier and the evidence adduced on behalf of the respondent No.1 clearly establish the sovereign character of the erstwhile Kapurthala State. Consequently, the appellants plea that the rulers of Kapurthala were only Jagirdars or Chiefs and not rulers is wholly without cogent evidence and the appellants are failed to substantiate their plea raised, on the other hand the evidence produced has proved that the Kapurthala was a sovereign State and the custom of primogeniture was invariably prevalent in Hindu Sovereign State all across India including Kapurthala.

93. After having gone through the impugned judgment, we are of the considered view that the learned Single Judge has dealt with each and every piece of evidence produced by the parties and has rightly come to the conclusion that the respondent No.1 has been able to establish his pleas raised in the written statement and we agree with the finding of the learned Single Judge that there is cogent evidence on record to come to the conclusion that rule of primogeniture prevailed.

94. Hence, there is no scope of interference in the impugned

judgment and decree passed by the learned Single Judge on 03.09.2004. The appeal is, therefore, devoid of any merit and the same is dismissed with costs.

95. Now, we shall deal with the cross-objections filed lby respondent no.1 pertaining to its contentions on issue nos. 6 to 9.

96. The finding on issue no.6 arrived by P.K. Bahri, J. in judgment dated 06.04.1992 which reads as under :

> "Mere fact that mark X8 is the certified copy of the purported Will of Maharaja Jagatjit Singh does not mean that the onus to prove that Maharaja Jagatjit Singh actually had executed a valid Will stood discharged on the part of defendant No.1. the executionof the Will has to be proved in terms of Section 63 of the Indian Succession Act. No evidence has been led to prove that Maharaja Jagatjit Singh who was about 76 years of age at the time of his death in 1949 had the testamentary capacity to execute a Will. No evidence has been led to show that the original Will of which mark X8 is the copy actually had signatures of Maharaja Jagatjit Singh and also the signatures of the two attesting witnesses. In Moon Devi Vs. Radha Devi; AIR 1972 SC 1471, it has been laid down that it is not merely the genuineness of signatures on which the proof of the execution of the Will under Section 38 of the Indian Succession Act depends, it has to be proved that the Will was attested in accordance with clause (e) of that Section.
>
> It may be also highlighted that letters Exs. PW 1/18, PW 1/19, PW 1/64 and PW 1/65 would indicate that defendant No.1 was very keen and rather coerced his father to execute a Will in his favour cancelling the previous Will made in favour of Maharani Stella. Such pressure and coercion would not have been necessary if Maharaja jagatjit Singh had made a Will of which mark X8 is the copy because defendant No.1 would have inherited all the properties bequathed to Maharaja Paramajit singh on the basis of the siad Will and in fact, Maharaja Paramajit Singh could not have been entitled to make any Will in respect of those properties at all.

It is also admited case oif the parties that Maharaja Paramjit Singh was making allowances to his collaterals which he had stopped and defendant No.1 in the letter referred to above while referring to the contents of the Will of Maharaja Jagatjit Singh was also accusing his father of acting dirty towards the family and not following the contents of the Will of Maharaja Jagatjit Singh. The document Ex.DW6/XN is a letter written by late Prime Minister Pt. Jawaharlal Nehru to his father objecting to his father cutting down the allowaqnces being given to the other members of the family. So, it is evident that allowances were being paid by Maharaja Paramjit Singh to other family members and it is not shown by defendant No.1 why such allowances were being paid and what were the conditions and the rule which the allowances were being paid to which the indication is given in the letter Ex. DW6/XN. The stateemnts of two witnesses Pyare Lal and Des Raj, Advocates, do not prove that the Will which was allegedly filed in the court proceedings at Kapurthala bore the signatures of Maharaja Jagatjit Singh and they also did not say that they were in a position to idenity the signatures of Maharaja Jagatjit Singh and of the attesting witnesses. The testimony of Des Raj, Advocate, shows that a certificate was issued by the Govt. of India in davour of Maharaja Paramjit Singh which was filed in the petition for grant of succession certificate with regard to certain assets left by Maharaja Jagatjit Singh and he could not deny whether the succession certificate had been granted on the basis of certificate issued by the Govt. of India. It is quite evident that the succession that the succession certificate was not granted on the basis of the alleged Will of Maharaja Jagatjit Singh. So, examiend from every point of view, it is clear that defendant No.1 has miserably failed to prove that Maharaja Jagatjit Singh had executed a valid last Will of which mark X8 is the copy.

In view of the above discussion, I hold that defendant No.1 has failed to prove that any Will dated January 16, 1949, of which Mark X8 is the certified copy was executed by Maharaja Jagatjit Singh. So, Issue No.6 is decided against defendant No.1."

Issue Nos.7 to 9 were to arise only if the findings were to be given in issue Nos.6 to 8 in favour of defendant No.1.

97. While determining the issue No.8, the following are main finding in the judgment:

> "As far as factum of obtaining a succession certificate is concerned, it is obvious that the proceedings for grant of succession certificate being not proceedings in probate jurisdiction donot determine any title in rem. The succession certificate only entitles a person to collect the money left by the deceased.
>
> In Ram Saran Vs Gappu Ram, AIR 1916 Lahore 277, it was laid down that grant of succession certificate does not establish title of the grantee as the heir of the deceased, it only furnishes him with an authority to collect the debts and allows the debtors to make payments to him without incurring any risk. A similar proposition was reiterated by the Lahore High Court in Mt. Charjo & another Vs Dina Nath & others, AIR 1937 Lahore 196.
>
> At the time the aforesaid certificate was obtained, defendant No.1 was unmarried. As far as testimony of attesting witness Maj. Kirpal Singh, who has since deceased, recorded in the same is not admissible in evidence inasmuch as the same does not comply with the strict provision of Section 33 of the Indian Evidence Act. So, it cannot be used for proving the aforesaid Will.
>
> Defendant No.1 has not in his elaborate testimony stated as to how and in what manner and at what place the Will came to be executed. It is to be remembered that the Will was allegedly made on July 10, 1955 and Maharaja Paramjit Singh died on July 19, 1955. The contents of the letters written by defendant No.1 Exs.PW1/18, PW1/19, PW1/64 & PW1/65 show amply that defendant No.1's father was not in sound disposing mind during his last days and defendant No.1 was putting up lot of pressure and coercion on his father for revoking his Will which he had earlier made in favour of his wife Maharani Stela. Defenant No.1 in cross-examination was not even admitting the fact that his father had made a Will in favour of Maharani Stela

almost bequeathing everything to her but on persistent cross-examination his counsel conceded the fact that for the purposes of this case it be assumed that Maharaja Paramjit

Singh had made a Will in favour of his wife.

It has also come out on the record that defendant No.1 had to make a settlement with Maharani Stela and had to part with substantial estate. In case there was a valid Will of his father which is the last Will bequeathing everything in favour of defendant No.1 there could be no occasion for defendant No.1 to have entered into a settlement with Maharani Stela. The contents of the letters written by defendant No.1 mentioned above would clearly indicate that defendant No.1 was accusing his own father of playing dirty with the whole family by trying to leave everything in favour of Maharani Stela and his own efforts to prevail upon his father to revoke the said bequest. There was one schedule of the property attached with the settlement arrived at with Maharani Stela which would have disclosed us how much properly had been given to Maharani Stela on the basis of the settlement but that schedule was not produced.

The two attesting witnesses of the aforesaid Will Maj.Kirpal Singh and Shanti Sagar had died. Major Kirpal Singh was General Attorney and Secretary of defendant No.1. No evidence has been led by defendant No.1 to prove that the aforesaid Will was executed by Maharaja Paramjit Singh in presence of the said two witnesses. Reference was also made by counsel for defendant No.1 to the testimony of Dewan Pyare Lal (DW2) but his statement does not categorically prove the execution of a valid Will by Maharaja Paramjit Singh because he was not present at the time the alleged Will was executed by Maharaja Paramjit Singh.

A half hearted contention was raised that the document being 30 years old a presumption with regard to its due execution arises under Section 90 of the Indian Evidence Act. AT the time the suit was filed the document was not 30 years old. So, no presumption can be drawn regarding its due execution by reference to the provisions of Section 90 of the Indian Evidence Act. I hold that it is not

proved that Maharaja Paramjit Singh had executed a valid Will Ex.D11.

Issue No.8 is decided against defendant No.1."

98. In Issue No.6 it was held that the same was not proved that Maharaja Jagatjit Singh has executed any Will dated 16.01.1949 which is exhibited as 'X-8'. In issue No.8 again a finding was given that it is not proved that Maharaja Paramjit Singh had executed a Will dated 10.07.1955 exhibited as 'D-11'.

99. It was specifically mentioned in the order passed in review application on 28.4.1969 that the finding of the court with regard to the issue Nos.6 to 9 did not call for any review. It is a matter of fact that the said order allowing the review petitions was challenged by the appellants before the Division Bench of this Court and the appeal filed by the appellants was dismissed on 09.05.1996. As far as the respondent No.1 is concerned, he did not challenge the said order.

100. Learned counsel for the respondents have made various submissions and also referred decisions in support of cross objections filed by the respondent no.1.

101. Admittedly, P.K. Bahri, J. in his judgment dated 06.04.1992 had decided issue nos. 6 to 9 against the respondents as no review was allowed in respect of these issues by order dated 28.04.1995. The matter was then put up for fresh hearing of issue nos. 1,2,4,5,10 and 11 and ultimately the impugned judgment and decree was passed on

3rd September, 2004 in the main Suit. The same was challenged in the present appeal. The respondnet no.1 filed the cross objections in the appeal and challenged the order of review dated 28th April, 1994.

102. Learned Single Judge, admittedly, has not dealt with the finding arrived on issue nos. 6 to 9 while passing the impugned judgment. Learned cousel for the respondent however, during the course of arguments the learned counsel for the respondent has admitted that the issue on the decision of two Wills marked X-8 and X-11 are merely academic. If relief in favour of respondent no.1 is granted by holding that the rule of primogeniture is applicable in the State of Kapurthala.

103. In view of the abovesaid reasons, we feel it not necessary to deal with and discuss on these issues. The cross objections filed by the respondnet no.1 are, therefore, disposed of accordingly as this court has decided the issue of rule of primogeniture in favour of the respondents.

104. No costs.

MANMOHAN SINGH, J.

A.K. SIKRI, J.

NOVEMBER 19, 2010
Jk/dp/sa