Ameer-Un-Nissa Begum & Ors vs Mahboob Begum & Ors on 14 January, 1955

Equivalent citations: AIR 1955 SUPREME COURT 352

Bench: V. Bose, N.H. Bhagwati, B. Jagannadhadas

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           CASE NO.:
Appeal (civil)  101-103 of 1954

PETITIONER:
AMEER-UN-NISSA BEGUM & ORS.

RESPONDENT:
MAHBOOB BEGUM & ORS.

DATE OF JUDGMENT: 14/01/1955

BENCH:
B.K. MUKHERJEE (CJ) & V. BOSE & N.H. BHAGWATI & B. JAGANNADHADAS & B.P.
SINHA

JUDGMENT:
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JUDGMENT AIR 1955 SC 352 The Judgment was delivered by : B. K. MUKHERJEA C. B. K. MUKHERJEA C. J. : These three appeals are directed against a common judgment of a Division Bench of the Hyderabad High Court dated 21-1-1954, by which the learned Judges affirmed, on appeal, three orders made by the City Civil Court, Hyderabad in three analogous execution proceedings arising out of the execution of the same decree. Two of these three execution cases were commenced by respondents 1 to 12 in Appeals Nos. 101 and l03 of this Court, while the third case was started by respondent 1 in Appeal No. l02. The appellants in the three appeals were the objectors in all the three execution proceedings and their objections having been overruled by both the courts below, have come up on appeal to this Court on the strength of a certificate granted by the High Court under Art. 133 (1) of the Constitution.

2. This litigation has had a long history behind it, and to appreciate the points that have been canvassed before us, it will be necessary to narrate briefly the material facts.

3. The dispute between the parties relates to rights of succession to the 'matrooka' or personal estate left by one Nawab Wali-ud-Dowlah, a wealthy noble man and a high dignitary in the State of Hyderabad. The Nawab, who was a member of the Vicar-ul-Umra Paigah family and had been a Minister in the Hyderabad Government for many years, died on 22-2-1935, while he was on a pilgrimage to Hedjaz. Besides extensive Jagir properties appertaining to the Paigah which fetched an income of nearly Rs. 1, 36, 000 per year, he left 'matrooka' or personal estate of considerable value.

It is not disputed that Ameer-un-nissa Begam, appellant 1 in the appeals before us, was one of the wedded wives of the Nawab and that she and the five children, whom she bore to her husband, are entitled to their legitimate shares in the properties left by the deceased. There is also no. dispute that the Nawab was legally married to another lady named Fatima-un- nissa Begum, some time in 1920. Fatima-un-nissa Begum left her husband's house a few months after her marriage but the marriage was never dissolved. The only claim put forward by her against her husband's estate which is material for our present purpose is one to recover a sum of Rs. One lakh as dower debt.

The controversy between the parties really centred round the point as to whether two other ladies, to wit, Mahboob Begum and Quadiran Begum were legally married wives of the late Nawab, or whether they were mere 'kavases'or permanent concubines kept by him. If there was no. legal marriage between them and the Nawab, it is not disputed that neither they, nor their children, though admittedly begotten on them by the Nawab, would be entitled to any share in the 'matrooka' or the personal estate left by the deceased. Mahboob and Quadiran are respectively respondents 1 and 5 in Appeals Nos. 101 and 103 before us. Respondents 2 to 4 in these appeals are the children of Mahboob, while respondents 6 to 12 are the sons and daughters of the Nawab born of Quadiran Begum.

4. The dispute first arose before the Paigah Trust Committee (Atiat) whose duty it was to distribute the income of the Paigah estate amongst the heirs of the late Nawab. It appears that in April 1935, shortly after Ameer-un- nissa Begum, who had accompanied her husband to Mecca, returned to Hyderabad after the death of the latter, the Paigah Committee addressed letters to Ameer-un-nissa, Fatima-un-nissa and Mahboob Begum enquiring about the wives and children left by the Nawab. No. letter, it seems, was addressed to Quadiran. On a consideration of the replies given by the addressees and also the statements made on their behalf at the hearing before the Committee, the latter drew up a report which was submitted to the Executive Council of the Nizam.

The Committee proceeded on the footing that the Nawab's marriage with Ameer-un-nissa Begum was beyond dispute but as Mahboob Begum did not produce her marriage certificate even after repeated demands by the Committee, she as well as Quadiran were treated as concubines. The Committee recommended that the annual income of the Paigah should be divided in the proportion of 60 to 40 amongst the legitimate and illegitimate relations of the Nawab. Sixty per cent of the income was to go to Ameerunnissa Begum and her issue and the remaining 40 per cent, was to be paid to Mahboob Begum and Quadiran, as it well as to their children.

These recommendations were approved by the Nizam by a 'Firman' dated 9-7-1936. Previous to this, express intimations were given to the surviving relations of Wali-ud-Dowlah under orders of the Nizam that whatever disputes might exist among them regarding 'matrooka' or personal estate of the Nawab should be decided by proper proceedings in a Court of law and pending such decision the estate might be kept under the supervision of the Paigah Committee.

A dispute arose some time afterwards regarding the pension to be given to the wives of the Nawab. The Council recommended that Ameerunnissa should be given a pension of Rs. 300 per month and a sum of Rs. 100 should be allowed to Mahboob Begum. Ameerunnissa Begum made a

representation that Mahboob Begum was not a legally married wife of the Nawab and consequently was not entitled to claim or receive any pension. By a 'Firman' dated 30-ll-1937, the Nizam directed that the entire pension should go to Ameernnissa Begum and Mahboob Begum should be instructed to prove the legality of her marriage in the Darul Quaza Court.

On 8-2-1938, Mahboob Begum and her children filed a suit in the Darul Quaza Court which was a Court established under the law for deciding rights of succession, marriage, divorce etc. of the Muslims in the Hyderabad State, praying for a declaration that Mahboob Begum was the legally married wife of the Nawab and the children were his legitimate children, and for other consequential reliefs in the shape of participation in the 'matrooka' and recovery of dower debt payable to Mahboob Begum. Ameerunnissa Begum and her children and Quadiran and her children were among the defendants impleaded in the suit.

Written statements were filed by the defendants and also rejoinders by the plaintiffs, but before the suit could come up for hearing, a 'Firman' was issued by the Nizam on 19-2-1939 on the application of Ameerunnissa directing the withdrawal of the suit from the Darul Quaza Court and the appointment of a Special Commission consisting of Nawab Jeewan Yar Jung, the then Chief Justice of Hyderabad and the Judge of Darul Quaza, before whom the suit was pending, to investigate the matter and submit a report to the Nizam through the Executive Co.

5. The proceedings before the Special Commission commenced on 27-3-1939. On 26-9-1939, Quadiran filed a plaint before the Commission on behalf of herself and her children wherein she claimed identical reliefs as were claimed by Mahboob Begum and her children. This plaint was at first rejected by the Commission but was subsequently entertained under a Firman dated 5-9-1940. It appears that Fatimaunnissa also lodged a plaint in the Darul Quaza Court in respect of her dower against the estate of the Nawab and this matter was also directed to be investigated by the Commission.

The inquiry before the Commission was a protracted affair in which a large mass of evidence both oral and documentary, was adduced. The Commission submitted its report on 16-10-1944. They found that Mahboob Begum and Quadiran were both legally married wives of the Nawab, with the result that they and their children were entitled to participate in the distribution of the 'matrooka'. Fatimaunnissa was also held to be a legally wedded wife of the Nawab and as such entitled to the dower claimed by her.

When the report came up for consideration by the Executive Council, the members of the Council were divided in their opinion. A minority of the members was in favour of accepting the findings of the Commission forthwith but the majority view was that a further report should be obtained, before the Council could formulate its final recommendation. Eventually, on the advice of the Council, the Nizam directed by his 'Firman' dated 27-8-1945, that the report of the Special Commission should be scrutinised by an Advisory Committee consisting of three persons, to wit, two Judges of the High Court and the Legal Adviser of the State.

The instructions conveyed to the Committee in the 'Firman' were that they should take no. further evidence and should not hear the parties and that what they were to consider was, whether having regard to the documents in writing of the late Nawab and other evidence adduced before the Commission, the three ladies could be held to be legally married wives or not. The three ladies referred to were Mahboob Begum, Quadiran and Fatimaunnissa.

This Committee submitted its report on l4-11-1945, and their findings were that the marriage of Fatimaunnissa was proved but that the marriages of Mahboob Begum and Quadiran were not proved. On 20-3-1946, the Executive Council recommended that despite the report of the Committee, the findings of the Special Commission should be accepted and this recommendation was approved by the Nizam by a 'Firman' dated 26-6-1947, which was communicated to Mahboob Begum and Quadiran Begum on 28-71947. The 'Firman' is in these terms :

> "In this connection even after knowing the opinion of the advisers who were appointed to advise the members of the Council, the opinion of the majority of the Council is that the decision of the Commission is worthy of being implemented. So it should be implemented soon, because in this much delay has already occurred and the heirs are greatly worried waiting for the decision of the Commission."

6. There was a petition by Mahboob Begum praying that the members of the Special Commission themselves should be asked to implement their findings but eventually it was decided by a Resolution of the Executive Council dated 22-9-1947, that the task of enforcing the recommendation of the Commission should be entrusted to the Chief Justice of the Hyderabad High Court. This Resolution is worded as follows :

> "It has been unanimously resolved that for the execution of the report of the Commission there is a machinery existing in the High Court, through whom such matters can be completed. For this reason this matter may be entrusted to Mr. Abdul Hameed Khan, C. J., so that he may enforce the recommendations in the report of the Commission as early as possible."

This was accepted by the Nizam and on 30-5-1948 a 'Firman' was issued in the following terms :

> "In accordance with the opinion of the Council the decision of the Commission may be entrusted to the Chief Justice for execution proceedings so that he may carry into effect the recommendations of the Commission as soon as possible."

It appears that in subsequent communications to the Executive Council the Nizam expressed doubts regarding the status of Mahboob Begum and Quadiran Begum and suggested the replacement of the 'Firman' of 26-6-1947 by new orders in the nature of a compromise. The Executive Council, however, stuck to their decision and finally on 3-6-1948, the findings of the Commission were transmitted to the Chief Justice for execution of the same as early as possible.

On 28-6-1948, another 'Firman' was issued by the Nizam to the effect that whatever report the Chief Justice may prepare in respect of the distribution of the 'matrooka' he should obtain the sanction of the Nizam through the Council before carrying it into effect. This direction was embodied in a Resolution of the Executive Council dated 2-9-1948. The Police Action in Hyderabad commenced soon after that and on 25-9-1948, after the Police Action had terminated and a Military Governor was placed in charge of the Hyderabad State, a formal communication of the Resolution made above was made to the Chief Justice.

Soon afterwards, on the application of Ameerunnissa Begum made to the Military Governor the execution proceedings before the Chief Justice were stayed by an order dated 16-10-1948. This stay order was again cancelled on 6-11-1948, and the execution proceedings were allowed to continue. On 2-12-1948, the Chief Secretary to the president of the Executive Council wrote a letter to the Chief Justice, enquiring of the latter by what time his report regarding distribution of the 'matrooka' would be ready. In his reply dated 4-12-1948, the Chief Justice intimated that the report was almost ready and would be submitted in a day or two and on the day following the report was sent to the Executive Council of the Nizam.

On 24-2-1949, however, a 'Firman' was issued by the Nizam purporting to act under the advice of the Military Governor which directed that the finding of the Advisory Committee which differed from the views taken by the Special Commission should be given effect to; in other words the claims of Mahboob Begum and Quadiran Begum would stand dismissed and Ameerunnissa Begum was to pay Rs. One lakh to Fatimaunnissa as the dower due to the latter. The 'Firman' concluded as follows :

> "The matter is now finally decided and the case will not be reopened."

In spite of the ostensible finality contained in this 'Firman', a further 'Firman' was issued on 7-9-1949, which revoked the earlier 'Firman' of 24-2-1949, and the whole case was referred for opinion and report to Sir George Spence, the Legal Adviser to the Military Governor, who was directed to hear the parties and take such further evidence as he considered necessary. The text of this 'Firman' is as follows :

> "In my 'Firman' of 24-2-1949, which as stated therein was issued on the advice of the Military Governor, I directed that effect be given to the findings of the Legal Adviser Justice Qumar Hussain and Justice Abu Sayeed Mirza on the case of the succession to the late Wali-ud-Dowlah. The Military Governor for certain further reasons has now rendered further advice in accordance with which I revoke the direction given in the said 'Firman' and direct the case to be referred for opinion and report to Sir George Spence, the Legal Adviser to the Military Governor, who will hear the parties and have discretion to take further evidence if he thinks fit."

Enquiry then began before the Legal Adviser but neither party adduced any evidence. Sir George Spence submitted his report on -1-1950. The material findings and recommendations in his report were as follows;

'P. 76 : My finding on the case is that neither Mahboob Begum nor Quadiran Begum was married to the Nawab with the result that these ladies and their children are not entitled to participate in the distribution of the 'Matrooka'.

P. 77 : If this finding is accepted, the order required for its implementation would be an order dismissing the claims of Mahboob Begum and Quadiran Begum on the 'Matrooka' and directing Ameerunnissa Begum to pay Rs. One lakh out of the 'Matrooka' to Fatimaunnissa on account of Haq Mehar.

"

7. The Constitution of India came into force on 26-1-1950, and after the integration of Hyderabad with the Indian Union, the Nizam lost his absolute sovereign powers which he could exercise previously. It was, therefore, no. longer possible for him to issue a 'Firman' in terms of the report of Sir George Spence. To obviate this difficulty, recourse was had to legislation and in April 1950, an Act was passed, known as Wali-ud-Dowlah Act (Succession Act), which purported to end the disputes regarding rights of succession to the 'matrooka' or personal estate of the Nawab Wali-ud-Dowlah. Section 2(1) contained the material provisions of the Act and laid down that "

> the claims of Mahboob Begum, Quadiran Begum and their children to participate in the distribution of 'matrooka' of the late Nawab Wali-ud- Dowlah are hereby dismissed.
>
> "

The second clause of this section provided that a sum of Rs. One lakh was to be paid to Fatimaunnissa Begum on account of her dower.

8. Section 3 further provided that the decision affirmed in S. 2 could not be called in question in any Court of law. The Act received the assent of the Nizam as Raj Pramukh of the State on 24-4-1950.

9. On 6-3-1950, Mahboob Begum and Quadiran Begum, together with their children, presented a petition before the High Court of Hyderabad under Art. 226 of the Constitution, praying for appropriate writs to quash the aforesaid Act on the ground of its provisions being in conflict with the fundamental rights of the petitioners under Arts. 14, 19 (1)

(f) and 31 of the Constitution. This application was resisted by Ameerunnissa Begum and her children.

The High Court by its judgment dated 7-11-1950 substantially accepted the contentions of the petitioners and declared the Act to be void so far as it affected their rights. Against this decision, Ameerunnissa Begum and her children took an appeal to this Court being C. A. No. 63 of 1952 reported as - 'Ameerunnissa Begum v. Mahboob Begum', 1953 AIR(SC) 91 (A). This Court dismissed the appeal basing its decision practically on one ground, namely that the provisions of the Act

violated the fundamental rights of the respondents guaranteed under Art. 14 of the Constitution; and in this view it was considered unnecessary to decide the other points raised before the High Court.

It may be mentioned here that the learned Judges of the High Court held 'inter alia' in their judgment that there was a valid and operative decree in favour of Mahboob Begum, Quadiran Begum and their children based on the decision of the Special Commission, and one of the grounds on which the impugned Act was declared to be invalid was that this decree being property in the eye of law, the impugned Act had deprived the petitioners of their proprietary rights within the meaning of Arts. 19(1)(f) and 31 of the Constitution. This Court refrained from expressing any opinion upon this part of the judgment of the High Court and left the point open, particularly in view of the fact that the question of their being an effective and final decree in favour of the respondents was raised specifically by Ameerunnissa Begum and her children in the execution case started by the respondents which was awaiting decision before the City Civil Court of Hyderabad.

As has been said above, it was in pursuance of the 'Firman' of the Nizam, dated 30-5-1948, that the decision of the Special Commission was transmitted for implementation to the Chief Justice of the Hyderabad High Court. On 13-7-1948, Mahboob Begum, Quadiran Begum and their children presented an application for execution of this decree before the Chief Justice of the High Court and this execution case was pending when the Military Governor of Hyderabad by his order dated 16-10-1948, directed a stay of the execution proceedings. This order indeed was withdrawn on 5-11-1948, and the Chief Justice did proceed with his work after that and submitted his report on the 5th of December following, but shortly after that the 'Firman' of 24-2-1949 came, which dismissed the claims of these two ladies and their children altogether.

The events after that, leading up to the passing of the Wali-ud-Dowlah Succession Act which have been referred to already, prevented any further steps being taken in the execution proceedings. After the decision of the High Court was given on the writ petition and the Wali- ud-Dowlah Succession Act was declared invalid, a fresh petition was filed by Mahboob Begum, Quadiran Begum and their children on 12-3-1951. At that time an appeal had already been taken by Ameerunnissa Begum and her children against the judgment of the High Court in the writ petition and the appellants had obtained a partial stay of execution proceedings on the basis of a consent order passed by this Court on 25-1-1951. Consequently, in the application for execution filed on 12-3-1931, the prayer of the respondents was that the execution proceedings might be carried on subject to the order for partial stay made by this Court.

This execution petition was transferred to the City Civil Court, Hyderabad, under the orders of the Chief Justice as the original side of the High Court where the execution proceedings were pending had been abolished under the provisions of the Abolition of Original Jurisdiction of the High Court Act. This application was resisted by Ameerunnissa Begum and her children and the contentions raised 'inter alia' on the behalf were that there was no. effective decree in favour of the applicants at any time which was capable of being executed and even if there was any decree, it was destroyed by the 'Firmans' of the Nizam, dated 24-2-1949 and 7-9-1949.

It was also contended that the City Civil Court had no. jurisdiction to execute the decree. The learned Judge of the any Civil Court rejected these objections and directed that execution should proceed. This order was passed on 5-2-1952, and Ameerunnissa Begum and her children took an appeal against this decision to the High Court of Hyderabad which was numbered Appeal No. 196/1 of 1951-52.

10. As has been said already, on 9-12-1952, this Court dismissed the appeal filed by Ameerunnissa Begum and her children against the judgment of the High Court of Hyderabad in the writ proceedings. As a result of the dismissal of the appeal, the stay order was vacated and Mahboob Begum, Quadiran Begum and their children presented another application for execution in the City Civil Court in which the rest of their claims under the decree was included which was stayed during the pendency of the appeal in this Court. This petition was filed on 3-1-1953.

Ameerunnissa Begum and her children raised the identical objections against this application as they had raised in the earlier proceedings. The learned Judge of the City Civil Court took the matter as being concluded by his previous decision and dismissed these objections by an order dated 20-2-1953. Against this order Appeal No. 190/1 of 1953 was taken by Ameerunnissa Begum and her children to the Hyderabad High Court.

11. Alongside the first execution petition of Mahboob Begum and others, Fatimaunnissa Begum, the other admitted wife of the late Nawab, filed a petition for execution of her decree which she had obtained under the impugned Act and which had been declared to be subsisting by the High Court so far as her claim was concerned. To this execution petition also Ameerunnissa Begum and her children raised an objection and by a similar order dated 5-2-1932, the learned Judge of the City Civil Court dismissed the objections and directed execution to proceed.

Against this order also, Ameerunnissa Begum and her children took an appeal to the Hyderabad High Court which was numbered Appeal No. 195 of 1951-52. These three appeals were heard together by the learned Judges of the High Court and were disposed of by one and the same judgment dated 21-1-1954. The learned Judges affirmed the view taken by the City Civil Court and dismissed all the three appeals.

It is against the judgment that Appeals Nos. 101 to 103 of 1954 have been brought to this Court. Of these, Appeals Nos. 101 & 103 arise out of the two execution proceedings commenced by Mahboob Begum, Quadiran Begum and their children, while Appeal No. 102 arises out of the execution proceedings started by Fatimaunnissa Begum.

12. It may be mentioned at the outset that Appeal No. 102, which is directed against Fatimaunnissa Begum, has not been seriously pressed by the learned Attorney General who appears for the aappellants in all the appeals. The appellants do not dispute that Fatimaunnissa Begum was legally married to Nawab Wali-ud-Dowlah and is entitled to a sum of Rs. One lakh as dower out of the personal estate of her husband. As a matter of fact, the appellants have already paid her the sum of Rs. One lakh out of the 'matrooka' of the Nawab in their possession under the terms of the stay order, passed by this Court, on the application of the appellants at an earlier stage of the appeal.

The learned Attorney General made it clear that his clients have no. objection to Fatimaunnissa Begum's recovering this amount in discharge of the dower debt admittedly due to her from the estate of the Nawab but they are not prepared to treat this as payment towards the so- called decree which is the subject-matter of these execution proceedings and the existence and validity of which they do not admit.

The learned counsel appearing for Fatimaunnissa Begum expressed his readiness to accept the money in full satisfaction of the dower debt duo to his client and this position being accepted by both parties, there is no. other question which requires determination in this appeal. Whether Fatimaunnissa Begum is entitled to any share of the 'Matrooka, as wife of the deceased is another question and is not the subject-matter of the present proceedings and we do not express any opinion on this point at all. Subject to this observation, Appeal No. 102 will stand dismissed and there shall not be any order as to costs.

13. We will now take up the two main appeals, to wit, Nos. 101 and 103 which involve the same points for consideration and which have been argued with elaborate fullness by the learned counsel on both sides. The Attorney General appearing in support of these appeals has put forward a three-fold contention on behalf of his clients. He has contended in the first place that there was never in fact a decree in the present case capable of execution and consequently the execution petitions filed by the respondents were misconceived and wholly untenable in law.

14. The second point urged is that even if there was an effective decree at any time that was completely destroyed by the two 'Firmans' of the Nizam dated 24-2-1949, and 7-9-1949. Lastly it is argued that assuming that a valid and operative decree is still in existence, the City Civil Court of Hyderabad has no. jurisdiction to execute the decree.

15. The determination of all these questions depends primarily upon the meaning and effect to be given to the various 'Firmans' of the Nizam which we have set out already. It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no. constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; - nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed.

16. Before the High Court the question was elaborately discussed as to whether the 'Firmans' that were passed in the present case were in the nature of legislative enactments or judicial orders. We do not think that the question is of any practical importance for purposes of the present case though it may have some bearing on the rule of construction that is to be applied in interpreting these 'Firmans'.

The Nizam was not only the supreme legislature, he was the fountain of justice as well. When he constituted a new Court, he could, according to ordinary notions, be deemed to have exercised his legislative authority. When again he affirmed or reversed a judicial decision, that may appropriately be described as a judicial act. A rigid line of demarcation; however, between the one and the other would from the very nature of things be not justified or even possible. The learned counsel appearing before us on both sides, it may be stated, did not advance any argument upon this point at all.

17. In order to decide whether there was in fact a decree capable of execution in existence at any time in the present case, and, if it did so exist, whether it was revoked or cancelled later, we will have to examine the sequence of events beginning from the filing of the suit by Mahboob Begam and others in the Darul Quaza Court in February 1938, and ending with the 'Firman' of the Nizam passed on 7-9-1949, by which the case was referred for opinion and report to Sir Gorge Spence.

Mahboob Begum filed her suit in the Darul Quaza Court, which was an ordinary Court established by law for deciding disputes relating to marriage, divorce, succession, etc. of the Muslims in the Hyderabad State. If this suit had been allowed to continue in that Court, there is no. doubt that it would have, in the usual way, culminated in a decree capable of execution under the ordinary law. The case was, however, withdrawn from the Darul Quaza Court under orders of the Nizam dated 19-2-1939, and a Special Commission was appointed consisting of the Chief Justice of Hyderabad and the Judge of the Darul Quaza Court to investigate and submit a report to the Nizam through the executive council.

18. That this Special Commission was a sort of judicial tribunal and not a mere administrative body is not disputed on behalf of the respondents. The Nizam certainly intended it to be a substitute for the Darul Quaza Court where the case was pending. As a matter of fact, it appears to have been quite a normal practice in the Hyderabad State for the Nizam to direct disputes regarding succession to estates of princes and noblemen to be decided by Special Commissions of this sort and not by ordinary Courts. What amount of authority the decision of such tribunals would carry undoubtedly depended upon the directions of the Nizam embodied in the relevant 'Firman'.

Mr. Aiyangar lays stress upon the word "decision" in connection with the appointment of the Special Commission by the 'Firman' of 19-2-1939. The Commission was undoubtedly authorised to decide the case referred to it and it was to determine the rights of the different claimants to the personal estate of the Nawab. The decision of the Commission, however, was to be submitted to the Nizam through the Executive Council. We agree with Mr. Aiyangar that the Executive Council was not to act in any independent capacity but was merely to assist the Nizam in arriving at the decision which he was to take in the matter. But there can be no. doubt that the decision of the Special Commission would not be final and conclusive and would not have the binding force of a decree or judgment of a Court so long as it did not receive the approval or sanction of the Nizam.

It is true that the Special Commission had almost all the 'trappings' of a Court but the 'Firman' of the Nizam which brought it into existence did not confer upon it the power to make a final pronouncement which would 'proprio vigore' be binding on and create rights and obligations

between the parties. The binding authority could attach to it only by the sanction of the Nizam. We are unable to agree with Mr. Aiyangar that the only implication of the direction in the 'Firman' regarding the submission of its decision by the Special Commission to the Nizam was this, that the Nizam reserved to himself the power of vetoing the recommendations of the Commission if he so liked but so long as no. disapproval was expressed by him, the recommendations would have the force of a judgment of a full-fledged judicial tribunal. This would be going against the plain words used in the 'Firman'.

The position obviously is that the report of the Special Commission could not 'per se' operate as a decree. It could acquire the force of a decree after it received the sanction of the Nizam. In our opinion the 'Firman' of the Nizam dated 26-6-1947 amounted to giving such sanction. This 'Firman', the contents of which have been set out above, declared the report of the Special Commission to be worthy of implementation and expressly directed that it should be implemented. We, therefore, hold that there was a decree capable of execution brought into existence in this case on 26-6-1947. The question now is, whether or not this decree was destroyed or annulled by the subsequent 'Firmans' of the Nizam referred to above.

19. The Special Commission being an 'ad hoc' or extraordinary tribunal, its decision could be implemented only in the way it was directed to be implemented by the Nizam. As stated above, a 'Firman' of the Nizam dated 30-5-1948, which embodied a resolution of the Executive Council of an earlier date, directed that the decision of the Commission should be entrusted for implementation to the Chief Justice of the High Court and the latter was requested to carry it into effect as soon as possible. On 3-6-1948, the report of the commission was actually transmitted to the Chief Justice for execution. On 28th June following, however, a 'Firman' was issued by the Nizam to the following effect :

"

The Chief Justice should be enjoined to see that whatever report he may prepare in respect of the distribution of 'matrooka', he should obtain my sanction through the Council before carrying it into effect.

"

The learned Attorney General argues that this 'Firman' had the effect of destroying the finality of the decision, assuming that any finality attached to it by the 'Firman' of 26-6-1947. We do not think that we can accept this contention as correct. The language of the 'Firman' clearly indicates that the finality of the decision of the Special Commission so far as it related to the rights of the parties as well as the shares in the 'matrooka' to which the different claimants were entitled, was not in any way altered or affected. The report of the Special Commission would still have to be implemented by the Chief Justice but the actual scheme of partition or allotment of the shares which the Chief Justice as the executing court might prepare would not be carried into effect till it received the sanction of the Nizam.

The power reserved by the Nizam, therefore, extended only to making or suggesting alterations as he thought fit as regards the final scheme for partition, but it did not in any way disturb the rights of the parties or the shares to which they were entitled according to the findings of the Special Commission. Whether the power thus reserved by the Nizam in the matter of granting or refusing to grant final sanction to the scheme for distribution of the estate could be exercised after the integration of the Hyderabad State with the Indian Union and the coming into force of the Constitution is a different matter, but we are unable to say that the decision of the Special Commission ceased to be executable by reason of the 'Firman' of 28-6-1948.

20. An application for execution of the decree was filed by Mahboob Begum and others before the Chief Justice of Hyderabad on 13-7-1948, and this execution case was pending when the Police Action in Hyderabad began. After the Police Action had ended and a Military Governor was placed in charge of Hyderabad there was an order passed on 16-10-1948, directing the stay of further proceedings in execution. This order was countermanded on the 6th November following and after that the Chief Justice did proceed with the work of distribution and prepare a report which was submitted for the sanction of the Nizam on 5-12-1948.

Quite surprisingly, however, a 'Firman' was issued on 24-2-1949, under the advice of the Military Governor which declared that the report of the Advisory committee, which was contrary to that of the Special Commission, should be held binding and given effect to and agreeably to that report the claim of Mahboob Begum and Quadiran Begum would stand dismissed. The proceedings were thus seemingly at an end, but it appears that on a representation being made by Mahboob Begum a further order was passed by the Nizam on the advice of the Military Governor on 7-9-49, which revoked the earlier order of 24-2-1949, and referred the case for opinion and report to Sir George Spence who was the Legal Adviser to the Governor.

It is on the correct interpretation to be put upon the 'Firmans' of the 24th February and 7-9-1949, that a proper answer could be given to the question raised in the case, namely, whether the decision of the Special Commission which was made operative by the 'Firman' of 26-6-1947, was by reason of these two later 'Firmans' annulled or made incapable of execution. Paragraph 1 of the 'Firman' of 24-2-1949 runs as follows :

"

As advised by the Military Governor, I direct that the findings of the Legal Advisers, Qamar Hasan and Abu Sayeed Mirza JJ. in the late Wali-ud- Dowlah's case be given effect to. The result of these findings is that the claims of Mahboob Begum and Quadiran Bi on the 'matrooka' of the late Nawab Wali-ud-Dowlah are hereby dismissed and Ameer-un-nissa Begum should pay a sum of rupees one lac to Fatima Begum out of the 'matrooka' of the late Nawab."

The only other material provision is para 4 which says " This matter is now finally decided and the case will not, be re-opened.

"

21. By the 'Firman' of 7-9-1949, the terms of which we have set out already, this direction was reversed and the case was directed "

> to be referred for opinion and report to Sir George Spence, Legal Adviser to the Military Governor, who will hear the parties and will have discretion to take further evidence if he thinks fit."

The learned Judges of the High Court held these 'Firmans' to be in the nature of judicial pronouncements by the Nizam in his capacity as a supreme Judge. As there was no. higher judicial authority above the Nizam, the High Court was of opinion that the order of 24-2-1949, could be held only to be an order passed on review by which the decision of the Special Commission was set aside, and the opinion of the Advisory Committee accepted as the final adjudication on the rights of the parties. But this order, it is said, was passed 'ex parte' without hearing the parties in whose favour the decision of the Special Commission was made. So on a representation being made by Mahboob Begum and others, the later 'Firman' was passed on 7-9-1949.

What this later 'Firman' did was to set aside the 'ex parte' decision made on 24-2-1949, and the result was that the original decree was revived. The matter was then directed to be heard afresh as on an application for review by Sir George Spence and as the inquiry made by Sir George Spence proved infructuous and no. final order could be made on those proceedings, the legal position was that the review proceedings failed and the original decree remained intact without being in any way affected by the same.

22. We do not think that the line of reasoning can be accepted as sound. The 'Firmans' issued by the Nizam could be likened to Judicial pronouncements only in the sense that they affected the rights and the obligations of persons who were parties to a civil dispute. But as the Nizam enjoyed untrammelled authority to pass any order he liked, the importing of the fiction of a proceeding by way of review, prior to the passing of the 'Firman' of 24-2-1949, seems to us to be altogether unwarranted.

23. Assuming for argument's sake, however, that the order of 24-2-1949, was one passed on a review of the previous decision of the Special Commission, obviously on the analogy of the law relating to review proceedings, the order passed on review, whether it affirmed, modified or reversed the earlier decision, would rank as the final decision in the suit or proceeding. The 'Firman' of 24-2-1949, as is stated above, expressly dismissed the claims of Mahboob Begum and Quadiran Begum to the 'matrooka' or the personal estate of the Nawab and the concluding words set out above emphasised the fact that this was the final decision on the rights of the parties which would not be re-opened. It could not, therefore, be said that the order of 24-2-1949 was a mere interim order which did not finally decide the rights of the parties.

When the 'Firman' of 7-9-1949 was passed, it undoubtedly set aside the order of 24-2-1949, but it is difficult to see on what conceivable principle it could be said to have restored the decision of the Special Commission which was annulled by the order of 24-2-1949. Even if we hold that there was a further application for review in respect to the order of 24-2-1949, on the ground of its being passed

'ex parte', the effect of the subsequent order passed on 7-9-1949 upon the rights of the parties would depend upon the language of the order itself. The respondents would have been right in their contention if this order, after setting aside the 'Firman' of 24-2-1949, had restored the decision of the Special Commission, but it did not do that and, on the other hand, referred the whole case for further enquiry and investigation by Sir George Spence who was to take further evidence in the matter if he so chose and come to his own findings upon it.

This direction for further enquiry, it is true, proved abortive but that could not help the respondents in any way and the only conclusion that would follow from the events stated above would be that there was no. final decision in this case- the decision of the Special Commission being abrogated by the 'Firman' of 24-2-1949, and this order again being superseded by the later order of 7-9-1949, which threw the entire matter open for further enquiry and determination. We are unable to hold, in these circumstances, that there was any final and conclusive determination of the rights of the parties in existence after the order of 7-9-1949, which was capable of execution as a decree.

24. The result will be the same even it we proceed on the footing that the various 'Firmans' issued by the Nizam were in the nature of legislative enactments determining private rights somewhat on the analogy of private Acts of Parliament. We may assume that the 'Firman' of 26-6-1947 was repealed by the 'Firman' of 24-2-1949, and the latter 'Firman' in its turn was repealed by that of 7-9-1949. Under the English Common Law when a repealing enactment was repealed by another statute, the repeal of the second Act revived the former Act 'ab initio'. But this rule does not apply to repealing Acts passed since 1850 and now if an Act repealing a former Act is itself repealed, the last repeal does not review the Act before repealed unless words are added reviving it : vide Maxwell's Interpretation of Statutes, p. 402 (10th Edition).

It may indeed be said that the present rule is the result of the statutory provisions introduced by the Interpretation Act of 1889 and as we are not bound by the provisions of any English statute, we can still apply the English Common Law rule if it appears to us to be reasonable and proper. But even according to the Common Law doctrine, the repeal of the repealing enactment would not revive the original Act if the second reporting enactment manifests an intention to the contrary. In the present case the 'Firman' of 7-9-1949, does not repeal the earlier 'Firman' of 24-2-1949, 'simpliciter' but makes a further provision providing for fresh enquiry and report which presupposes the continuance of the repeal of the original 'Firman' of 26-6-1947.

This being the position, we are constrained to hold that there was no. final or effective decree in existence subsequent to the issuing of the 'Firman' of 7-9-1949, and the execution proceedings started by the respondents are, therefore, untenable in law. In the view that we are taking it becomes unnecessary to discuss the third point raised by the Attorney General, namely, whether the City Civil Court has jurisdiction to execute the decree.

25. Although we feel bound to decide these appeals against the respondents, we cannot shut our eyes to the immense hardships that they have been put to by reason of a series of arbitrary and capricious 'Firmans' issued by the Nizam from time to time. The result has been that the respondents have for these long years been deprived of the right to have their disputes decided according to law by a

competent Court and a good deal of time and money has simply been wasted. As matters stand, all the proceedings subsequent to the withdrawal of the suit instituted by Mahboob Begum and her children in the Darul Quaza Court must be held to have been wiped out and the suit of Mahboob Begum must consequently be held to be undisposed of and still pending.

It is true that the Darul Quaza Court has since then been abolished, but its jurisdiction is now vested in the City Civil Court of Hyderabad and the suit of Mahboob Begum and others can now be continued in the City Civil Court from the stage at which it was left when the Nizam issued his 'Firman' of 19-2-1939. The learned Attorney General accepts this to be the correct position in law and raises no. objection to the suit being tried 'de novo' in that court as the proper court to entertain and decide the claim. We would therefore direct that City Civil Court should take upon its file the plaint originally filed in the Darul Quaza Court and proceed with the trial of the case from the stage at which it stood when the order for transfer was made. The plaintiffs will be at liberty to apply for such amendment of the plaint as may be necessitated by reason of events which have happened in the meantime.

It may be mentioned here that Quadiran did not file an independent suit on behalf of herself and her children, though she and her children were made parties defendants in Mahboob's suit. As the suit is one for distribution or partition of the personal estate of the late Nawab, each one of the parties to it, whether a plaintiff or a defendant, is entitled in law to pray for determination of his or her claim to a share in the properties. Thus Quadiran Bibi will be at liberty to raise the question of the validity of her marriage with the late Nawab and the legitimacy of her children in the written statement filed or to be filed on behalf of herself or her children and these questions will be decided by the Court and a comprehensive decree for distribution of the 'matrooka' left by the Nawab will be passed by it granting reliefs to the several parties in accordance with the findings which the court might arrive at.

26. Subject to the directions mentioned above, the appeals will be allowed and the execution proceedings will stand dismissed. There will be no order for costs in favour of any of the parties to the present appeals.