Vishnu Partap Singh vs State Of Madhya Pradesh & Ors on 12 January, 1990

Equivalent citations: 1990 AIR 522, 1990 SCR (1) 43, (1990) 1 RRR 392, AIR 1990 SUPREME COURT 522, (1990) 2 LANDLR 334, (1990) JAB LJ 144, (1990) 1 JT 20 (SC), 1990 SCC (SUPP) 43

Author: M.M. Punchhi

Bench: M.M. Punchhi, Kuldip Singh

PETITIONER:
VISHNU PARTAP SINGH

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT12/01/1990

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
RANGNATHAN, S.
KULDIP SINGH (J)

CITATION:
1990 AIR 522 1990 SCR (1) 43
1990 SCC Supl. 43 JT 1990 (1) 20
1990 SCALE (1)15

ACT:
Constitution of India: Article 363 and Covenant of Ruler of states in Bundelkhand and Baghelkhand--Whether Ruler of Chhatarpur had set aside the demised property as private property?

HEADNOTE:
The question is whether the property in dispute was the private property owned by the Ruler or State property? On August 25, 1948 the then Maharaja of erstwhile Chhatarpur State made a gift of the house in dispute in favour of his father-in-law Dewan Shankar Partap Singh, now deceased and represented by his legal representative appellant. This gift

became the subject-matter of dispute in the suit filed by the State of Madhya Pradesh in 1962. The Trial Court's clear findings were that the property in dispute was not that of the Maharaja as it had been gifted away by him to the de- fendant and was mistakenly shown later as 'State Property'. The High Court allowed the appeal of the State of Madhya Pradesh on the view taken by it that the property in dispute had vested in the United State of Vindhya Pradesh on May 1, 1948 and thereafter no valid gift could be made by the Ruler in favour of the defendant; and whatever rights and power the Ruler had as a sovereign ceased to exist after May 1, 1948 and the gift made thereafter could not give the defend- ant a valid title to the property.

Allowing the appeal, this Court,

HELD: The Ruler of Chhatarpur lost none of his sover- eignty by integrating his State with other States except to the extent in which it was arranged or re-distributed on some of its aspects. It is in exercise of that sovereign power that the Ruler, had set apart the property in dispute as one of his private properties in the list submitted on July 5, 1948. [52F]

The High Court committed an error that the Ruler had lost his sovereign right to earmark the property in dispute as his private property after May 1, 1948 or that the said property vested in the State with effect from that date or that the letter Exhibit P-9 of Shri N.M. Buch

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and the lists attached thereto had the effect of divesting the appellants of the title to the property in dispute in favour of the State with effect from that date. [53E]

Virendra Singh & Ors. v. State of Uttar Pradesh, [1955] I SCR 415, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 509(N)of 1975.

From the Judgment and Order dated 25.7.1973 of the Madhya Pradesh High Court in First Appeal No. 118 of 1966. A.K. Ganguli and C.N. Sreekumar for the Appellant. R.B. Misra and S.K. Agnihotri for the Respondents. The Judgment of the Court was delivered by M.M. PUNCHHI, J. This appeal by special leave is against a judgment and decree in reversal passed by a Division Bench of the High Court of Madhya Pradesh at Jabalpur. One has straightaway to come to grips with some basic facts of the case alongside the historic backdrop influenc- ing their course. The property in dispute is a medium-sized house bearing No. 494/1, Partap Sagar Ward, known as Gulab Rai Wala House, in the city of Chhatarpur. In the plaint filed by the District Collector, Chattarpur, dated May 5, 1962, it was valued at Rs.40,000 and its rental value barely as Rs.114.77 NP. In British days, the State of Chattarpur, like other such States, was an independent State, under the paramountcy of the British Crown. The British Crown was the suzerain power as acknowledged by the Indian States which owed

a modified allegiance to it, but none to the Government of India. On India having obtained independence the suzer- ainty of the British Crown over the Indian States lapsed simultaneously because of section 7 of the Indian Independ- ency Act, 1947. It is a matter of history that immediately thereafter all but three of the Indian States acceded to the Dominion by executing Instrument of Accession. Chattarpur was one such State. The new Dominion of India was empowered to accept such like accessions by a suitable amendment in the Government of India Act, 1935. The sovereignty of the acceding States was expressly recognised and safeguarded. The identical Instrument of Accession, which each Ruler signed, was in the exercise of his sovereignty in and over his State and clause 8 provided:

> "Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, au- thority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State."

To put it differently, the effect of the accession was to retain full autonomy and sovereignty to the Rulers in their respective States except on three subjects, namely, Defence, External Affairs and Communications. These alone were trans- ferred to the Central Government of the new Domimon. On March 13, 1948, thirty-five States in Bundelkhand and Baghelkhand regions agreed to unite themselves into one State which was to be called the United State of Vindhya Pradesh. Chattarpur being one such State in Bundelkhand area was a party thereto. The signing thirty-five Rulers had brought about the new State into being purely as a domestic arrangement between themselves and not as a treaty with the Dominion of India. Obviously there was surrender of a frac- tion of the sovereignty of each Ruler to the newly created State but there was no further surrender of sovereign powers to the Dominion of India beyond those already surrendered in 1947 relating to Defence, External Affairs and Communica- tions. Despite the readjustment, the sum total of the sover- ignties which had resided in each before the covenant then resided in the whole and its component parts; none of it was lost to the Dominion of India.

The articles of the covenant, so far as they are rele- vant for our purposes, are articles VI and XI, which are reproduced hereafter:

> "ARTICLE VI (1) The Ruler of each Covenanting State shall, as soon as may be practicable, and in any event not later than the 1st May, 1948, make over the Administration of his State to the Raj Pramukh;
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> (a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Govern-

ment of the Covenanting State shall vest in the United State and shall hereafter be exerciable only as provided by this Government or by the Constitution to be framed thereunder:

> (b) all duties and obligations of the Ruler pertaining or incidental to the Government of Covenanting State shall devolve on the United State and shall be discharged by it;

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the United State.

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ARTICLE XI

(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State Properties) belonging to him on the date of his making over the Adminis- tration of the State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the 1st May, 1948 an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State Property, it shall be referred to a Judicial Officer to be nominated by the Government of India, and the decision of that person shall be final and binding on all parties con-

cerned."

Despite the distinction drawn in Article XI, there was in reality no distinction between State property and the property privately owned by a Ruler, since the Ruler was the owner of all the property in the State. For the purposes of arrangement of finance, however, such a distinction was practically being observed by all Rulers. The apparent effect of the covenant was that all the property in the State vested in the United State of Vindhya Pradesh except private property which was to remain with the Rulers. As is evident, the Ruler was required under Article XI to furnish to the Raj Pramukh before May 1, 1948 an inventory of all immovable properties, securities and cash balances held by him as such private property. Conceivably, on a dispute arising as to whether any item of property was or was not the private property of the Ruler and hence state property, it was required to be referred to a Judicial Officer to be nominated by the Government of India and the decision of that officer was to be final and binding on all parties concerned. Despite the stern language of Article XI, requiring a Ruler to furnish the list of his private properties by May 1, 1948, the covenant did not contain any clause or article providing penal consequences which would or were likely to follow in the event of a Ruler not furnishing the list of private properties before that date. Nothing is available in the covenant and none was pointed out to us that if a Ruler failed to furnish an inventory of his private properties before May 1, 1948, he was debarred from furnishing it at a later stage and that failure of his part had the effect of divesting him of title to his private properties.

The House in dispute was built by the then Ruler Mahara- ja Sir Vishvanath Singh Ju Deo to accommodate Gulab Rai, his Private Secretary and that is how it acquired its name as Gulab Rai Wala house. The parties were at variance about the subsequent user of the house whether it was for State pur- poses or private purposes of the Ruler. The factual undenied positioin is that the Ruler of

Chattarpur on July 5, 1948 (vide Exhibit D-13-5) submitted a list to the Raj Pramukh of the United State of Vindhya Pradesh of his private proper- ties, and in the said list the house in dispute, namely, Gulab Rai Wala house, was shown as the private property of the Ruler (by the then Maharaja Shri Bhawani Singh Ju Deo). In the following month, on August 25, 1948, the said Mahara- ja Shri Bhawani Singh Ju Deo made a gift of the house in dispute in favour of his father-in-law Dewan Shanker Partap Singh (now deceased and represented by his legal representa- tives-appellants). His gift has become the subject matter of dispute in the suit, out of which this appeal has arisen, for grounds to be taken note of later at an appropriate stage.

By means of another agreement dated December 26, 1949, between the Governor General of India and the Rulers of the States forming the United State of Vindhya Pradesh, the covenant entered into on March 13, 1948, was abrogated. The articles of this agreement, in so far as they are relevant for our purposes, read as under:

> "ARTICLE I As from the first day of January, 1950, the Covenant entered into in March, 1948 by the Ruler of certain States in Bun- delkhand and Baghelkhand for the formation of the United State of Vindhya Pradesh (hereinafter referred to as "the Covenant") shall stand abrogated.
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> ARTICLE II As from the aforesaid day, the United State of Vindhya Pradesh shall cease to exist and all the property, assets and liabilities of that State, as well as its right duties and obligations shall be those of the Government of India. ARTICLE III The Ruler of each of the States specified in the Schedule to this agreement (hereinafter referred to as the Covenanting States') hereby cedes to the Government of India, with effect from the aforesaid day, full and exclusive authority, jurisdiction and powers for, and in relation to, the gover- nance of that State; and thereafter the Government of India shall be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit.
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> ARTICLE VII
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> (1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private proper-

ties (as distinct from State Properties) belonging to him on the date of his making over the Administration of the State to the Raj Pramukh in pursuance of the Covenant.

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(2) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to a judicial officer to be nominated by the Government of India, and the decision of that officer shall be final and binding on all parties concerned. ' ' This Agreement of the year 1949 paved the way for the Cen- tral Government appointing a Chief Commissioner as

Head of the Administration of Vindhya Pradesh, followed by the Parliament making it a Part 'C' State in the year 195 1, followed by the creation of the State of Madhya Pradesh in the year 1956 under the States Reorganisation Act. And such position continues till date.

As is prominent, under the covenant of March 13, 1948, and as repeated in the agreement of December 26, 1949, any dispute arising, whether any item of property was the pri- vate property of the Ruler or State property, was to be referred to a Judicial Officer to be nominated by the Government of India and the decision of that officer was to be final and binding on all parties concerned. It appears, however, that a letter dated January 22, 1950 (copy whereof was Exhibit P-9) was sent by Shri N.M. Buch, Secretary in the Ministry of States, New Delhi, to the Ruler suggesting that a Conference was held between him and the Ruler at Naugong from 16th to 18th September, 1949, and some deci- sions were taken with regard to the private properties of the Ruler and the list of such property as finally emerging was Exhibit P-10 attached with the letter Exhibit P-9. Item No. 22 in that list, being Gulab Rai Wala house, was shown to be State property as per decision taken in the said Conference. From these documents, the High Court when re- solving the claims of the State and the donee has taken the view that originally the property in dispute was claimed by the ruler as his private property but on agreement it was decided that it be State property, and further the legal effect thereof was that with effect from May 1, 1948, the date of agreement of merger, the property in dispute stood vested in the new Union. The second factor which weighed with the High Court to conclude in the aforesaid manner was that listing of properties, whether State or private, was open to objection and could be settled by a Judicial Officer to be nominated by the Government of India, as per the articles aforereferred to, and a raiseable dispute could otherwise be settled amicably mutually, Mr. Buch's letter being indicative of that. On that basis, the gift deed dated August 25, 1948, was held by the High Court to be ineffec- tive, the said property having already vested in the State with effect from a prior date on May 1, 1948. And since after that date, the Ruler was incompetent to effect a valid gift deed in favour of anyone, the State's claim of posses- sion and mesne profits was held irresistable. Undeniably, the Dewan Shanker Partap Singh was in pos- session of the house in dispute when the suit was instituted by the State of Madhya Pradesh on May 5, 1962. The suit was filed almost 14 years of the gift in his favour. The gift was challenged as null and void and ineffective for the reasons: (i) the gift deed was written on an ordinary paper; (ii) was unregistered, (iii) was not signed by any witness, (iv) did not bear the seal of the Maharaja, (v) prior to the date of the gift the power of the Maharaja was transferred to Vindhya Pradesh Government and the said house was not his private property, and (vi) the house in dispute was already declared to be the property of the Vindhya Pradesh Government as per terms of the cove- nant between the ex-Ruler of Chattarpur and the Government of India, and the Civil Court was not competent to question the legality of the conditions of the said covenant. On that basis, possession of the house was claimed from the donee Dewan Shanker Partap Singh as also arrears of rent from August 25, 1949 onwards at the rate of Rs.114.77 NP, totall- ing Rs.18,866, before the trial court.

The suit was contested by the defendant-Shanker Partap Singh contending that (i) the gift of August 25, 1948, was not void and inoperative and that there was no legal re- quirement to use a particular kind of paper for executing a gift deed; (ii) non-registration thereof had no legal effect as the executant had admitted execution of the document,

(iii) the Transfer of Property act was not applicable at the relevant time, (iv) the deed was signed by the Ruler and the absence of seal was of no consequence, (v) the property was the private property of the Maharaja, and (vi) finally the Ruler had every right to make such gift. Besides, a number of other pleas were raised, which are unnecessary to be dealt with for the present purposes. Similarly, the pleas in the replication, countering the pleas in the written state- ment, also need not require any attention for the present purposes, for the way in which we propose to deal with this appeal.

The trial Court framed a number of issues which attract- ed voluminous evidence to be led by the parties. The Mahara- ja of Chhatarpur was examined as defendant's witness and owned making of the gift in favour of his father-in-law. He admitted, however, that Shri Buch had met him in connection with the covenant, but he denied that he had received any letter Exhibit P-9 from Shri Buch or the lists Exhibits P- 10 to P- 12 regarding his private and State properties, were a part thereof. His evidence was suggestive of there being no agreement between him and Shri Buch to change the list of properties. The trial Court's clear findings were that the property in dispute was not that of the Maharaja but that of the defendant, as it had been gifted to hun by the Maharaja on August 25, 1948, and that the house was mistakenly shown later as 'State property'. In that view of the matter, the trial Court dismissed the suit. The appeal of the State of Madhya Pradesh was, however, allowed by the High Court on the view taken that the property in dispute had vested in the United States of Vindhya Pradesh on May 1, 1948, and that thereaf- ter no valid gift could be made by the Ruler in favour of the defendant. The High Court further held that whatever rights and powers the Ruler had as a sovereign ceased to exist after May 1, 1948, and the said date was fixed not later than May 1, 1948, and the gift deed made thereafter on August 25, 1948, could not give the defendant a valid title to the property on that basis. With regard to damages, the High Court took the view that the rate of Rs.56 per mensem as at one time demanded initially by the State should be the basis for assessment of damages. In that view of the matter, the suit of the State of Madhya Pradesh Government was decreed for possession, but reducing the damages to Rs.16,735.35 paise. And this has given rise to the present appeal.

History of the covenant entered into by the Rulers and the final integration finds recognition in Virendra Singh and others v. State of Uttar Pradesh, [1955] 1 SCR 415. The significant passage as available at page 4 19 of the report, is worthy of reproduction here:

> "After this, on 13th March, 1948, thirty five States in Bundelkhand and Baghelkhand (including Charkhari and Sarila) agreed to unite themselves into one State which was to be called the United State of Vindhya Pradesh. In pursuance of this agreement each of the thirty five Rulers signed a covenant on 18th March, 1948, which brought the new State into being. It is important to note that this was a purely domestic arrangement between themselves and not a treaty with the Dominion of India. Each Ruler necessarily surren- dered a fraction of his sovereignty to the whole but there was no further surrender of sovereign powers to the Dominion of India beyond those already surrendered in 1947, namely, Defence, External Affairs and Communications. Despite the readjustment, the sum total of the sovereignties which had resided in each before the covenant now resided in the whole and its camponentparts: none of it was lost to the Dominion of India."

(Emphasis supplied) Only a fraction of sovereignty to the whole was surrendered by the Ruler--not his total sovereignty. Though it was expected by Article XI of the covenant of the Ruler to submit a list of his private properties before May 1, 1948, his individual sovereign power did not stand taken away after May 1, 1948. He was still sovereign, as is our view, to submit the list beyond that date and there was no penal clause in the covenant to penalise him for belated observance or to treat belated observance non est. It is the admitted case that factually the Ruler of Chattarpur had in his list of July 10, 1948, shown the property in dispute to be his private property and this was followed by a gift of it in writing on August 25, 1948, in favour of his father-in-law. It is in the assertion of his sovereign power that he gave his list on July 5, 1948 (Exhibit D-13-5) and it is in assertion of the same sover- eign power as also individual that he made the gift of the house in dispute to his father-in-law. Support for such view is available in Virendra Singh's case (supra) from the following passage occurring at page 429 of the report;

> " ..... The Rulers of Charkhari and Sarila retained at the moment of final cession, whatever measure of sovereignty they had when paramountcy lapsed, less the portion given to the Indian Dominion by their Instruments of Accession in 1947; they lost none of it during the interlude when they toyed with the experiment of integration. There was then redistribution of some of its aspects but the whole of whatever they possessed before the integration returned to each when the United State of Vindhya Pradesh was brought to an end and ceased to exist. Thereafter each acceded to the Dominion of India in his own right." (Emphasis supplied). It is thus plain that the Ruler of Chhatarpur lost none. of his sovereignty by integrating his State with other States except to the extent in which it was arranged or redistributed on some of its aspects. It is in exercise of that sovereign power that the Ruler, in the manner indicated above, had set apart the property in dispute as one of his private properties, in the list submitted on July 5, 1948. It is nobody's case that he could not submit such a list on July 5, 1948. Further, in exercise of his sovereign as also individual right over his private property, that he trans- ferred the house in dispute to his father-in-law on August 25, 1948. In these circumstances, the suggested Conference which took place later in September, 1949 between him and Shri N.M. Buch, Secretary in the Ministry of States, New Delhi, evident from letter Exhibit P-9 dated January 22, 1950, and the lists Exhibits P- 10 to P-12, appended there- with, is not of much significance. In the first place, the Ruler denied when appearing as a witness in the trial as having received any such letter or the lists appended there- with, sug-
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> gestive of the fact that he had reconverted the donated property to be a State property. In the second place, but for the said letter, purportedly issued at a time when the State of Chhatarpur had otherwise ceded to the Central Government vide agreement dated January 1, 1950, there was no direct evidence forth-coming for such conference. In the third place, even if such Conference had taken place in September 1949, as suggested, the minutes thereof cannot be treated as amounting to a divestiture of the gift made in favour of the father-in-law. Fourthly, the Ruler had no sovereign power towards administering his State which had become part of the integrated United State in terms of Article VI of the covenant, and during the

integration he could not exercise such a sovereign power, so as to take away the property of a private person and treat it as State property because the property in dispute having once vested in the defendant-appellants could not be divested in the manner suggested. And lastly, there was no raiseable ques- tion or issue which the Ruler could, while sitting with Shri Buch, decide amicably without the aid of the Judicial Offi- cer nominated by the Government entering upon such dispute, because before integration he owned his State and its properties and there could legitimately not arise a dispute as to which was his private property or State property and thus its settlement by a mutual consent did not arise. Taking thus the totality of these circumstances in view, we are driven to the conclusion that the High Court committed an error that the Ruler lost his sovereign right to ear-mark the property in dispute as his private property after May 1, 1948, or that the said property vested in the State with effect from that date or that the letter Exhibit P-9 of Shri N.M. Buch and the lists attached thereto, had the effect of divesting the appellants of the title to the property in dispute in favour of the State with effect from that date. In that strain, factual position having not been denied, the validity of the gift dated August 25, 1948, cannot be ques- tioned on the grounds enumerated in the plaint, due to exercise of sovereign power of the Ruler in the grant there- of at that point of time. Once that is held the claim for damages too caves in. We hold it accordingly. For the view above taken, we allow this appeal, set aside the judgment and decree of the High Court and dismiss the suit of the State of Madhya Pradesh with costs.

R.N.J. Appeal al- lowed.