Supreme Court of India
Pratap Singh vs Sarojini Devi on 17 August, 1993

PETITIONER:
PRATAP SINGH

Vs.

RESPONDENT:
SAROJINI DEVI

DATE OF JUDGMENT17/08/1993

BENCH:

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- The facts leading to these appeals are as under.

2.Nabha was a Princely State in pre-independence India. It was one of the three Phulkian States. The other two were Patiala and Jind.

3.In the matter of succession to Chiefship, the rule of primogeniture was followed by the Phulkian families. This rule was also followed in the State of Nabha. While the eldest son became the Chief, provision was made for the younger sons for their maintenance by way of grant of jagir, land or purse.

4.When the British had paramountcy in India they subjected the ruling chiefs to various restrictions. One such restriction was about the purchase of the property outside the territory of their own State. The policy was enunciated to discourage the acquisition, whether direct or indirect, by Sovereign or Feudatory princes, of any lands in British Territory, however and from whomever acquired. This policy was communicated to all native States in Punjab including the State of Nabha.

5.Maharaja Ripudaman Singh was the Ruling Chief of Nabha State in the early twenties of this century. His ruling powers were withdrawn by the British Government in the year 1923. Thereafter, he was deposed from the Gaddi in 1928 and was exiled to Kodaikanal in Tamil Nadu. He resided in Kodaikanal till 1942 when he died. He left behind his wife, Sarojini Devi, three sons, Pratap Singh, Kharagh Singh and Gurbaksh Singh and two daughters, Kamla Devi and Vimla Devi.

6.Sarojini Devi, wife of Ripudaman Singh and her children were residing in England from 1934 to 1944. She returned to India when her eldest son, Pratap Singh was to receive administrative training as he was to become the Ruler of Nabha State by the applicability of rule of primogeniture. It also requires to be stated that the entire family came back to India in the year 1945. Gurbaksh Singh, the third son of Ripudaman Singh died in November 1963. He left behind is widow, Chandra Prabha Kumari and two minor daughters, Krishna Kumari d Tuhina Kumari and a minor son Vivek Singh.

7.The property known as 'Sterling Castle' situate in Simla was owned by ol. S. Appaji Rao Sitole of Gwalior. In view of the restriction relating to requisition of property imposed by the British Government Ripudaman Singh circhased this property in the name of his friend Dr Tehl Singh. The sale deed was dated December 21, 1921. Dr Tehl Singh executed the deed of relinquishment on April 30, 1952. By the said deed, Dr Tehl Singh relinquished is title and conferred it upon the three sons and the widow of late Ripudaman singh. It is this property which forms the subject-matter of the suit.

8.In 1957, dispute arose between the parties. Pratap Singh claimed absolute fight over this property denying the title of the other heirs of Ripudaman Singh, When the Municipal Committee, Simla refused to effect mutation in their names on view of the objection raised by Pratap Singh, notice was issued to the Municipal Committee and the Sub- Registrar, Simla that the refusal to do so was not proper. Similarly, notice was issued to Pratap Singh. On March 31, 1961, the two younger brothers sought leave from the Central Government under Section 36 read with Section 87-B of the Code of Civil Procedure to file a suit against Pratap Singh. That was refused in July 1961. On January 30, 1962, Pratap Singh old this property in favour of 'The Save the Children Fund', a society incorporated in the United Kingdom for a sum of Rs 50,000.

9.Sarojini Devi, Kharagh Singh and the minor children of Gurbaksh Singh filed a suit for partition and in the alternative for joint possession and also for he recovery of mesne profits. It was averred in the plaint that the plaintiffs had a share in the 'Sterling Castle' as the heirs of late Ripudaman Singh. Though the property ostensibly stood in the name of Dr Tehl Singh it was Ripudaman Singh who was the real owner, the sale consideration having been provided by him. Therefore, Pratap Singh had no right to sell the property in favour of defendants 1 and 2, namely, 'The Save the Children Fund' and its Administrator. The said sale was not binding on the plaintiffs. Praying for the abovesaid relief mesne profits were claimed at the rate of Rs 5000 for a period of three years commencing from February 1, 1962 till the date of suit and the future mesne profits.

10.While the suit was pending, defendants 1 and 2 sold the property in favour of defendants 4 to 8 by a sale deed dated May 1, 1970. The sale consideration was Rs 1,40,000.

11.Though originally the suit came to be filed before the learned Senior Sub-Judge, Simla, after the merger of the area in Himachal Pradesh, original jurisdiction cannot to be exercised by the Delhi High Court. On the formation of the Himachal Pradesh High Court, the suit (C.S. No. 14 of 1968) was transferred to the original side of that Court.

12. In the written statement of the defendants (other than the third defendant) it was urged that:

(1)Pratap Singh was a necessary party and insofar as he had not been joined the suit was bad for non-joinder.

(2)Inasmuch as the Central Government refused leave under Section 86 read with Section 87-B of the Code of Civil Procedure against Pratap Singh, the suit could not be filed even against his assignees.

(3)The suit was not maintainable for partial partition since there are other properties left by Ripudaman Singh.

(4)From 1942 Pratap Singh had remained in possession of the property as full owner for over 20 years and had, therefore, perfected his title.

(5)In the merger agreement executed by Pratap Singh in favour of Central Government the suit property was claimed as exclusive property of Pratap Singh. Such claim is conclusive as to ownership. If, in fact, Nabh; State was the owner, by rule of primogeniture Pratap Singh became the, owner .

In any event, the defendants were bona fid e purchasers without notice. Therefore, the sale in their favour will not be affected.

13.The learned Single Judge came to the conclusion that the property was purchased benami by Ripudaman Singh. On his death, it devolved on the entire joint family. The rule of primogeniture would not be applicable to his persona property since it applied only to the property of the State. Merely because Pratap Singh was declared as a Ruler of Nabha State he could not become the owner of this property. Thus, answering the issues in favour of the plaintiffs, he granted a preliminary decree for partition and recovery of mesne profits in favour of the plaintiffs and the third defendant. Aggrieved by the same, the defendants took up the matter in appeal (R.F.A. No. 22 of 1973).

14.The Division Bench reversed the judgment of the learned Single Judge and held that the plaintiffs had failed to establish that the 'Sterling Castle' was purchased benami in the name of Dr Tehl Singh from out of the personal funds of Ripudaman Singh or that it was, on that account, his personal property. The failure to establish this basic fact must result in the dismissal of the suit. Accordingly, the appeal was allowed. It is under these circumstances, Civil Appeal No. 1208 of 1990 has come to be preferred.

15.Civil Appeal No. 5857 of 1983 arises out of the judgment of the Delhi High Court in R.F.A. (O.S.) No. 6 of 1977 dated May 23, 1980. Pratap Singh filed Suit No. 394 of 1966 for possession of House No. 34, Alipur Road, Civil Lines, Delhi. The defendants are mother Sarojini Devi, two brothers and two sisters. One of the brothers, namely, Gurbaksh Singh, having died, his legal representatives were brought on record. The suit property came to be purchased in the year 1922 by Ripudaman Singh in the name of one Gurnarain Singh Gill. The seller was one Shri Ram Popli. The sale deed was executed on April 8, 1922 for a sum of Rs 1,25,000. The property was managed by the officials of Nabha State. In 1937, Gurnarain Singh Gill executed a deed of release in favour of Nabha State. The

property continued to be dealt with as belonging to Nabha State even after Pratap Singh ascended the Gaddi. After independence the State of Nabha acceded to the Indian Union. On May 15, 1948, a Covenant was entered into between the Central Government and eight Princely States, all of which merged to form a States Union called Patiala and East Punjab States Union (PEPSU). The plaintiff submitted an inventory of the properties. As per paragraph 2 of Article XII the said inventory included the house in question. On that basis, it was urged by the plaintiff that it became his private property and he was exclusive owner thereof. Thus, the suit for possession.

16.In opposing the claim of the plaintiff the defendants contended that it was a private property of Ripudaman Singh and continued to be so. The Covenant had recognised this position and had accordingly declared. The Covenant did not create or confer a new right. On the contrary, the intention of he Covenant is to receive claims, scrutinise the same and finally put at rest tile controversy, if any, between the Ruler and the Government of the States Union once and for all.

17.The learned Single Judge came to the conclusion that the suit property was the property of Nabha State. It was not a personal property of' Ripudaman singh. He further proceeded to hold that Ripudainan Singh could hold the property in his personal capacity. Up to the date of the Covenant the property was that of Nabha State. After May 4, 1949 the ownership changed. On this basis, the suit came to be decreed. Aggrieved by the same, the defendants took p the matter in appeal [R.F.A. (O.S.) No. 6 of 1977].

18.The Division Bench was of the view that the Covenant dated May 5, 948 does not create any new rights. It only recognises and declares the preexisting rights. The claim of Pratap Singh as private property has not been established. The position regarding ownership of the property continued inchanged even after Pratap Singh ascended the Gaddi. Thus, it was concluded that the property was the personal property of Ripudaman Singh. Upon his death, it devolved upon Pratap Singh and his brothers. Sarojini Devi being the widow gets her right under Hindu Women's Right to Property Act of 1937 as Ripudaman Singh died in 1942. Accordingly, the appeal was allowed and Suit No. 394of 1966 was dismissed. It is against this dimissal of tile Suit, C.A. No. 6857 of1983 has come to be preferred.

19. In Civil Appeal No. 1208 of 1990 Mr Hingorani, learned counsel for the appellant would submit that under the impugned judgment the Division Bench was accepted the findings of the learned Single Judge on three important points:

> (1)The rule of primogeniture was followed in the State of Nabha in regard to succession to Chiefship or Gaddi.
>
> (2)Ripudaman Singh's own personal properties as distinct from State properties and succession to his personal properties were governed by Mitakshara School of Hindu Law. (3)The inclusion of the suit property in the inventory furnished by Pratap Singh, as his private property, would not deprive the original owners of their share as the heirs of the father.

20.These findings are independent of the findings covered by the decree and would operate as res judicata. The only surviving issue in the appeal is whether the suit property is the personal property of Pratap Singh or was he owning the property as Karta of Joint Hindu Family? Having regard to the facts of this case, it is clear that Pratap Singh could not have purchased the suit property as State property in the year 1921.

21.During the Rulership Pratap Singh had treated the estate of his father as point family property. Documentary evidence supports this argument. Ex. B dated December 3, 1943 referred to the ornaments and other articles of the widows of the previous Rulers of Nabha State. These properties were private Properties of the Ruler, distinct from State properties.

22.Ex. F is an indemnity bond given by Pratap Singh in favour of the imperial Bank of India against any claim by the legal representatives to the ,state of his father.

23.Ex. PW 3-B is a letter dated October 30, 1956 from the Chief Secretary PEPSU to Deputy Secretary, Government of India in respect of loan of above Rs 4,00,000 advanced to Pratap Singh in 1947 against the estate of his father.

24.The learned Single Judge had given due importance to these document The Division Bench erred in treating them lightly.

25.In terms of Article XII of the Covenant dated August 20, 1948 Prata Singh had submitted a list of his private properties to Rajpramukh of PEPSU That included Sterling Castle, 34, Alipur Road and 11 other properties. Artiel XII postulates that the Ruler can include in his inventory only those properties as distinct from State properties, at that time.

26.Pratap Singh had, all along treated this estate, left by his father as join family property. This is confirmed by his application dated February 22, 1949. requires to be noted that the application was filed after the submission of hi inventory of private properties to the Rajpramukh. In the said application file(before the Court of Subordinate Judge, Delhi, for grant of letters of administration, it was clearly averred by Pratap Singh that his father had left properties in different places in India including Delhi. He, being the head of the family, was the best person to administer the estate of the deceased. It was or this basis, letters of administration were granted. It is a vital piece of evidence to show how Pratap Singh himself treated the property.

27.On May 4, 1949, Pratap Singh received a letter from Rajpramukh in respect of his inventory of private properties. That included Sterling Castle an(34, Alipur Road, Delhi amongst other private properties.

28.Merely because the Municipal Committee, Simla did not bring or, record the names of the beneficiaries under the deed of relinquishment by Dr Tehl Singh, effect of mutation accordingly does not mean the rights of the appellant are, in any way, lost. The Allahabad High Court has held in a judgment between the same parties that the rule of primogeniture applied only to succession to the Gaddi and not succession to his private properties as distinct from the State properties. That

judgment will constitute res judicata. The Division Bench ought to have given weight to the said judgment. The deed of relinquishment executed by Dr Tehl Singh conclusively establishes that the Suit property is a joint family property. It requires to be carefully noted that the relinquishment has not been disputed in the written statement of any other respondent. In fact, it could not be disputed since the learned counsel for the defendant had made a statement under Order X Rule 1 of the Code of Civil Procedure that it was not within the knowledge of defendants 1 and 2 that Ripudaman Singh had purchased the property in the name of Dr Tehl Singh in 1921. Defendants 1 and 2 had also no knowledge of relinquishment dated April 30, 1952. In view of this, the question of going into the validity of relinquishment did not arise. Though Pratap Singh was called upon to produce the original deed of relinquishment he did not do so. It was under these circumstances, a certified copy came to be filed. The Division Bench has clearly overlooked this important aspect of the matter. Further, Dr Tehl Singh, having died even before the evidence was recorded in 1970, his evidence could not be procured. In view of all this, the finding of the Division Bench ill relation to the deed of relinquishment cannot be supported. Article 363 cannot constitute a bat to decide the nature of the ownership with reference to the property in question.

29.In opposition to this, Mr D.D. Thakur, learned counsel would submit that there is absolutely no evidence in this case that Ripudaman Singh was having large funds from Sarfa Khas which came to be utilised by Sarojini Devi for purchase of the suit property. Excepting the oral testimony which has been rightly disbelieved, there is not a single document to prove that the property was purchased benami in the name of Dr Tehl Singh. Right from inception, the property was treated as belonging to the State. The Municipal Registry also bears this out. If really, that be so, rightly a declaration was made by Pratap Singh on February 22, 1949 while submitting the list of properties as his personal property. The ostensible title of Dr Tehl Singh cannot be put up because that cannot militate against the treatment of the property as belonging to the State coupled with the entries in the Municipal Register. As rightly held by the Division Bench, the onus of proof cannot be cast on these respondents to prove that the property was purchased by the State out of its funds.

30.The letter of administration was, no doubt, asked for, but that only relates to bank accounts.

31.A careful reading of the White Paper shows that there was no distinction between private and public property made by the Ruler. Lastly, it is submitted, as seen from Exs. D-3 to D-6, the records of Simla Municipality clearly establish that the property belongs to the Nabha State. In view of this, it is submitted that no interference is warranted with the impugned judgment.

32.Mr Arun Mohan, learned counsel, would submit that the question in this case is, whether acquisition of Alipur Road property by Ripudaman Singh was in a capacity other than the Ruler of Nabha State? In other words, at the time of Ripudaman Singh's removal and exile in 1923 or at the time of his being formally deposed in 1928 was the property separated from the State of Nabha or retained by him personally or exclusively, and in 1937, when Gurnarain Singh Gill, the ostensible owner, relinquished his property. The question would be whether the relinquishment was in favour of Gurcharan Singh (formerly Ripudaman Singh) who was by then only a subject or did he do so in favour of State? The learned Single Judge proceeded on the basis that there was a dual capacity. There is no such dual capacity in law. He came to the conclusion that the evidence established

purchase by the State. When the Division Bench held that the purchase was by Nabha State it did not have regard to the acts of State in 1923-28 on the one hand and the 1942 succession on the other.

33.Equally, the Division Bench failed to note that the property belonged to Nabha State and not to S. Ripudaman Singh. Even after Ripudaman Singh was deposed, S. Ripudaman (later Gurcharan) Singh had nothing to do with this property. The finding of the Division Bench that the Covenant dated May 5, 1948 only recognises and declares the pre-existing rights is wrong both in law and in fact.

34.It is important to note that insofar as 1923-28 period is concerned they are acts of State, there was no death, no succession opened. Therefore, there was no application of Mitakshara. When in 1928 Ripudaman Singh was formally deposed it extinguished every vestige of his title or claim. When Pratap Singh was installed, title thereto came to vest in him and the said title continued and has not been defeased at any point of time subsequently. If this be so, the findings of the Division Bench are liable to be set aside.

35.Countering these submissions, it is argued by Mr Hingorani, learned counsel, that the case of the appellant before the High Court was that even before the date of Covenant an Indian Ruler whose capacity was other than that of a Ruler acted only for the State, being its sovereign. Any property purchased by him, in his own name or in the name of another person, would not be purchased by the State. The High Court has correctly found that such a contention is not acceptable in view of the articles of the Covenant.

36.It is submitted that the Ruler's private property is not governed by any of the provisions of the Constitution which provide certain privileges, rights and powers which were being enjoyed by the Ruler.

37.The Division Bench followed the ruling of the Allahabad High Court involving identical issues between the parties. It was on that basis the conclusions were arrived at that the rule of primogeniture applied only to, succession to Rulership and not to the private property. The ruling of the High Court had become final and, therefore, is not open to question. In support of this, reliance is placed on Vashist Narain Sharma v. Dev Chandra'. The same view was taken by this Court in Revathinnal Balagopala Varma v. His Highness Sri Padmanabha Dasa Bala Rama Varma2. Learned counsel wants to draw our attention to paragraphs 5 and 10 of the judgment.

38.The Covenant for the merger of State, Article XIV provides that succession, according to law and custom, to the Gaddi of each covenanting State, is guaranteed. Article XII stresses that each Ruler of a covenanting State could include only such properties in his inventory of private properties which belonged to him as distinct from State properties.

39.When Pratap Singh was installed as Ruler in 1941 he never passed any Order or Farman in respect of the suit property. If the immovable property has been purchased out of the income of the impartible estate it is a separate property of the holder of the impartible estate. Insofar as there is no

evidence that this property came to be merged into the impartible estate, succession will be governed by the general principles of Hindu Law. Therefore, it is submitted that no exception could be taken to the judgment under appeal.

40.We will now take up Civil Appeal No. 1208 of 1990. The facts have alreadybeen set out. Therefore, the basic question in this case would be, whetherthe acquisition of Sterling Castle by Ripudaman Singh in 1921 was in a capacity other than the Ruler of Nabha? It is the appellant in this case who pleads benami. In view of the interdict on the native Ruler, to purchase any immovable property in erstwhile British India, necessarily resort was had to this course of benami. It is well settled in law that where benami is pleaded five principles will have to be taken into consideration.

41. It has been held in Mayne's Hindu Law, 13th Edn. at page 1201 as under:

"(1) Source of the purchase money;

(2) nature and possession of the property and custody of the title deeds;

(3) motive;

(4) relationship between the parties;

1 (1955) 1 SCR 509 : AIR 1954 SC 513 : 10 ELR 30
2 1993 Supp (1) 1CC 233

(5) conduct of the parties in dealing."

42. The points that fill for determination are:

(1) What is the rule of succession applicable to the State of Nabha?

(2)Did Sterling Castle, the suit property, belong to the State of Nabha or was it the private property of Ripudaman Singh?. (3)Whether the judgment of the Allahabad High Court constitutes res judicata?

43.Before we proceed to answer these questions we will briefly set out the historical background.

44.The State of Nabha was formed in 1763 by Hamir Singh as the Ruler. Maharaja Hira Singh was not a direct descendant of the former Ruler, Raja Bhagwan Singh. When he died issueless in 1871 there were no natural heirs. Being a descendant of Pliul, Hira Singh came to be selected as the Ruler. He wielded sovereign powers over this territory. On his death in 1911 his son Ripudaman Singh came to power. The admitted facts are:

45.Maharaja Ripudaman Singh ascended the Gaddi of Nabha in 1911 and came to rule the State. He was an absolute monarch enjoying the same status, powers and position as any other Hindu Ruler.

46.In 1920, Maharaja Ripudaman Singh acquired the Delhi property and in 1921 he acquired the Himachal Pradesh property. Maharaja Ripudaman Singh acquired a number of other properties (before and after these two), but it is not necessary to go into those details, at this stage.

47.In 1923, on account of his activities, the British Government as the Paramount Power, removed Maharaja Ripudaman Singh. He was externed and made to go into exile from the State and took up residence in Dehradoon which was part of British India. A monetary allowance was fixed for him but that also was only partly given. The administration of the Nabha State was taken over and carried on by the British. Four years after being removed, in 1927, he changed his name from 'Ripudaman Singh' to 'S. Gurcharan Singh'. Although removed by the British in 1923, Maharaja Ripudaman Singh was formally deposed only on February 2, 1928. The British, as the Paramount Power, then installed Pratap Singh (his son) as the Ruler of Nabha. The State of Nabha, and all its properties came to vest in him (Maharaja Pratap Singh). Having been deposed and ceasing to be a Ruler and being a commoner, subject to law, former Maharaja Ripudaman Singh settled down in the south Indian hill station of Kodaikanal.

48.Fourteen years later, on December 14, 1942, S. Gurcharan (formerly Maharaja Ripudaman) Singh died leaving behind his widow, three sons and two daughters. The Nabha State, he had been divested of 14 years earlier, and whatever little he had left with him, formed subject-matter of his estate.

49.On August 20, 1948, Nabha State integrated (merged) with seven other Princely States to form PEPSU. Maharaja Pratap Singh ceased to be a sovereign ruler as of this date. A list of the properties separated from the State and retained by him, in terms of the Covenant, was prepared.

50.In the pre-independence era the Rulers were the princes and although were subject to British paramountcy yet they were absolute monarchs or sovereigns within their own territories. Their word was the law. This aspect of the matter has been dealt with in Revathinnal Balagopala Varma 2 in paragraphs 51 to 61, wherein there is a copious reference to case-law.

51.Being an absolute monarch or sovereign, the Ruler was the owner of all the property in the State. In Vishnu Pratap Singh v. State of M.P.' at page 46 it was held:

> "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 States 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 Rajpramukh 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 on his part had the effect of divesting him of title to his private properties."
>
> 52. Again in paragraph 13 at pages 51-52 it was stated thus:
>
> "It is thus plain that the Ruler of Chattarpur 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, it was in exercise of his sovereign as also individual right over his private property, that he transferred 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, Secretar y in the Ministry of States, New Delhi, evident from letter Ex. P-9 dated January 22, 1950, and the lists Exs. P-10 to P-12, appended therewith, 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 therewith, suggestive 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 Chattarpur had otherwise ceded to the Central Government vide agreement dated January 1, 1950, there was no direct evidence forthcoming for such conference. In the third place, even if such Conference had taken place in 3 1990 Supp SCC 43, 46 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 question or issue which the Ruler could, while sitting with Shri Buch, decide amicably without the aid of the Judicial Officer 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 earmark the property 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 Ex. 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 questioned on the grounds enumerated in the plaint, due to exercise of sovereign power of the Ruler in the grant thereof at that point o f time. Once that is held the claim for damages too caves in. We hold it accordingly."

53.It was this ruling which was applied in Revathinnal Balagopala Varma case2.

54.The distinction between public and private property of a sovereign Ruler came up for consideration in one of the earliest rulings of the Privy Council.

55.In Advocate General of Bombay v.

Amerchund4, cited in the footnote in 12 ER, at page 345, it was observed:

"... Lord Tenterden asked, 'What is the distinction between the public and private property of an absolute sovereign? You mean by public property, generally speaking, the property of the State, but in the property of an absolute sovereign, who may dispose of everything at any time, and in any way he pleases, is there any distinction?' and in delivering the judgment of their Lordships he also observed, 'another point made, which applies itself only to a part of the information, is, that the property was not proved to have been the public property of the Peishwa. Upon that point I have already intimated my opinion, and I have the concurrence of the other Lords of the Council with me in it, that when you are speaking of the property of an absolute sovereign there is no pretence for drawing a distinction, the whole of it belongs to him as sovereign, and he may dispose of it for his public or private purposes in whatever manner he may think proper'."

56.It also requires to be noted that this was one of the cases referred to in Revathinnal Balagopala Varma case2. 4 12 ER 340, 345 :(1830) 1 Knapp 316, 329-

57. White paper on Indian States in paragraph 157 states its under:

"In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned by their respective States. With the integration of States it became necessary to define and demarcate clearly the private property of the Ruler. The settlement was a difficult and delicate task calling for detailed and patient examination of each case. As conditions and customs differed from State to State, there were no precedents to guide an d no clear principles to follow. Each case, therefore, had to be decided on its merits."

58.In the ruling already referred to, namely, Vishnu Pratap Singh3 this aspect of the matter has been dealt with. However, with regard to one other aspect of the matter in Revathinnal Balagopala Varma2 in paragraph 64, it was observed:

"If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him that the said property was held by the sovereign not as sovereign but in some other capacity."

Q. 1: What is the Rule of Succession applicable to the State of Nabha?

59. As to the applicability of rule of primogeniture it could be culled from the following rulings.

60.In Baboo Gunesh Dutt Singh v. Maharaja Moheshur Singh5 it was stated as follows: "We apprehend that the principle upon which we are about to proceed in this case admits of no doubt or question whatever. By the general law prevailing in this District, and indeed generally Linder the Hindoo law, estates are divisible amongst the sons, when there are more than one son; they do not descend to the eldest son, but are divisible amongst it. 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, but still a limited Sovereignty and Principality, which, in its very nature excludes the idea of division in the sense in which that term is used in the present case." (emphasis supplied)

61.In 'Digest of Customary Law in the Punjab' by Sir W.H. Rattigan, K.C., L.L.D., 15th Edn. at page 126-M it is stated:

" The Rule of Primogeniture only prevails in families of ruling chiefs or Jagirdars whose ancestors were ruling chiefs."

62.Again, there is a reference to the above Digest in Jai Kaur v. Sher Singh6.

63. In Salig Rain v. Maya Devi7 at page 268 it was observed thus:

Rattigan's work has been accepted by the Privy Council as 'a book of unquestioned authority in the Punjab'. Indeed, the correctness of this paragraph was not disputed before this Court in 'Gopal Singh v. Ujagar Singh,8."

5 (1854-7) 6 MIA 164: 1 Sar PCJ 521
6 AIR 1960 SC 11 18 at 11 21 :(1960) 3 SCR 975 : ILR (1960) 2 Punj 615
7 AIR 1955 SC 266 :(1955) 1 SCR 1191
8 AIR 1954 SC 579: (1955) 1 SCR 86

64. In Privy Purses' case9 Mitter, J. observed:

"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 this body."

65.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.

66.The allied question is whether the rule of primogeniture applies only to the Rulership (Gaddi) and not to the other property? This is precisely the argument of Mr Hingorani. This argument came to be accepted by the learned Single Judge of the High Court of Himachal Pradesh as well as the Division Bench of the Delhi High Court in the judgment under appeal. We have already referred to the observations of Lord Tenterden in Advocate General v. Amerchund4. We may also now refer to the observations of Bhagwati, J. (as he then was) in D.S. Meramwala Bhayavala v. Ba Shri Atarba Jethsurbhai10:

> "If the Khari-Bagasara Estate was a sovereign Estate, it is difficult to see how the ordinary incidents of ancestral coparcenary property could be applied to that Estate. The characteristic feature of 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 alienations 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 these rights which are necessary consequence of community of interest cannot exist. The Chief of a sovereign Estate would hold the Estate by virtue of his sovereign power and not by virtu e 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 limitation on his powers in relation to the Estate."

67. Again, at para 12 it is stated thus: "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 an 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 Ruler of' the Estate subject to the municipal law."

68.This being the position, the distinction drawn between public and private property seems to be not correct. Reference has been made to the case ill Revathinnal Balagopala Varma2 in this regard. Insofar as such a concept runs counter to the basic attribute of sovereignty the said distinction is not acceptable. In this connection, we may refer to Mirza Raja Shri Pushavathi 9 madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85 : AIR 1971 SC 530, 596 10 ILR (1968) 9 Guj 966 (para 11) Viziaram Gajapathi Raj Manne Sultan Bahadur v. Shri Pushavathi Visweswar Gajapathi Raj' 1. At page 416 it was observed thus:

> "It follows from the decision in Shiba Prasad Singh case12 that unless the power is excluded by statute or custom, the holder of customary impartible estate, by a declaration of his intention can incorporate with the estate self-acquired immovable property and thereupon, the property accrues to the estate and is impressed with all its incidents, including a custom of descent by primogeniture. It may be otherwise in

the case of an estate granted by the Crown subject to descent by primogeniture."

69.With this, we pass on to the next question whether the primogeniture lapsed in the years 1947-48? It is the contention of the respondents that Pratap Singh ceased to be governed by primogeniture on August 15, 1947 and, in any case, on August 20, 1948 when he ceased to be a sovereign. It is true that there was no Rulership after India became a Republic on January 26, 1950 but if the estate is impartible in nature it would continue to be governed by the rule of primogeniture. We will refer to Thakore Shri Vinayasinghji v. Kumar Shri Natwarsinhji13. At page 134 it is stated thus:

"The principle of law that is applicable to a coparcenary property or to the coparceners is inapplicable to an impartible estate or to the holder thereof except that an impartible estate is considered to be a joint family property to the extent of the junior members succeeding to the estate by right of survivorship. When under certain circumstances the right of a coparcener to take by survivorship can be defeated, no exception can be taken, if the right of survivorship of junior members of an impartible estate to succeed to it is defeated by the holder thereof by disposition by a will."

70.Again in Rajkumar Narsingh Pratap Singh Deo v. State of Orissa14 at page 121it is observed thus:

"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;.....

71. Section 5 of the Hindu Succession Act, 1956 (Central Act 30 of 1956) states as follows:

"This Act shall not apply to

(i) ** *** ** **

(ii)any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) ** ** ** **

72. In Mulla's Hindu Law, 16th Edn. at page 766 it is stated:

"The exception is limited to the impartible estates of Rulers of Indian States succession to which is regulated by special covenants or agreements 11 (1964) 2 SCR 403 : AIR 1964 SC 118 12 Shiba Prasad Singh v. Rana Prayag Kumari Debi, 1932 LR 59 IA 331 13 1988 (Supp) SCC 133, 134 14

(1964) 7 SCR 112, 121 : AIR 1964 SC 1793 and to estates, succession to which is regulated by any previous legislation, and the Estate and Palace Funds mentioned in sub-section (iii)."

73. At the stage of Bill, in 1954 it was clearly brought out in the Rajya Sabha Debates at pages 7115 and 7116 as under:

> "Then there is another clause, sub-clause (ii) which says:
>
> ,any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;' This clause has been put in because, as we know, it is only after the attainment of independence that on a large scale there has been integration of States, and there are certain agreements and covenants which have been entered into between the Government and those Rulers of States, and some arrangements have been made only very recently with respect to their line of succession. It is a special thing. What it says is: 'any covenant or agreement entered into by the Ruler'. Naturally, if we have entered into any such agreement only as recently as 1947 or 1948 and much time has not elapsed, it is not proper that by an enactment of a general nature like this we should do something which will set at nought the agreements and the covenants which the Government of India has solemnly entered into with those people and on the strength of which they had consented to allow their States to be integrated with India. of course, I agree that probably it is not entirely a socialist pattern or whatever you call it, but as I have been always saying, I hold the opinion that we have to proceed by the process of evolution. I do not mince matters."
>
> 74.Therefore, it can be said with certainty that this rule continued even after 1947-48.
>
> 75.Under Article 372 the law of succession relating to primogeniture continues until it is repealed. This is the position of law relating to succession.

76.We will now see the relevant portions of the Covenant entered into between the Rulers of Nabha State and the Government of India on May 15, 1948, which have a bearing on thi s aspect.

77. The relevant provisions of the Covenant are:

"Article VI. (a) All rights, authority and jurisdiction belonging to the Ruler which pertain or are incidental to the government of the Covenanting State shall vest in the Union and shall hereafter be exercisable only as provided 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 Union and shall be discharged by it;

(c)all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the Union; and

(d)the military force if any, of the Covenanting State shall become the military forces of the Union.

X X Article VIII. The Rajpramukh shall, as soon as practicable and in any event not later than the 30th of August, 1948 execute on behalf of the Union an Instrument of Accession in accordance with the provisions of Section 6 of the Government of India Act, 1935, and in place of the Instruments of Accession of the several Covenanting States; and he shall by such instrument accept as matters with respect to which the Dominion Legislature may make laws for the Union all the matters mentioned in List I and List III of the Seventh Schedule to the said Act except the entries in List I relating to any tax or duty.

Article XII. (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 administration of that State to the Rajpramukh.

(2)He shall furnish to the Rajpramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.

(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 such person as the Government o f India may nominate in consultation with the Rajpramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be so referable after June 30, 1949.

Article XIV. The succession according to law and custom, to the Gaddi of each Covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler thereof, is hereby guaranteed.

(2)Every question of dispute of succession in regard to a Covenanting State which arises after the inauguration of the Union shall be decided by the Council of Rulers after referring it to a Bench consisting of all the available Judges of the High Court of the Union and in accordance with the opinion given by such Bench."

78.A careful reading of Article XII shows that there is a clear distinction between the private properties and the State properties. Such private properties must be belonging to the Ruler and must be in his use and enjoyment even earlier. Therefore, properties which were recognised even earlier as such private properties alone were to be left out and submitted for the recognition as such. As stated in White Paper (para 157, page 23 supra), the demarcation and the settlement of the list was carried out for the purposes of Integration. If this be the correct position of law, the contrary observations of the learned Single Judge are not correct.

79.The property was purchased on December 21, 1921 benami in the name of Dr Tehl Singh. The sale deed has been marked as Ex. PW 6-A. The benami nature of the transaction is affirmed by the letter of the Prime Minister of Nabha State dated April 17, 1922. In that reply to Governor General's agent it is admitted that Sterling Castle has been acquired by the Nabha State benami. The following amply establish as to how this property was treated as belonging to the State of Nabha.

21-12-1921- Sterling Castle, purchased in the name of Dr Tehl Singh benami. Sale Deed is Ex. PW 6-A. 17-04-1922- Prime Minister Nabha State, sends a reply to Governor General's agent (Punjab States) admitting that Sterling Castle had been acquired by the Nabha State benami. 19-12-1922- Resolution of Government of India, (Foreign & Political Deptt.) regarding acquisition of residential properties by ruling Princes and Chiefs in British India 'The property when acquired by a Prince or Chief will be acquired as State properties and not as personal property'.

07-06-1923- J.P. Thompson records that Maharaja Ripudaman Singh had sought to retain certain houses including Sterling Castle. Permission to retain Sterling Castle was declined. 08-07-1923- The British Government as the paramount power removes Maharaja Ripudaman Singh and takes over the administration of Nabha State. Maharaja Ripudaman Singh is externed and made to go into exile outside the State. The affairs of Nabha State are placed in the hands of Mr C.M.G. Ogilvie, ICS as the first Administrator appointed by them, pending return to India of Mr J. Wilson Johnston, the permanent Administrator. A sum of Rs 3 lakhs per annum as pension is allowed to Maharaja Ripudaman Singh. Even this is not fully paid.

5-10-1923- Having taken over the administration of the State, the Government draws up a list of house properties owned by Nabha State. 34, Alipur Road shown as one such property. So is Sterling Castle. The list is forwarded to the Government of India on December 19, 1923. 19-12-1923- Administrator Nabha sends to the Secretary, Foreign & Political Department, Government of India, a list of Nabha State properties, price paid and details of title deeds etc. Sterling Castle is included. 15-05-1924- State Engineer, Nabha writes to Municipal Board, Simla for reassessment of taxes of Sterling Castle, which is described as Nabha State property, Ex. D-4. 27-08-1924- British prepare report on the administration of Nabha State for the period July 8, 1923 to March 31, 1924. 12-10-1924- Nabha State (as owner), leases out Sterling Castle to Lt. Gen. Sir Richard Stuart Wortley, Ex. D-6. 20-11-1924- State Engineer writes to Municipal Committee, Simla enclosing copy of lease between the State and Lt. Gen. Sir R. Wortley for Sterling Castle, Ex. D-5. 1926-1948- Simla Municipality Registers record Nabha State (and after 1948, Pratap Singh), as the 'Owner' of Sterling Castle, Ex. D-3.

02-02-1928- Maharaja Ripudaman Singh is formally deposed and detained at Kodaikanal. His son Pratap Singh then minor is installed on the Gaddi as Ruler of Nabha. A Council of Regency, consisting a President and three members is constituted to rule the State during his minority. The State of Nabha and all its properties come to vest in Maharaja Pratap Singh.

06-01-1931- Lt. Col. Coldstream, President, Council of Regency, Nabha State directs the Manager, Nabha Estate, Simla that Insurance Policy of Sterling Castle be obtained in the name of President, Council of Regency. 27-06-1931 to 12-8-1931- Settlement Tehsildar, Simla after inquiries and

proceedings conducted on various dates, sanctions mutation in favour of Maharaja of Nabha on August 12, 1931, and also records the Nabha State as being in possession.

21-12-1933- Resolution No. 21 of Council of Regency, Nabha State regarding boundary of Sterling Castle showing that space would remain State property.

13-04-1933 to 12-4-1934- Expenditure on roads and buildings of Nabha Estate analysed in which expenses pertaining to Sterling Castle also included.

14-07-1936- President, Council of Regency suggests a cottage in the compound of Sterling Castle (which is described as 'State House') for renting by Nabha Darbar to Mr Gillan. 09-02-1937 to 13-3-1937- Estimates and proposals made in Nabha State Budgets and subsequent sanctions made by the Agent, Governor-General of India regarding expenditure on repairs and alterations to the kitchen of Nabha State House, Sterling Castle.

05-03-1941- Maharaja Pratap Singh comes of age and is formally invested with full ruling powers. 12-12-1942- S. Gurcharan (formerly Ripudaman) Singh dies at Kodaikanal. Succession to his Estate opens. 03-12-1943- Sardar Gurdial Singh, Home Minister, Nabha State points out in his Note No. 3909, that there was no distinction between the ornaments belonging to State, and Mai Sahibas as everything vested in the Rulers, Ex. B. 27-03-1945- U.S. Troops vacate Sterling Castle which Maharaja Pratap Singh had placed at the disposal of the Government.

08-08-1945- Punjab States Residency informs Chief Minister, Nabha that Sterling Castle was not required by Headquarters, Ambala Area.

15-08-1947- Having been freed of the British paramountcy by the Indian Independence Act, 1947, Nabha State like the other five hundred and odd States, accedes to the Dominion of India on three subjects i.e. External Affairs, Defence and Communication, but the Ruler (Pratap Singh) retains his sovereignty.

23-12-1947- Executive Council approves the proposed estimates of State Engineer, Nabha regarding repair to the collapsed retaining wall in Sterling Castle. 19-08-1948- Maharaja Pratap Singh submits a list of properties to Rajpramukh, PEPSU showing the properties which he intends to retain at the time of merger. Sterling Castle is included in the list.

20-08-1948- In terms of Covenant, Nabha State integrates (merges) with seven other States to form PEPSU. Maharaja Pratap Singh ceases to be a sovereign ruler as on this day. 04-05-1949- Rajpramukh, PEPSU writes a letter enclosing the list of properties declared to be private property of His Highness Pratap Singh. Sterling Castle is also included. Letter is Ex. D-1, while the List is Ex. D-2. 28-06-1950- Secretary to PEPSU Govt. writes to Simla Municipal Committee that Sterling Castle has been declared as private property of Maharaja Pratap Singh and that entry be now made in his name as owner thereof, Ex. D-7. 26-04-1961- Simla Municipality certifies that according to Municipal records Sterling Castle was owned by Nabha State from 1926 to 1949 and from February 25, 1950 the ownership was changed to Maharaja Pratap Singh, Ex. D-11.

80.As to the Municipal Register the documents establish D- 3, D-4, D-5 and D-6.

Q. 2: Whether Sterling Castle is the property of State of Nabha?

81. The law relating to benami is stated in Jaydayal Poddar v. Mst Bibi Hazra15:

> "It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs.

Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) The source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship if any between the claimant and the allege d benamidar; (5) the custody of the title deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1, viz., the source whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another."

82.As seen from Ex. D-3 right from 1927 the properties stood registered in the name of Nabha State up to 1952. The entry for the year 1961 is in the name of Pratap Singh as the owner. From 1962 onwards the name of 'The Save the Children Fund' the vendee from Pratap Singh is entered. As against this, what is contended by the appellants is that Sterling Castle is purchased out of Sarfa Khas of Ripudaman Singh who treated this property as his private property. As rightly held by the Division Bench it was for the plaintiffs (appellants herein) to prove that the property came to be purchased from out of the personal funds. The plea, as raised in the plaint, was that Ripudaman Singh used to draw a privy purse of Rs 3,00,000 for his personal funds. He had large personal funds and inherited a lot of funds from his father. There are also funds from personal gifts. All these were

kept by him separate from the State funds from out of which this property came to be purchased. The proof regarding this plea rests entirely on the oral evidence of PW 1 who would aver that after purchase the sale deed remained in the custody of his mother. Inasmuch as PW 1 was born in the year 15 (1974) 1 SCC 3, 6-7 : (1974) 2 SCR 90, 91-92 1924 he could not have any personal knowledge as to the purchase and from whom the source of consideration went. The other oral evidence is that of Sarojini Devi who was examined as C.P.W. 1. According to her, the amount was paid in cash to Sardar Sitole by her husband in Nabha. She stated that she was at Nabha at that time and it was she who brought the cash to Sardar Sitole. Concerning this huge amount she candidly admitted that no account of Sarfa Khas was maintained by her husband, nor was any entry about the payment of Rs 3,00,000 made in any account. Therefore, this oral testimony is hardly sufficient to establish the source of consideration.

83.As regards the relinquishment deed it was stated to have been executed on April 30, 1952 by Dr Tehl Singh. The original of this document is not forthcoming. Nor again, anyone connected with this document, was examined. It is somewhat surprising that Pratap Singh should have insisted upon such a document when he unequivocally declared by his letters dated August 19 and October 24, 1948, Sterling Castle as his personal property. These letters were submitted in accordance with Article XII of the Covenant to which we have made a reference earlier. But what is noteworthy is that in this deed of relinquishment it is stated that this property was all through in the possession of the ruling family and the State of Nabha. By the time the suit came up for trial Dr Tehl Singh was dead. Therefore, the finding of the Division Bench in the judgment under appeal faulting the plaintiffs (appellants) for non- examination of Dr Tehl Singh may be unwarranted, but in the light of the other documents, it is impossible to hold that an inference must be drawn from the deed of relinquishment in favour of the plaintiff to conclude Sterling Castle as the personal property of Ripudaman Singh. As seen already even as early as June 7, 1923, there is a record declining permission to Ripudaman Singh to retain this property as personal property.

84.Much cannot be made of Ex-A, D.O. letter dated March 13, 1956 in the absenceof Ranbir Singh being examined. No doubt, letters of administration were asked for but Sterling Castle was not one of the properties. The argument of learned counsel for the appellants that the declarations made in accordance with Article XII will not affect the ostensible title of Dr Tehl 'Singh who continued to hold the property till 1952, clearly overlooks the treatment of the property right from the date of purchase as belonging to State of Nabha. Therefore, we have not the slightest hesitation in concluding that the suit property was never the personal property of Ripudaman Singh. The Division Bench is right in its conclusion.

Q.3: Whether the judgment of the Allahabad High Court constitutes res judicata?

85.The judgment of the Allahabad High Court relates to a commoner. In other words, the Ruler who had been deposed. In 1942, he was not wielding ruling powers of the State. The main issue to be decided in that case was succession relating to Gurcharan Singh's estate in 1942. In deciding the question as to what monies were utilised for the purchase of Ilahi Manzil in 1951 the Court returns a finding of fact that one set of monies that went into the purchase of that house in 1951 was surplus sale proceeds of Rs 32,000 which were personal to Gurcharan Singh till December 14, 1942. That

being so, upon the death of Gurcharan Singh, the proceeds acquired the character of Hindu Joint Family. On December 14, 1942, when succession opened, the property was inherited according to Mitakshara Law. If really, therefore, the funds flowed from Joint Family it stands to reason that it should be held so. But, here not only the facts but also the law which is applicable are totally different. Therefore, it is concluded that the judgment of the Allahabad High Court would not constitute res judicata.

86. In the result, the appeal will stand dismissed. There will be no order as to costs.

87. Now, we go on to Civil Appeal No. 5857 of 1983. This appeal relates to No. 34 Alipur Road, Civil Lines, Delhi. The documents under which the purchase was made were dated April 18, 1922.

88. It was purchased benami in the name of Gurnarain Singh Gill. The events that followed and the documents relating to this, till the suit came to be filed by Pratap Singh for recovery of possession in 1959, could be stated chronologically.

89. The property is in occupation of the Government of India (from 1920) as a lessee per Ex. P-16 who had placed it at the disposal of the Australian High Commission. The tenants (Government of India) attorn to the Nabha State as the purchaser.

11-06-1923- J.P. Thompson records that Maharaja Ripudaman Singh agrees that house belonging to Nabha State could be sold to raise money for paying the proposed Rs 50 lakhs compensation to Patiala State by the Nabha State. He said he had kept aside from the State a sum of Rupees Six lakhs for himself which he would not part and that he had no other assets. The rest of the State he said the British had taken over.

08-07-1923- The British Government as the Paramount Power removes Maharaja Ripudaman Singh and takes over the administration of Nabha State. Maharaja Ripudaman Singh is externed and made to go into exile outside the State. The affairs of Nabha State are placed in the hands of Mr C.M.G. Ogilvie ICS as the first Administrator appointed by them, pending return to India of Mr J. Wilson Johnston, the permanent Administrator.

A sum of Rs 3 lakhs per annum as pension is allowed to Maharaja Ripudaman Singh and nothing else. Even this is not fully paid.

03-10-1923- Administrator Nabha State writes to Governor- General's (Punjab States) agent a D.O. letter proposing extension of lease of 34, Alipur Road. 05-10-1923- Having taken over the administration from Maharaja Ripudaman Singh, the Government draws up a list of house properties owned by Nabha State. 34, Alipur Road shown as one such property. So is Sterling Castle. The list is forwarded to the Government of India on December 19, 1923. 07-10-1923- Administrator Nabha receives concurrence to his proposal from the Govemor-General's agent (Punjab) regarding extension of lease of 34, Alipur Road. 12-10-1923- Administrator Nabha State writes to Estate Officer that lease may be extended and that house No. 34, Alipur Road belongs to the State although acquired by the Maharaja benami.

19-12-1923- Administrator Nabha State writes to Secretary, Foreign and Political Department, Government of India regarding possession of title deeds of various properties. 28-12-1923- Administrator Nabha State writes to Gurnarain Singh Gill (benamidar) to seek confirmation of the fact that 34, Alipur Road was property of Nabha State. 31-12-1923- Gurnarain Singh Gill (benamidar) acknowledges 34, Alipur Road as the property of Nabha State. 10-01-1924- Administrator Nabha State writes to Executive Engineer stating that the house belongs to the State. 18-01-1924- Estate Officer writes to Administrator Nabha State for production of the Sale Deed as payment of rent could not be made without proof of ownership. 07-02-1924- Administrator Nabha State despatches the Sale Deed of 34, Alipur Road to the Estate Officer. 23-05-1924- Estate Officer writes to Administrator Nabha State agreeing to pay rent for 34, Alipur Road subject to the condition that claim of Gumarain Singh Gill will be the responsibility of the State.

23-05-1924- Estate Officer writes to Gumarain Singh Gill notifying him that the Government was entering into an agreement with Nabha State believing it to be the owner of the bungalow 34, Alipur Road.

19-06-1924- List of the house properties belonging to the State having been prepared, it enquired from Maharaja Ripudaman Singh (by then in exile) as to the possession/whereabouts of the title deeds. Maharaja Ripudaman Singh replies that he does not have any title deed in his possession relating to house properties of the State and further expresses that in case of difficulty in regard to the intended sale of these properties he would always be prepared to give every assistance.

23-06-1924- D.O. letter from agent, Governor-General (Punjab States) asking to surrender within 14 days the title deeds of house property belonging to Nabha State. 30-06-1924- Rent Bill by Nabha State from April 7, 1922 to June 30, 1924 (Ex. P-24).

20-08-1924- Estate Officer writes to Administrator Nabha State that lease of 34, Alipur Road will be sent for execution on receipt of a reply from Gumarain Singh to letter dated May 23, 1924 (copy Ex. P-30). 27-08-1924- British prepare report on the Administration of Nabha State for the period July 8, 1923 to March 31, 1924. 28-08-1924- Chief Secretary Nabha State writes to Gumarain Singh Gill requesting him to reply to the Estate Officer and confirm that Nabha State is the owner of 34, Alipur Road, Delhi.

02-09-1924 Gumarain Singh Gill (benamidar) confirms the factum of ownership of Nabha State.

15-10-1924 Rent Bill by Nabha State.

03-11-1924- Estate Officer conveys Administrator Nabha State's demand for rent from April 7, 1922 to May 31, 1924.

03-11-1924- Receipt issued by Administrator Nabha State for rent from April 7, 1922 to May 31, 1924. 14-11-1924- Rent being paid by the Government as the tenant for 34, Alipur Road is credited to Nabha State Treasury. Imperial Bank of India's letter.

26-02-1925- Estate Officer sends a copy of lease to Administrator Nabha State.

02-03-1925- Administrator Nabha State acknowledges receipt of copy of lease from the Estate Officer. 02-02-1928- Maharaja Ripudaman Singh is formally deposed and detained at Kodaikanal.

His son Pratap Singh then minor is installed on the Gaddi as Ruler of Nabha. A Council of Regency, consisting of a President and three members is constituted to rule the State during his minority. The State of Nabha and all its properties come to vest in him (Maharaja Pratap Singh). 1931-1937- Expenses on maintenance of 34, Alipur Road shown in Budget Estimates of Nabha State.

25-02-1937- Gurnarain Singh Gill (the benamidar) executes a formal Release Deed in favour of Nabha State. Same is registered at Delhi on April 30, 1937. 05-03-1941- Maharaja Pratap Singh comes of age and is formally invested with full ruling powers. 12-12-1942- S. Gurcharan (formerly Ripudaman) Singh dies. Succession to his Estate opens.

01-10-1944- Australian High Commission vacates 34, Alipur Road.

27-10-1944- Maharaja Pratap Singh desires possession of the house for himself and officials, (Ex. P-68). 28-10-1944- Central Government to retain 34, Alipur Road house for its own use, (Ex. P-69).

03-11-1944- Chief Minister Nabha State gives consent to Central Government to retain 34, Alipur Road house as a tenant, (Ex. P-71).

15-08-1947- Having been freed of the British paramountcy by the Indian Independence Act, 1947 Nabha State like the other five hundred and odd States, accedes to the Dominion of India on three subjects i.e. External Affairs, Defence and Communication, but the Ruler (Pratap Singh) retains his sovereignty.

19-08-1948- Maharaja Pratap Singh submits the list of properties to the Rajpramukh which he seeks to retain at the time of merger. Alipur Road property is part of this. 20-08-1948- In terms of the Covenant, Nabha State integrates (merges) with seven other States to form PEPSU. Maharaja Pratap Singh ceases to be a sovereign ruler on this day. 1949- List of private properties in terms of Covenant includes 34, Alipur Road and Sterling Castle (Ex. P-535). 04-05-1949- Rajpramukh of PEPSU's letter to Maharaja Pratap Singh enclosing the list of private properties.

12-06-1950- PEPSU Executive Engineer writes to Secretary, Municipality, Delhi re declaration of 34, Alipur Road as private property of Maharaja Pratap Singh. Letter is dated June 12, 1950, (Ex. P-516).

1948-1950- Smt Sarojini Devi being the mother of Maharaja Pratap Singh assumes residence at his Alipur Road property. 1951- Smt Sarojini Devi manages to cause her name to be entered in the records of the Notified Area Committee as the owner of the house.

27-01-1951- Maharaja Pratap Singh's secretary writes to Notified Area Committee re instruction given by Executive Engineer, Buildings & Roads, Nabha State, regarding Maharaja Pratap Singh being the owner of the house. Requires the fact to be entered into the records, (Ex. P-528). 01-11-1956- PEPSU merges into Punjab. 01-11-1957- Dr Anand Prakash as Advocate for Rajmata Sarojini Devi writes to Home Ministry a letter where he alleges agreement for giving of 34, Alipur Road to Sarojini Devi by Maharaja Pratap Singh against money for purchase of Rolls Royce car. No plea that this property belonged to S. Gurcharan (formerly Ripudaman) Singh and that his clients succeeded to it on December 14, 1942.

09-11-1957- Deputy Secretary, Ministry of Home Affairs, Government of India, writes to Maharaja Pratap Singh forwarding letter of Advocate of Sarojini Devi alleging the giving of 34, Alipur Road to Sarojini Devi by Maharaja Pratap Singh against Rs 78,000 taken for purchase of Rolls Royce car. Letters November 1, 1957, November 9,1957 (Ex. P-AD).

26-11-1957- Maharaja Pratap Singh writes to the Secretary, Notified Area Committee.

17-08-1959- Maharaja Pratap Singh files suit for recovery of possession of 34, Alipur Road in the Court of Senior Sub- Judge, Delhi, which is later transferred to the High Court of Delhi.

90. All these have been referred to by the learned Single Judge (M.S. Joshi, J.) in Suit No. 394 of 1966.

91. Concerning the expenditure incurred for this building no evidence whatever was let in on behalf of the respondents (defendants). On the contrary, there are Budget Estimates prepared for the year 1931-48 as evidenced by Exs. P-73 to P-108. They clearly establish that the funds needed in this regard came from the Government treasury. It is true that Sarojini Devi in her evidence would state that a sum of Rs 25,000 was left with the plaintiff for the upkeep and the maintenance of the house. But, this only remains on oral evidence.

92. At the time when the house was purchased under lease, the rent realised was hardly Rs 250 per month. There is no evidence to show that Ripudaman Singh ever received the rent or demanded the rent. Though he was alive for 20 years after the date of purchase he had not evinced any interest with regard to this property. This conduct belies the claim of the defendant that it was purchased by him from out of his personal funds.

93. As rightly held by the learned Single Judge the evidence of Sarojini Devi that Ripudaman Singh purchased the property from his personal funds and this was meant to be the personal property is hard to accept. The bank account is not produced. The evidence of DW 10 is brittle. DW 3's testimony bristles with contradictions. Therefore, that is not helpful. What is more crucial is that Gumarain Singh Gill throughout maintained the stand that the property had been purchased for the State as benamidar. If really the property was purchased for Ripudaman (Gurcharan Singh) he would not take that stand as to betray the confidence of the master. The release deed was executed on February 25, 1937. It is somewhat strange it should have been executed in favour of Nabha State and not Ripudaman Singh. Ripudaman Singh was alive for 5 years subsequent to release deed. Not a

word of protest was uttered either by Ripudaman Singh himself or by anyone (beneficial owners).

94. The respondents placed reliance on Ex. DW 9/1. A careful perusal of the document shows that there is no reference to 34, Alipur Road, the suit property. Therefore, on that score, it cannot be claimed as private property of Ripudaman Singh.

95. As we have held in Civil Appeal No. 1208 of 1990 the letter of administration dated February 22, 1949 (DW 11/1) does not, in any manner, help the respondents since there is no reference in the Annexure to the suit property.

96. There is one clinching evidence in the letter of the Advocate for Sarojini Devi dated November 1, 1957. That is extracted below:

Ex. P-515 1St November, 1957 "No. A.P./Misc./433 The Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

Dear Sir, Application under Section 86 read with Section 87-B of the Code of Civil Procedure.

On behalf of my client, Her Highness Rajmata Sarojini Devi of Nabha, I hereby apply for permission to file a suit against His Highness Maharaja Pratap Singh of Nabha for the following matters:

Suit for declaration to my client's ownership rights in the property situate at 34, Alipur Road, Delhi. This property was given by His Highness to my client in consideration of a sum of about Rs 78,000 paid by my client on His Highness' behalf for purchase of a Rolls Royce Car. Suit for injuction to restrain His Highness from selling the above mentioned house.

Any other relief pertaining to the above mentioned house. Yours faithfully, sd/-

Anand Prakash."

97. Having regard to the admission made above that the property had been purchased by Sarojini Devi from Pratap Singh, the present plea, put forth by her as belonging to the Joint Family is contradictory to the earlier stand.

98. Now, we come to the covenant entered into. We have already seen the scope of Article XII. It is worth repeating the relevant clause of Article XII, clause (1), namely:

> "(1) The ruler of each Covenanting State shall be entitled to the ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to Rajpramukh." (emphasis supplied)

99. The State properties have been dealt with under Article VI. The language used in the above clause leaves no doubt that the private properties are distinct from State properties which were in

the use and enjoyment of the Ruler. Therefore, what is decisive are, the user and enjoyment. Unless and until it is established by such a user and enjoyment the property was private, it cannot be claimed to be so.

100. Concerning the scope of this article, the Division Bench says: "Under Article XII in paragraph (1) it is provided that the Ruler shall be entitled to full ownership, use and enjoyment of all private properties belonging to him on the date of his making over the administration of that State to the Rajpramukh. Paragraph I clearly assumes that the Ruler of each Covenanting State may b e having private properties and the provision assures all the rights in respect of those properties. Under paragraph 2 the Ruler is required to furnish an inventory of all properties held by him as such private property. The use of the word 'held' also makes it clear that the Ruler while furnishing an inventory should be holding some properties as his private properties. The decision given by the Rajpramukh with the approval of the Government of India about a particular inventory furnished by the Ruler would not make any difference because it was meant to put at rest any possible dispute between the Government of the States' Union and the Ruler. The question which, next, arises is whether a property accepted as a private property upon the furnishing of the inventory would mean that the property accepted as a private property would be the exclusive property of the Ruler or would it also include the private property held jointly by a Ruler with his family members. In our opinion there is nothing to suggest that 'word' private property when used in Article XII was meant to include only those properties which were held in exclusive ownership by a particular Ruler."

101. We are unable to agree with this finding. If the various documents and the other evidence to which we have made a reference earlier point out that the property belonged to the State of Nabha, it cannot be otherwise, because of the list submitted by Pratap Singh. The recognition by the sovereign parties to the covenant, that the suit property is a private property of Pratap Singh would amount to an act of State.

102.We are equally unable to uphold the finding of the Division Bench in paragraph6 of the judgment to the following effect: "The property in dispute was admittedly purchased by Maharaja Ripudaman Singh in the name of Gumarain Singh Gill. There was no reason to buy the property benami in case the property was intended to be the property by Nabha State. Only because the Maharaja was having difficulties with the British Government he had to buy property benami."

103. This finding clearly overlooks the interdict on a native Ruler to purchase property in British India. That interdict is as under:

"Annexure R-10 RULES AND OFFICE ORDERS OF THE POLITICAL DEPARTMENT OF PUNJAB GOVERNMENT EDITION 1908 Office Order No. XXXV

1. The Government of India in 1901 pointed out that the difficulties and inconveniences arising from the possession by native foreign chiefs of lands within British Territories are very serious. So greatly have these evils been felt that it has been the policy of the Government to effect exchanges of territory in such cases, on the basis of giving to the chiefs, land in sovereign right in lieu of their zamindari possession. For these reasons also it has been ruled by the Government of India that

grants or sales of land in British Territory should not be made to any native chief who is not a subject of the British Government.

2. The policy of the Government of India is, therefore, to discourage the acquisition whether direct or indirect by Sovereign or Feudatory princes of any lands in British Territory however and from whomever acquired. All the Commissioners of divisions in Punjab have been directed to report all cases in which landed property may be acquired by a ruling chief. All proposed purchases of this nature have to be referred for the orders of the Government of India who will only allow such purchases in special circumstances. These orders refer to all immovable property of every description whether land or houses and forbid also the lending of money upon mortgage of such immovable property.

3. The wishes of the Supreme Government in this respect were, in 1902 communicated to all the native States in the Punjab To Patiala, Bhawalpur, Jind and Nabha direct and to others through Political Agents.

4. Again in 1903, the Government of India pointed out that they are strongly opposed on grounds of principle to the acquisition of immovable property in British India by ruling chiefs and notables of native States, and in forwarding a list indicating the manner and circumstances in which the policy of the Government of India has been infringed in certain instances in the matter and prompt and adequate measures taken to ensure the strict observance in future of the rules laid down by them.

Note: The terms notable employed in the above orders applies only to near relatives of ruling chiefs, to really important Sardars or officials of native States, and to persons whose relationship to or dependence on such Sardars and officials is so close that their names may be used as cover for 'Benami' transactions."

104. Accordingly this appeal will stand allowed. However, there shall be no orders as to costs.
