

SMT. MITHLESH KUMARI AND ANR.

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v.

THAKUR SHEO SARAN SINGH AND ORS.

JULY 9, 1996

[M.M. PUNCHHI AND MRS. SUJATA V. MANOHAR, JJ.]

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*Civil Procedure Code, 1908—Section 11—Res judicata—Principle—Applicability of.*

An estate known as Partapner Raj, at a point of time was owned by Raja S. The estate known to be an impartible one was governed by the rule of lineal primogeniture. The Raja had five sons, Rs, HS, MS, AS and RaS. The estate after the death of Raja S descended in the line of the eldest son, RS and then downwards for generations upto Raja HS. Raja HS died in 1925, leaving behind a mother Rani B, a step mother by the name Rani R and an adopted minor son, Raja M. Raja M was taken to have succeeded to the Partapner Raj. He was killed while unmarried and a minor. On the demise of Raja M, disputes about succession to the Partapner Raj estate arose. One SS from the junior branch, filed a suit for declaration asserting that the Raj was governed by the rule of primogeniture, and since he was the senior most male member of the senior branch of the family of Raja M, he was entitled to its succession. Rani B pleaded that the estate was not impartible and hence not subject to the rule of primogeniture, claiming that the entire estate was governed by Hindu Law in the matter of succession.

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VS of the junior branch staked his claim to be the closest and the nearest heir under Hindu Law to the estate of Raja M, and not S. KS of the Senior Branch contested the suit on the ground that SS as well as VS being in the junior branch were not entitled to succeed and since he was in the senior branch and the estate being impartible, governed by the rule of lineal primogeniture, he was entitled to succeed in preference to others.

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The trial court held that properties mentioned in Lists A and C constituted the impartible Partapner Raj, governed by the rule of primogeniture and that KS, defendant, and not SS, plaintiff, was the senior most member of the senior branch of the family and hence KS was entitled to succeed to the Raj properties; that properties mentioned in lists B and

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- A D did not form part of the Raj and were thus susceptible of governance by Hindu Law in matters of succession and those devolved on Rani B, the adoptive grand mother of Raja M. Rani B died during the pendency of these consolidated appeals, and therefore, the appeal filed by her was dismissed having abated. The other two appeals, namely of SPS of the junior branch and KS of the senior branch were dismissed on their respective merit.

The High Court held that since by will, Raja H had gifted his entire property to his adopted son, Raja M, the erstwhile Raj Properties, by that fact itself, lost their character as impartible estate became the self acquired properties of Raja M, and the same passed on under Hindu Law to his adoptive grand mother, Rani B and that the suit of SPS remained dismissed and the advantage gained by KS in the trial Court, of his succeeding to Lists A and C properties on the basis of the rule of primogeniture, was lost. The appeals filed by SPS and KS to the Privy Council against the decision of the High Court were allowed in part. The Privy Council reversed the finding of the High Court regarding the effect of the Will of Raja H, in changing the character of the properties, holding that properties in Lists A and C continued to constitute the impartible Raj while properties in Lists B and D continued to be held as self acquired properties of Raja M, governed by the Hindu Law of succession. It was further held that KS was the senior most male member of the senior branch of the family and was entitled to succeed to the partapner Raj and that SPS (SS, being his predecessor) was not entitled to the Raj properties being in the junior branch of the family.

- F VS filed a suit for declaration which was partially decreed in respect of the properties mentioned in Lists B and D and Items 5 to 7 of List E Part II and dismissed with regard to the properties mentioned in Lists A and C as well as relating to the remaining items in List E. VS and KS filed first Appeal. The High Court partly on the basis of *res judicata* and partly on the basis of concessions made by counsel before the trial court, concluded that KS could not lay any claim to properties which were self acquired properties in the hands of Raja M and likewise VS could not lay claim to the properties mentioned in Lists A and C, forming part of the Partapner estate to which the lawful heir was KS, descending in the senior branch by the rule of primogeniture. This appeal had been filed against
- H the judgment of the High Court. The question raised for consideration was

whether in the facts and circumstances, general principles of *res judicata* would apply. A

Dismissing the appeal, this Court

HELD : Partly on the basis of *res judicata* and partly on the basis of concessions made by counsel before the trial court, the High Court rightly concluded that the respective parties to keep to their places, in holding that KS cannot lay any claim to properties which were self-acquired properties in the hands of Raja M and likewise V S could not lay claim to the properties mentioned in Lists A and C, forming part of the Partapner estate to which the lawful heir was K S, descending in the senior branch by the rule of primogeniture. The plea of K S that he constituted a Hindu undivided family or a coparcenary with Raja M was not seriously contested before this Court. Besides there was no basis or any evidence in support of such plea. The High Court for good and sufficient reasons had gone against K S both on his plea of being a member of the Hindu undivided family as well as forming a coparcenary with Raja M, as he stood removed from him in many degrees. The finding recorded by the High Court on this aspect as well as on other aspects are unassailable. [295-D-F] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1114 of 1975. E

From the Judgment and order dated 9.9.71 of the Allahabad High Court in F.A. No. 12 of 1957.

E.C. Agrawala and Ms. Purnima Bhat for the Appellants.

R.K. Bhatt for the Respondents. F

The Judgment of the Court was delivered by

PUNCHHI, J. Whether in the facts and circumstances, general principles of *res judicata* would apply, is the sole question seeking answer in this long drawn litigation, hopefully reaching its finale. G

There exists an estate known as Partapner Raj in the district of Etawah in the State of Uttar Pradesh. It is known to be an ancient Raj. At a point of time it was owned by Raja Sambhar Singh. The said Raja had five sons, namely, Raja Narain Singh, Hindu Singh, Mohan Singh, Anand H

A Singh and Ratan Singh. The estate was known to be an impartible one, governed by the rule of lineal primogeniture. Indisputably, due to the dictate of such rule, the estate after the death of Raja Sambhar Singh descended in the line of the eldest son, Raja Narain Singh and then downwards for generations upto Raja Hukum Tej Pratap Singh (for short referred to as Raja Hukum).

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Raja Hukum died on May 17, 1925, leaving behind a mother by the name Rani Baisni Madho Kunwar (hereinafter called Rani Baisni), a step-mother by the name Rani Rathorni Narain Kunwar (for short Rani Rathorni) and an adopted minor son, Raja Maha Vindeshri Pratap Singh (for short Raja Maha). We are not concerned with all the remaining four branches represented by the remaining four sons of Raja Sambhar Singh, except two of them, who, for facility of reference, shall be called the senior branch and the junior branch, because of the age factor. In the senior branch was one Madho Singh, whose natural son Raja Maha; was given over in adoption to raja Hukum. In the same line was one Kalka Singh, the brother of Madho Singh. He has been the principle contestant in the litigation throughout. He died during the pendency of the instant litigation, whose cause, the present appellants, being his heirs and legal representatives, espouse. In the junior branch, there was one Sheorakhan Singh, another contestant. He died and the contest was continued by his son, Shyam Partap Singh. In that branch was also one Vikram Singh but a degree closer than Shyam Partap Singh, the substituted contestant.

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On the demise of Raja Hukum on May 17, 1926, Raja Maha was taken to have succeeded to the Partapner Raj. On 14th December, 1926, the Court of Wards assumed the management of the estate on behalf of the minor Raja Maha. On February 18, 1931, Raja Maha was murdered by his natural father, Madho Singh. Raja Maha was killed while unmarried and a minor.

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On the demise of Raja Maha, disputes about succession to the Partapner Raj estate arose. Sheorakhan Singh from the junior branch, filed Suit No. 19 of 1931 for declaration before the Civil Court asserting that the Raj was government by the rule of lineal primogeniture, and since he was the senior most male member of the senior branch of the family of Raja Hukum, he was entitled to its succession. As said before, on account of his demise, his son, Shyam Partap Singh carried on the suit. In it were arrayed

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Rani Baisni and Rani Rathorni from the branch of Raja Hukum, Vikram Singh of the junior branch and Kalka Singh of the senior branch, as well as some others as defendants. The suit was contested. Rani Baisni pleaded that the estate was not impartible and hence not subject to the rule of primogeniture. She claimed that the entire estate was governed by Hindu Law in the matter of succession. Vikram Singh of the junior branch pleaded likewise that the Raj was not an impartible estate and hence not governed by the rule of primogeniture, but by succession under Hindu Law. He staked his claim to be the closest and the nearest heir under Hindu Law to the estate of Raja Maha, and not Sheorakhan. Kalka Singh of the Senior Branch contested the suit on the ground that Sheorakhan Singh as well as Vikram Singh being in the junior branch were not entitled to succeed and since he was in the senior branch and the estate being impartible, governed by the rule of lineal primogeniture, he was entitled to succeed in preference to others.

The suit property was described in the plaint to be of four kinds, mentioned in Lists A, B, C and D, annexed to the Plaint.

Rani Baisni also filed suit No. 26 of 1932 before the same Court for a declaration that she was the next heir of Raja Maha, the entire estate being Zamindari, governed in the matter of succession by Hindu Law. As was natural, the other parties, mentioned earlier, contested the suit in accordance with the pleas taken by them in the earlier suit No. 19 of 1931. The two suits were therefore consolidated together and jointly tried.

The trial court held that properties mentioned in Lists A and C constituted the impartible Partapner Raj, governed by the rule primogeniture and that Kalka Singh, defendant, and not Sheorakhan Singh, Plaintiff, was the senior member of the senior branch of the family and hence Kalka Singh was entitled to succeed to the Raj properties. On the other hand, it held that properties mentioned in Lists B and D did not form part of the Raj and were thus susceptible of governance by Hindu Law in matters of succession. According to the trial court, those devolved on Rani Baisni, the adoptive grand-mother of Raja Maha. On these findings, the suit of Sheorakhan Singh of the junior branch, was dismissed, while the suit filed by Rani Baisni was decreed in relation to properties in Lists B and D.

Both the respective plaintiffs being aggrieved against the decision of the trial court, filed appeals in the High Court of Allahabad. In Appeal

A No. 109 of 1933, Rani Baisni was the appellant and in Appeal No. 82 of 1933, Shyam Partap Singh was the appellant. Kalka Singh too filed Appeal No. 381 of 1933, being aggrieved against the finding recorded that properties in Lists B and D were not part of the impartible estate, those properties going in favour of Rani Baisni, on the partial decree of her suit.

B During the pendency of these consolidated appeals, Rani Baisni died on June 12, 1938. Rani Rathorni (the co-widow of the deceased Rani) applied for substitution in First Appeal No. 109 of 1933. Her application was rejected on the finding that she could not legally represent the estate of the deceased. It was observed though, that Vikram Singh of the junior  
C branch could be a preferential heir, as according to the pedigree table, he was closest in degree to the common ancestor, Raja Sambhar Singh and hence to Rani Baisni. Since Vikram Singh, even though a party to the consolidated appeals, did not make any application for substitution or transposition of his name in place of Rani Baisni, the appeal filed by Rani  
D Baisni was dismissed on November 1, 1939 having abated. And on the same day, the High Court dismissed the other two appeals, namely of Shyam Partap Singh of the junior branch and Kalka Singh of the senior branch on their respective merit.

E The High Court held that since by Will dated 16th May, 1925, Raja Hukum had gifted his entire property to his adopted son, Raja Maha, the erstwhile Raj properties, by that fact itself, lost their character as impartible estate and became the self-acquired properties of Raja Maha, and the same passed on under Hindu Law to his adoptive grand-mother, Rani Baisni. The result of the same was that suit of Shyam Partap Singh  
F remained dismissed and the advantage gained by Kalka Singh in the trial court, of his succeeding to Lists A and C properties on the basis of rule of primogeniture, was lost. Though the factum of death of Rani Baisni was taken note of by the High Court but the question or to who would succeed to her estate was left un-decided.

G Both Shyam Partap Singh and Kalka Singh preferred appeals to the Privy Council against the decision of the High Court. Both the appeals were allowed by the Privy Council in part vide decision dated April 11, 1946. The Privy Council reversed the finding of the High Court regarding the effect of the Will of Raja Hukum, in changing the character of the  
H properties, holding that properties in Lists A and C continued to constitute

the impartible Raj while properties in Lists B and D continued to be held as self-acquired properties of Raja Maha, governed by the Hindu Law of succession. It settled also the dispute as to seniority of branches *inter se* holding that Kalka Singh was the senior most male member of the senior branch of the family and was entitled to succeed to the Partapner Raj. Correspondingly, it was held that Shyam Partap Singh (Sheorakhan Singh, being his predecessor) was not entitled to the Raj properties being in the junior branch of the family.

Concludingly, the Privy Council held that properties mentioned in Lists A and C constituted the partapner Raj which was an impartible estate governed by the rule of primogeniture, whereby Kalka Singh of the senior branch was entitled to the Raj properties. But since Kalka Singh had not preferred any substantive claim in the form of a separate suit, the Privy Council followed the course adopted by the trial court in merely affirming the dismissal of the suit of Shyam Partap Singh. Side by side the Privy Council held that properties mentioned in Lists B and D were self-acquired properties of Raja Maha and were governed by the rules of Hindu Law, rightly devolving on Rani Baisni, as held by the trial court.

That decision alas - was not the end of the journey. Before hand, soon after the decision of the High Court, Vikram Singh filed Suit No. 21 of 1939 in the Civil Court based upon those findings recorded by the High Court that properties mentioned in all the four Lists were self-acquired properties of Raja Maha, and therefore devolving under Hindu Law on him, he being the closest in proximity, since Rani Baisni had died and he was the nearest heir to Raja Maha. He prayed for a declaration in his favour to that effect. He however added another list of properties described as List E consisting of two parts, some of which had allegedly been acquired by Rani Baisni by purchase, out of the income derived from Partapner Raj estate and others from the self-acquired properties of Raja Hukum and Raja Maha. Rani Rathorni's claim to some of those properties as Stridhan, when impleaded as a defendant to that suit, fell to the ground because of her death on December 22, 1939. Since the Court of Wards had taken possession of her estate, shortly before her death, the Court of Wards was also added as a defendant in the suit. Ultimately, Vikram Singh plaintiff and Shyam Partap Singh, defendant in the suit, entered into a compromise on September 23, 1940 whereunder Shyam Partap Singh recognised Vikram Singh to be the nearest heir of Raja Maha entitling him

A to his self-acquired properties and on that basis some arrangement to divide the plaint property was *inter se* made between them. The suit was thus settled in terms of the compromise between those two. Shyam Partap Singh thus withdrew from contesting the suit. The real contestant thus remaining was Kalka Singh in relation to properties mentioned in Lists A, B, C and D and Items mentioned at Serial Nos. 5, 6 and 7 of List E, as called out by the trial court.

The principal defence of Kalka Singh, as was expected, was based on the existence of the Privy Council decision, operating as *res judicata* for the purpose of the instant suit. Particular emphasis was laid that insofar as properties mentioned in Lists A and C were concerned, they were held to constitute impartible estate to which Kalka Singh alone was to succeed under the rule of lineal primogeniture. He, however, claimed the remaining properties to be devolving on him on the basis that he constituted a joint Hindu family with Raja Maha, but this plea ultimately did not succeed and it was found that no such joint Hindu family was constituted. This aspect can thus drift away as of no consequence. Significantly, on October 16, 1946, counsel for Vikram Singh, plaintiff, conceded before the trial court that to such of those properties which had been held to be impartible, Vikram Singh had no right to those properties. Correspondingly, not disputing that position, counsel appearing for Kalka Singh also made statement that according to the pedigree table, Vikram Singh was nearer and more proximate in relationship to Raja Maha as compared to Kalka Singh. In view of these statements, the incontrovertible position arising was that Vikram Singh had no right to the Raj properties, but he had a superior and preferential claim over kalka Singh with regard to self-acquired properties of Raja Maha. Item Nos. 5 to 7 of List E Part II had been held by the trial court to be part of the self-acquired properties. The sum total thus was that Vikram Singh's suit for declaration was partially decreed in respect of the properties mentioned in Lists B and D and Items 5 to 7 of List E Part II and dismissed with regard to the properties mentioned in Lists A and C as well as relating to the remaining items in List E.

In spite of taking fair stances before the trial court through their respective counsel as to what properties constituted the impartible Partapner estate as well as to the proximity of their relationship to Raja Maha, yet Vikram Singh and Kalka Singh preferred First Appeal Nos. 98 and 12 of 1957, respectively before the High Court. The same questions arising

before the trial court were raked up. It went on to rule that the findings recorded by the Privy Council with regard to the properties mentioned in Lists A and C belonging to the Partapner Raj, governed by the rule of primogeniture and vesting in Kalka Singh could not be re-opened on the principles of *res judicata*. Similarly, the decision given by the Privy Council with regard to the properties mentioned in List B and D (to which were later added Items 5 and 7 of List E by the trial court) to be the self-acquired properties of Raja Maha vesting in Rani Baisni operated as *res judicata*. On the demise of Rani Baisni, heirs to the estate of Raja Maha had obviously to be discovered and as conceded to by counsel for Kalka Singh before the trial court. Vikram Singh was closer in proximity of relationship to Raja Maha.

Partly on the basis of *res judicata* and partly on the basis of concessions made by counsel before the trial court, the High Court, in our view, rightly concluded that the respective parties to keep to their places, in holding that Kalka Singh cannot lay any claim to properties which were self-acquired properties in the hands of Raja Maha and likewise Vikram Singh could not lay claim to the properties mentioned in Lists A and C, forming part of the Partapner estate to which the lawful heir was Kalka Singh, descending in the senior branch by the rule of primogeniture, The plea of Kalka Singh that he constituted a Hindu undivided family or a coparcenary with Raja Maha was not seriously contested before us. Besides there was no basis or any evidence in support of such plea. The High Court for given good and sufficient reasons has gone against Kalka Singh both on his plea of being a member of the Hindu undivided family as well as forming a coparcenary with Raja Maha, as he stood removed from him in many degrees. We concur with the finding recorded by the High Court on this aspect as well as on other aspects.

As a result of the afore-discussion, we find no merit in this appeal and the same is ordered to be dismissed, but without any order as to costs.

R.A.

Appeal dismissed.