

FAQRUDDIN (DEAD) THROUGH L.R.S.

v.

TAJUDDIN (DEAD) THROUGH L.R.S.

(Civil Appeal No. 3643 of 2008)

MAY 16, 2008

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ]

Mohammedan Law:

Jaipur Matmi Rules, 1945 – Rule 13 – Sajjadanashin or Mutawalli, office of – Inheritance to – Held: Rule of primogeniture is not applicable to offices of Sajjadanashin and Mutawalli – Sajjadanashin is a spiritual office and Mutawalli is a manager of secular properties – Both offices are of different nature – Inheritance of office may not be governed by law of inheritance – Office of Sajjadanashin involves requisite qualifications – In such cases, jurisdiction of Revenue Authorities is limited – It cannot decide a question of title – Title depends upon religious law or statutory law or customary law – Entry in revenue records is not a document of title – On facts, with regard to appointment of plaintiff (since deceased) and his predecessor and successor-in-interest as Sajjadanashin or Mutawalli, when he was recognized as ‘Matmidar’ after the death of earlier ‘Sajjadanashin’ and ‘Matmidar’ K, the Board could not have conferred title upon plaintiff – Its decision being without jurisdiction would be nullity – Jurisdictional fact would not attract principles of estoppel – Also entry of the revenue records did not give rise to fresh cause of action so as to take away the effect of principles of res judicata – Wakf was held to be Wakf Al Aulad – More so, on death of plaintiff, who died issueless, suit abated – Recognition of right in his favour was personal in nature – No decree for possession could be granted in favour of plaintiff’s legal representative, until their right vis-à-vis bequeathment by plaintiff was not determined – There was valid declaration in favour of appellant as Mutawalli of Dargah since 1938 and ‘Sajjadanashin’ since 1958 – Thus,

A *plaintiff having not derived any title as 'matmidar' cannot become a 'Sajjadanashin' or Mutawalli.*

B HZS was a great Sufi Saint. In view of his spiritual attainments, the Ruler of State of Jaipur gave him 7 bighas of land. However, he acquired 8 bighas 2 biswas lands out of his own funds. On his demise, his tomb was treated as a sacred place and it attained the status of a Dargah.

C GRS, HZS's sisters son was the first Sajjadanashin and Mutawalli of Dargah. In 1860, SIS succeeded to the said office followed by SMS. SMS was convicted by a criminal court. Matmi was sanctioned in favour of K, younger brother of SMS. K died in 29.05.1938. He allegedly executed a Will and nominated his eldest son-A, as Sajjadanashin and another son, F as Mutawalli. In 1939, M, son of SMS filed a suit against K claiming inheritance and also against 'A' claiming election to the post of Sajjadanashin which were dismissed. Appeals were also dismissed. During pendency of the proceedings, A died and in his place, his son T was substituted. The Wakf was held to be Wakf Al Aulad. In 1953, T filed another suit, for a declaration that he was the rightful Sajjadanashin of Dargah and F, the deceased predeceased-in-interest of the appellants be removed from the office of Mutawalli. It was held that the plaintiff was not entitled to be 'Sajjadanashin' as it was a private land. Appeal was also dismissed and the said proceeding attained finality. It is alleged that on the demise of A, the second brother-SS became Sajjadanashin. On demise of SS, the younger brother, F became Sajjadanashin according to custom. He continued to hold the office of Mutawalli also. In 1966, T, A's son filed another suit claiming himself to be the Sajjadanashin and later on withdrew the suit. In 1974, 'matmi' proceeding was initiated and plaintiff's name-T was directed to be mutated by the Board of Revenue. Plaintiff filed a fresh suit that having been declared as a holder of land, he became Mutawalli and Sajjadanashin,

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thus, entitled to possess the same exclusively. The trial court held that the suit was barred under the principles of *res judicata*. During pendency of appeal, T filed another suit. First Appeal was also filed. F died in 1981 and appellants were substituted in his place. According to appellants, SZA was declared as Mutawalli. In 1987, T died issueless. Respondent AR was substituted as legal representative in place of T claiming his right on the basis of an alleged Will. Other respondents also claimed the right under another Will. Appeal filed by T was allowed. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 Sajjadanashin is a spiritual office. It has to be held by a wise person. He must be fit for holding the office. Mutawalli is a manager of secular properties. He is the temporal head. Both of them are connected with a Dargah or a Wakf. The term "Matmi" has been defined in Sub-rule (3) of Rule 4 of the Jaipur Matmi Rules, 1945 to mean "mutation of the name of the successor to a State grant on the death of the last holder". Matmi, however, is a process of mutation carried out in the revenue register in terms of the Matmi Rules. [Paras 21, 22 and 28] [393-C,E, 397-F]

1.2 The law of inheritance amongst the Mohammedans is governed by their personal laws. If the properties are wakf properties, the offices of Sajjadanashin and Mutawalli are to be filled up in accordance with the law or the custom. If the properties are heritable, those who are the 'Quranic Heirs' would be entitled to hold the said posts. Indisputably, the law of primogeniture has no application amongst the Mohammedans vis-à-vis their law of inheritance. [Para 26] [397-C,D]

1.3 'Wakf' would mean taking out something out of one's ownership and passing it on to God's ownership dedicating its usufruct – without regard to indigence or

A affluence, perpetually and with the intention of obtaining Divine pleasure-for persons and individuals, or for institutions or mosques and graveyards, or for other charitable purposes. [Para 27] [397-E,F]

B 1.4 The Matmi Rules are statutory in nature. His Highness of Maharaj used to exercise both executive and legislative policy. The Rules having been validated have a statutory force. Apart from having the statutory sanction under the Jaipur Matmi Rules (Validation Act), 1961, it seems to have Presidential sanction. [Para 29 and 30] [397-G, 398-E]

C *Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Ors.* AIR 1963 SC 1638; *Thakore Sobhag Singh v. Thakur Jai Singh and Ors.* AIR 1968 SC 1328; *Shah Najihuddin Ahmad v. Amir Hasan Khan & Ors.* AIR 1934 Patna 443 - referred to.

D 'Muslim Law as administered in India & Pakistan' by Shri K.P. Saksena - referred to.

E 1.5 The jurisdiction of the Board of Revenue being limited, no title could have conferred upon the plaintiff. Title in or over a land will depend upon the statutory provisions. A title does not remain in vacuum. It has to be determined keeping in view the law operating in the field, viz., religious law or statutory law or customary law, etc. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense. The provisions of Rule 13 of the Matmi Rules laying down a rule of primogeniture will have no application in relation to the offices of Sajjadanashin and Mutawalli, F which are offices of different nature. They are *stricto sensu* not hereditary in nature. An entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title. Inheritance or succession to a property is governed by statutory law. Inheritance of an G office may not be governed by law of inheritance; but, H

the office of Sajjadnashin is not ordinary office. A person must possess the requisite qualifications to hold the said office. [Para 34] [401-D-H] A

Suraj Bhan and Others v. Financial Commissioner and Others (2007) 6 SCC 186; Narain Prasad Aggarwal (D) By LRs. v. State of M.P. 2007 (8) SCALE 250 – referred to. B

1.6 Only because an observation has been made by the Board of Revenue, the same by itself did not confer any jurisdiction upon the civil court, if it was otherwise barred. If the suit was barred under the principles of res judicata, Section 12 of the CPC bars filing of another suit. [Para 35] [402-D] C

Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas and another Civil Appeal No. 3495 of 2008, decided by S.C. on 12.05.2008 – referred to. D

1.7 High Court might have been correct had plaintiff would have obtained title by reason of a separate transaction. The entry of the revenue records did not give rise to a fresh cause of action so as to take away the effect of principles of res judicata. If the order of the Board of Revenue is taken to its logical conclusion, the same would be rendered wholly illegal and without jurisdiction. It would be a nullity. The submission that respondents are estopped and precluded from questioning the jurisdiction of the Board of Revenue is without any merit. [Paras 36 and 37] [402-E-H] E
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Anwar Khan Mehboob Co. v. State of Madhya Pradesh and Others (1966) 2 SCR 40; Chief Justice of Andhra Pradesh and Another v. L.V.A. Dikshitulu and Others AIR 1979 SC 193; MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. (2004) 8 SCC 619; Hasham Abbas Sayyad v. Usman Abbas Sayyad and Ors. (2007) 2 SCC 355 - referred to. G

1.9 A jurisdictional fact would not attract the principles H

A of estoppel as there can be no estoppel against statute.
[Para 38] [403-B]

B 1.10 Respondents themselves claimed their rights
only under the Matmi Rules. The Matmi Rules do not recognize
any transfer of property. If they do not recognize
any transfer of property, by getting their names entered
as a Mutawalli in terms of the Rules, they cannot claim
exclusive possession. [Para 39] [403-C]

C 1.11 The genuineness or otherwise of validity of either
of the Wills, vis-à-vis, the nature of the grant as also
the nature of the properties in question must be determined
by an appropriate court of law. Whereas respondent No.1
claims his right, title and interest under one Will
purported to have been executed by T; respondent Nos.
D 2 and 3 claimed their right by virtue of another Will. The
inter se disputes between the parties are said to be pending
in some other proceedings. That is how the suit must
be held to have abated. The recognition of right in favour
of T was personal in nature. If he has died, name of another
E person as Mutawalli must be entered in the register
of revenue. By saying so it is not suggesting that the entry
made in the revenue records is final in nature. What
would be the effect thereof is one question but the very
fact that entire case of the respondent based on Wills
which is prohibited in terms of the Matmi Rules is another.
F So long their right vis-à-vis the bequeathment by T is not
determined, no decree for possession can be granted in
their favour. Although the District Judge, in his judgment
dated 7.9.1953 purported to have proceeded on the basis
G that T was not validly elected or selected for technical
reasons, the fact remains that the suit of the plaintiff was
dismissed. If a suit was dismissed, he could not have claimed
his right as Sajjadanashin or Mutawalli. It is true that in
the said suit, the right of the appellant as a validly elected
Sajjadanashin and Mutawalli was not determined. The trial

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judge stated in his judgment that there was a valid declaration in favour of Faqrudin. [Para 39] [403-D-H]

1.12 The land in question were not Wakf lands but 'Wakf Aulad'. Indisputably, however, both Wakf land as also the land in question are under the management of Mutawalli. He, apart from the Wakf land, holds the land in suit on behalf of the beneficiaries. The present appellants are also beneficiaries of the Wakf. If the right to recover possession must vest in a Mutawalli and if by reason of his status of 'Matmi', T did not become a Mutawalli, which declaration in his favour must be held to have been legally made by the High Court, the respondents relying on or on the basis of the purported Wills executed in their favour cannot claim independent right to recover possession. [Para 40] [404-B,C,D]

Gnanasambanda Pandara Sannadhi v. Velu Pandaram & Anr. XXVII (1899-1900) Indian Appeals 69; Debendra Nath Mitra Majumdar v. Sheik Safatulla AIR 1927 Calcutta 130 – referred to

K.P. Saksena's Muslim Law as administered in India & Pakistan p 572 – referred to.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3643 of 2008

From the Order dated 3.11.2006 of the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Civil Appeal No. 144/1981

K.V. Vishwanathan, Gagan Gupta, M. Shoaib Alam and Parmanand Gaur for the Appellants.

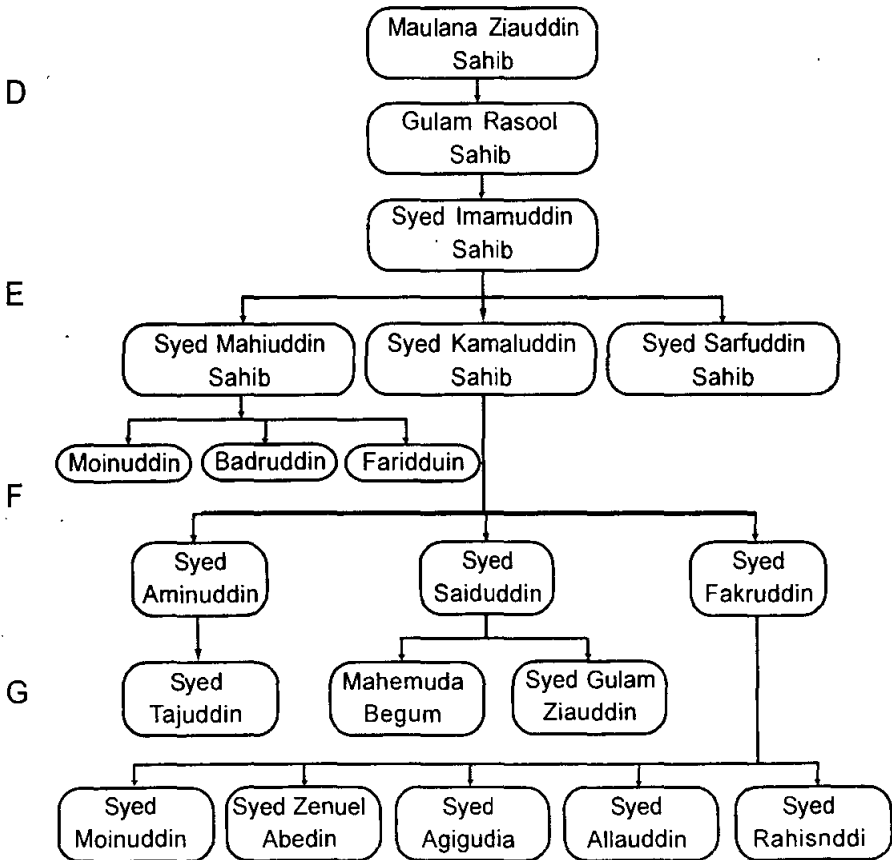
R.N. Mathur, V.S. Badhwar, S. Janani, Deepak Goel, Neeraj Shekhar, Jitender Singh Tanwar, Rajesh Kumar, Mohan Pandey, Shobha, Harish Sharma, R.K. Panigrahi and R.P. Prasad for the Respondents.

The Judgment of the Court was delivered by

A **S.B. SINHA, J** : 1. Leave granted.

B 2. Defendants-Appellants are before us, aggrieved by and dissatisfied with a judgment and order dated 3.11.2006 passed by a learned Single Judge of the High Court of Judicature of Rajasthan in S.B. Civil First Appeal No. 144 of 1981 allowing the appeal of the respondent from a judgment and order dated 31.01.1981 passed by the Additional District Judge, No. 1, Jaipur City in Civil Suit No. 67 of 1977, whereby and whereunder a suit filed by the respondent herein for declaration of his title, permanent injunction and possession was dismissed.

C 3. At the outset, we may notice the genealogical tree of the parties, which is as under:



4. One Hajrat Ziauddin Sahib (1730-1810) was a great Sufi Saint. He belonged to Sunni Sect of Islam. In view of his spiritual attainments, 7 bighas of land at Moti Katla, Jaipur was given to him by the then Ruler of the State of Jaipur for the purpose of maintenance of a garden. He, however, acquired lands out of his own funds. It comprised of Khasra Nos. 497 to 503 admeasuring 8 bighas 2 biswas. Indisputably, on the said land, there are prayer rooms, Dargah, Mosque, garden, graveyard, shops, houses, lodge, etc. On the demise of Hajrat Ziauddin Sahib, which took place in the year 1810, his Mazar (tomb) was treated as a sacred place. It attained the status of a Dargah. One Gulam Rasul Sahib was the first Sajjadanashin and Mutawalli of the Dargah. He was son of his sister. In the year 1860, Sayed Immauddin Sahib succeeded to the said office followed by Syed Mohiuddin Sahib.

A matmi proceeding was initiated for 12 bighas and 12 biswas of land. It was found that late Ziauddin Sahib was not in possession of 7 bighas of land. The land upon which Dargah, Kabristan, etc. were situated were not the subject matter of the State grant and, therefore, not subject to matmi.

5. Syed Mohiuddin Sahib was convicted by a criminal court. The 'Sajjadagi' was tied on the head of Kamaluddin, the younger brother of Mohiuddin as he was considered fit for holding the said post.

6. Matmi was sanctioned in favour of Kamaluddin. He died on or about 29.05.1938. He purported to have executed a Will and nominated Aminuddin, his eldest son, as Sajjadanashin and Faqrudin, another son, as Mutawalli. Allegedly, there existed a custom that on the Soum, i.e., the third day of the funeral, a congregation makes the nomination. It is notified by the congregation. Dastarbandi ceremony took place in terms whereof turbans were tied. The said customary formalities were said to have been complied with.

7. Moinuddin son of Mohiuddin (the convicted Sajjadanashin) filed a suit against Kamaluddin claiming inheritance in the year

A 1939. He also filed a suit against Aminuddin claiming election to the post of Sajjadanashin by Muslim public. Both the suits were dismissed by judgments dated 11.05.1920 and 5.09.1939 respectively. Appeals preferred thereagainst were also dismissed. During pendency of the said proceedings, Aminuddin died on 12.07.1944. In his place, Tajuddin was substituted. In the said suit, Wakf in question was held to be Wakf Al Aulad.

8. Tajuddin filed another suit, on or about 7.09.1953 for a declaration that he was the rightful Sajjadanashin of the Dargah in question. A prayer was made for removal of Faqrudin, the deceased predeceased-in-interest of the appellants, from the office of Mutawalli. A large number of issues were framed.

Issues Nos. 1, 4 and 5 read as under:

D "1. Whether the plaintiff is the Sajjada of the Dargah of Maulana Ziauddin Sahib?

4. (a) Whether on proof of issue No. 1 the plaintiff is entitled as Sajjadanashin to the savings left after mooting the expenses of the Dargah?

E (b) Whether the plaintiff is entitled to recover Rs. 100/- as the savings of the two years?

(c) To how much amount the plaintiff entitled for the period of the pendency of the suit?

F 5. Whether the plaintiff is bound to indicate the nature of the trust so that the question may be decided in the court?"

9. It was found that the purported election which had been held did not meet the requirements of law. It was furthermore held that the plaintiff was not entitled to be a 'Sajjadanashin' as it was a private land. The appeal preferred thereagainst, which was marked as Civil Appeal Case No. 23 of 1954, was dismissed on 20.11.1958. The said proceeding attained finality.

H 10. Allegedly, on the death of Syed Saidduddin Sahib, who became Sajjadanashin on the demise of Aminuddin, Faqrudin

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became Sajjadanashin according to custom. He continued to hold the office of Mutawalli also. A notification was issued under Section 5 of the Wakf Act, 1954 on 9.12.1965 declaring the properties to be Wakf Properties.

11. Another suit was filed by Tajuddin on 3.12.1966 against the State Government claiming himself to be the Sajjadanashin. He also claimed some amount on account of expenses for 'Chirag Bati' and also the value of 42 Gold Mohars. Faqrudin was impleaded as a party. The said suit was withdrawn by Tajuddin.

12. Another round of litigation started in the year 1974. A 'matmi' proceeding was initiated in terms of the provisions of the Jaipur Matmi Rules (for short "Matmi Rules"). Plaintiff's name was directed to be mutated by the Board of Revenue by an order dated 1.02.1974. The Board of Revenue, however, observed:

"...The only son of Aminuddin named Tajuddin is alive and he has some how (sic) been deprived of the office of Sajjadanashin so far, but as indicated above, the Board if not concerned with the appointment of the Sajjadanashin for Dargah Mirza Zaiuddin which is civil matter..."

It was furthermore observed:

"11. In exercise of the powers conferred by Section 10(d) of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, we, therefore, sanction succession of the last holder Kamaluddin son of Immamuddin in the name of this eldest real grandson namely Tajuddin son of Aminuddin in respect of 7 bighas 'Kham' State grant given for the maintenance of a garden by former Jaipur State Patta dated Shrawan Budi 4, Samwat 1856 whose Khasra numbers have since been delineated in the Judgment of Deewani of former Jaipur State dated 19/2/1938 and confirmed by the Full Council of State Jaipur under rule 13 of the Jaipur Matmi Rules 1945."

Fakhrumiya is Mutawalli till date”

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“After the death of Kamaluddin, Fakhrumiya is performing the work of Mutawalli since 1938 but with the written permission of Matmidar. Tehrir has been made by Miya Kamaluddin Matmidar. Kamaluddin sahib had executed the Will, which is available in the file.”

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In this manner, plaintiff himself has admitted in his cross-examination that on the basis of Will of Late Kamaluddin, defendant No. 1 had become the Mutawalli.”

Issue No. 1 was determined as under:

C

“As per above discussion, I reach on the conclusion that defendant No. 1 (one) has successfully proved that he is the Mutawalli of Dargah Hajrat Maulana Jiauddin since 1938 and Sajjadanashin since 1958. Therefore, this issue is decided in favour of defendant No. 1.”

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The issue of res judicata was also determined against the plaintiff. The suit was held to be not maintainable.

15. It is stated that pending appeal another suit was filed by Tajuddin. However, we are not concerned therewith.

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16. A First Appeal was preferred thereagainst. Faqrudin died on 25.03.1981. Appellants herein were substituted in his place. According to the appellants, Syed Zainul Abdeen was declared as Mutawalli. Tajuddin died in the year 1987. Whether the date of his death is 26.03.1987 or 26.04.1987 is not clear, but the same is not very material for our purpose. Admittedly, he died issueless. Respondent Abdul Rashid was substituted as legal representative in place of Tajuddin claiming his right on the basis of an alleged Will. The other respondents were also added as parties by an order dated 1.02.1994 as they claimed the right under another Will. It is, however, of some interest to note that in the said order dated 1.02.1994, it was stated:

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“Whether or not the appellant had executed the wills dated 22nd March 1987 and dated 26th March, 1987 is not a

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A subject-matter of the dispute before this Court and it is not
disputed that in this appeal, the Court has to decide as to
whether the appellant could be said to have become the
‘Sajjadanashin’ of the ‘Dargah’ in question by virtue of the
fact that he was recognized as a ‘Matmidar’ after the death
B of the earlier ‘Sajjadanashin’ and ‘Matmidar’ Kamaluddin.
In this view of the matter, if the applicants are impleaded
as parties in this appeal, they would only be assisting the
Court to come to the right conclusion on the above-said
point and it is made clear that by their being impleaded as
C parties in this appeal, their rights under the will are not
being decided. It is further made clear that simply because
Abdul Rasheed has been brought on record as the legal
representative of the deceased the decision of the appeal
being confined to the rights of Tajuddin, would not confer
D any right on Abdul Rasheed, as he as well as the other
members of the committee have to establish their wills.”

17. The appeal preferred by Tajuddin (since deceased)
has been allowed by reason of the impugned judgment.

E 18. Mr. K.V. Vishwanathan, learned counsel appearing on
behalf of the appellants, in support of the appeal, would, inter
alia, submit:

- F (i) On the death of Tajuddin, the suit itself has abated as
the cause of action did not survive on the principle
action personalis moritur cum persona.
- (ii) No order for impleadment of the respondents could
have been passed as the suit itself has abated.
- G (iii) In any event, no declaration as prayed for in the suit
could be granted.
- H (iv) By the judgment and decree dated 7.09.1953, the
Civil Suit No. 7 of 1946 having been dismissed,
Tajuddin could not have started another round of
litigation on the plea that he had become
Sajjadanashin, which was barred under the principle

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of res judicata.

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(v) Any observation made by the Board of Revenue would not confer a jurisdiction upon the Civil Court, if the same was otherwise barred.

(vi) By reason of the order passed by the Board of Revenue conferring the status of matmidar on the respondent, he did not derive any title as a 'matmidar' cannot become a Sajjadanashin or Mutawalli, the office being not heritable ones.

B

(vii) As a State grant, in any event, is inheritable, the purported rule of primogeniture contemplated in terms of the Matmi Rules has no application, particularly, in view of the fact that under the Mohammedan Law, the rule of primogeniture cannot regulate succession and the office of Sajjadanashin involves personal qualification.

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D

19. Mr. R.N. Mathur, learned counsel appearing on behalf of the respondent No. 1, on the other hand, would submit :

(a) 7 bighas of land being the subject matter of State grant, the Board of Revenue had the requisite jurisdiction to order declaration of the original plaintiff as a 'matmidar'.

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(b) Even if the claim of the respondent as Sajjadanashin or Mutawalli is excluded, he would be entitled to exclusive possession of 7 bighas of land as his right to hold the same stands recognized as a 'Khatedar'.

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(c) Being a holder of land, he is entitled to exclusive possession as rent has to be paid by him.

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(d) His claim as Sajjadanashin is not only based on a Will, but also upon a custom prevailing, viz., Sajjadanashin can nominate his successor.

(e) As Faqrudin was not a valid nominee, the holder of

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A the office of 'Sajjadanashin' could nominate the respondent.

B (f) Appellants having submitted themselves to the jurisdiction of the Board of Revenue and having failed in their attempt to get the order dated 1.02.1974 set aside in a writ petition filed by them, they are estopped and precluded from contending that the Board had no jurisdiction to pass the impugned judgment.

C (g) In any event, the questions raised herein having not been raised before the High Court, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

D 20. The State of Jaipur was a princely State. The Matmi Rules were framed during the said regime. The legislature of Rajasthan enacted the Jaipur Laws (Validating) Act, 1952. A Validating Act being the Jaipur Matmi Rules (Validation) Act, 1961 was also enacted; Section 2 whereof reads as under :

E "2. Validation of Jaipur Matmi Rules – Notwithstanding contained in the Jaipur General Clauses Act, 1944, or any other law or in any rule of interpretation or in any judgment, decision, decree or order of any court and notwithstanding any omission or defect of form or procedure or want of any competent sanction or approval, it is hereby declared that the Jaipur Matmi Rules, 1945, published in the Jaipur Gazette, Extra-ordinary, dated the 8th December, 1945 under Revenue Branch Notification No. 15941/Rev. dated the 24th November, 1945, shall have, and shall be deemed always to have had, the force of law and shall be treated as being and as having been an 'existing Jagir law' within the meaning of clause (d) of section 2 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (Rajasthan Act 6 of 1952) for the purposes of that Act as well as of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, (Raj. Act 18 of 1955) and any other law relating to jagirs or jagirdars."

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21. The said Rules, however, have a prospective effect. It merely declares the Rules to have always the force of law. The effect thereof, however, must be considered having regard to the other laws in force. We, would, therefore, proceed on the basis that the Matmi Rules had the force of law.

It, however, applies only to 'State grant'. 'State grant' has been defined in Sub-rule (1) of Rule 4 to mean "a grant of an interest in land made or recognized by the Ruler of the Jaipur State and includes a jagir, muamla, suba, istimrar, chakoti, badh, bhom, inam, tankha, udak, milak, aloofa, khangi, bhog or other charitable or religious grant, a site granted free of premium for a residence or a garden, or other grant of a similar nature". The term "Matmi" has been defined in Sub-rule (3) thereof to mean "mutation of the name of the successor to a State grant on the death of the last holder". Sub-rule (4) of Rule 5, however, makes an exception in regard to the applicability of the Matmi Rules in respect of land free of premium as 'waqf' for a religious building, etc.; the State grant, however, relates to vacant land. We would assume that the said exception has no application to this case.

22. Sajjadanashin is a spiritual office. Mutawalli is a manager of secular properties. Both of them are connected with a Dargah or a Wakf. Matmi, however, is a process of mutation carried out in the revenue register in terms of the Matmi Rules.

23. Rules 6 to 11 of the Matmi Rules provide for the mode and manner in which applications are required to be filed, entertained and determined. It casts a duty to bring the death to the notice of the State within the time specified therein, failing which a penalty may be levied.

Rules 11, 13 and 14 of the Matmi Rules read as under :

"11. The person claiming succession shall, within one month from the date of death of the last holder, submit an application in the prescribed form (Appendix A) to the revenue officer indicated in rule 22.

A Note(1) The application for matmi shall not be returned or rejected on the ground that the applicant has failed to furnish any of the prescribed particulars;

(2) The application under this rule shall be made even though a report has been made under Rule 6.

B 13. The eldest real son of the last holder or if such son is dead, such son's eldest real son or eldest real grandson is entitled to succeed, unless in the opinion of the Ruler he is unfitted to succeed by reason of serious mental or physical defect or disloyalty;

C Provided firstly, that in the case of the panchpana sardars of Shikhawati and the bhomias of Udaipurwati, the grant shall devolve on all the surviving real sons and the real sons or grandsons of predeceased sons of the last holder in accordance with local custom unless in any particular case His Highness the Maharaja Sahib Bahadur has recognized that the ordinary rule of succession by male lineal primogeniture shall apply.

E Provided, secondly, that in the case of a nihang grantee, a *chela* whose nomination has been approved by Government shall be entitled to succeed; and

F Provided, thirdly, that in the case of a tankha grant of which the holder dies after the 25th October, 1943, his eldest real son shall be entitled to succeed only to one-half of the grant and such son's eldest real son to only one-fourth of the original grant. In the fourth generation of the holder in possession on 25th October, 1943, the remainder of the grant shall be resumed.

G Example : (1) A, a tankhadar, in whose name matmi of a tan of Rs.2,000/- on six months qarar was sanctioned prior to the 25th October, 1943, dies in January, 1943 leaving three sons, B, C and D. B being the eldest son, matmi will be sanctioned in B's favour in respect of a tan of Rs.1,000/- on

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six months qarar and the remaining tan of Rs.1,000/- be resumed. A

- (2) X, a tankhadar, in whose name matmi of a tan of Rs.1,000/- on six months' qarar was sanctioned prior to the 25th October, 1943, dies in March, 1943, leaving Y and Z sons of his only son Q, who predeceased X. Matmi will be sanctioned in Y's name in respect of a tan of Rs.250/- only and the remaining tan of Rs.750/- will be resumed. B

14. (1) Subject to the provisions of rule 13, succession in the absence of a direct male lineal descendant of the last holder shall be restricted to the lineal male descendants of the original grantee, preference being given to the senior member of the senior line : C

Provided, firstly, that in the case of a grant for the maintenance of a temple, mosque or other religious place, other than a Jain temple, it shall be within the discretion of Government to select as successor any one of the male lineal descendants of the original grantee, with due regard to his suitability for the performance of worship; and D

Provided, secondly, that in the case of a Jain temple succession shall be sanctioned in favour of a manager nominated by the Panch Jains. E

(2) No adoption shall be recognized for the purpose of succession to a State grant unless a holder has obtained the previous sanction of the Government to adopt, such sanction being given only in favour of a direct male lineal descendant of the original grantee : F

Provided, firstly, that a person adopted in another family shall not be allowed to revert to his original family; and G

Provided, secondly, that a Raja (Lalji), a khawaswal, a tankhadar, an employee of the Bera Khawas Chelan, an H

A employee of the Karkhanejat and a mina chowkidar shall not be permitted to adopt.”

24. The High Court, in its judgment, with regard to the plea of res judicata, held:

B “...It is correct that plaintiff Tajuddin had filed a suit in the
C court of District Judge, Jaipur, to declare him as Sajjadanashin and the same was dismissed vide judgment dated 7.9.1953 (Exhibit A-2) and the appeal against that
D judgment was also dismissed by the High Court vide judgment 20.11.1958 (Exhibit A-3). But, after the judgment of the District Judge, the case of Matmi or successor of
E Kamaluddin was decided by the Statutory Authority exercising power under Section 4(1)(b) read with Section 10 of the Act of 1955 and as mentioned above the Revenue
F Board, vide its judgment dated 1.2.1974 (Exhibit – 1), sanctioned succession of the last holder Kamaluddin in the name of the plaintiff Tajuddin. The judgment of the
G Revenue Board dated 1.2.1974 (Exhibit – 1) was challenged by defendant Badruddin before this Court in S.B. Civil Writ Petition No. 2225/1974 and the said writ
petition was dismissed on 21.11.1983, therefore, order dated 1.2.1974 has attained finality. Certified copies of the Writ Petition No. 2225/1974, the reply to the writ
H petition on behalf of the respondent no. 3 in the writ petition, namely, Tajuddin, and the order dated 21.11.1983, dismissing the writ petition of the defendant Badruddin against the order
of the Revenue Board dated 1.2.1974 have been placed on the record along with the application under Order 41 Rule 27 of the CPC on 19.11.1997, which was allowed by this Court vide order dated 20.2.1998. The order dated 1.2.1974 passed by the Revenue Board is a statutory order by the statutory authority under the statute and this was the separate and fresh cause of action for filing the present suit...”

25. The High Court, on the premise that there exists a codi-

fied law for declaration of succession for the last holder, opined: A

“...Even if there is any custom for appointment on the post of Sajjadanashin then the same cannot be contrary to prevailing statute and codified law will prevail over the custom. The gifted property by the ruler has to be managed by successor according to law. There cannot be two different persons, one as successor and another as Sajjadanashin. Otherwise property in dispute cannot be managed properly. Any person who is declared as successor and in whose favour Matmi is sanctioned by competent authority under the statute is entitled to hold the posts of Sajjadanashin as well as Mutawalli also.” B C

26. The law of inheritance amongst the Mohammedans is governed by their personal laws. If the properties are wakf properties, the offices of Sajjadanashin and Mutawalli are to be filled up in accordance with the law or the custom. If the properties are heritable, those who are the ‘Quranic Heirs’ would be entitled to hold the said posts. Indisputably, the law of primogeniture has no application amongst the Mohammedans vis-à-vis their law of inheritance. D E

27. ‘Wakf’ would mean taking out something out of one’s ownership and passing it on to God’s ownership dedicating its usufruct – without regard to indigence or affluence, perpetually and with the intention of obtaining Divine pleasure – for persons and individuals, or for institutions or mosques and graveyards, or for other charitable purposes. F

28. It is beyond any doubt or dispute that a Mutawalli is the temporal head. He is the manager of the property. Office of Sajjadanashin, however, is a spiritual office. It has to be held by a wise person. He must be fit for holding the office. G

29. The Rules, indisputably, are statutory in nature. His Highness of Maharaj used to exercise both executive and legislative policy. The Rules having been validated have a statutory force. H

A In *Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Ors.* [AIR 1963 SC 1638], this Court opined :

B “In appreciating the effect of this Firman, it is first necessary to decide whether the Firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur, it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is covered by decisions of this Court and it has not been disputed before us, vide *Madhaorao Phalke v. State of Madhya Bharat*, 1961-1 SCR : (AIR 1961 SC 298). *Ameer-un-Nissa Begum. v. Mahboob Begum* AIR 1955 SC 352 and *Director of Endowments, Government of Hyderabad v. Akram Ali*, (S) AIR 1956 SC 60.”

E 30. As regards the Matmi Rules, apart from having the statutory sanction under the Jaipur Matmi Rules (Validation Act), 1961, it seems to have Presidential sanction. This had been recognized by this Court in *Thakore Sobhag Singh v. Thakur Jai Singh and Ors.* [AIR 1968 SC 1328].

F But this Court did not decide the question with regard to the effect of the said Rules.

G 31. “Matmi”, however, in terms of the Matmi Rules, as noticed hereinbefore, would mean mutation of the name of the successor to a State grant on the death of the last holder. The question is as to whether Tajuddin (since deceased) and his predecessor and successor-in-interest had in fact been appointed as Sajjadanashin or Mutawalli.

We may, however, notice a decision of the Patna High

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Court in *Shah Najihuddin Ahmad v. Amir Hasan Khan & Ors.* [AIR 1934 Patna 443], (which makes an interesting reading) wherein it was held :

“The learned advocate points out that succession to the office has not been strictly hereditary in the past and that Mahomedan law is strongly against attaching any right of inheritance to a public endowment or office. The office of a Sajjadanashin however stands on a special footing:

“He is not only a Muttawali but also a spiritual preceptor, and in him is supposed to continue the spiritual line (silsila).”

This supposed continuity of the spiritual tradition must obviously be taken into account and, speaking generally, is much more likely to be secured by the selection of a properly qualified descendant of the founder than of a stranger of the family. The same consideration applies to the preference given by the lower court to “nearness in propinquity” to the last holder. The observation of the lower Court that under the Firmans, as well as according to the long established usage prevailing in the Khanqah, it is clear that a stranger cannot be appointed to the office has not been assailed; but the learned advocate for the respondents has laid stress on the wide power of the Court, in dealing with public, religious or charitable trusts, to depart even from the intentions of the founder on questions of management, which must be governed by circumstances and varied if necessary in the best interest of the institution. It appeared during the arguments that what the plaintiffs really desire is that the appointment should be thrown open to all Muslims without much regard to the question whether they have any connexion with this institution. In our opinion there is no warrant for doing so in the circumstances of this case. It is at the same time clear that the appointment should be open to a stranger if it be found that no suitable descendant of Shah Kabir Darvesh is available, and that if this be added to the

A scheme, it might possibly save a suit under S.92. Preference ought however to be given to descendants of the founder and among them to those "nearest in propinquity" to the last incumbent, provided that such persons are duly qualified.

B It has been contended on behalf of the appellant that the learned Subordinate Judge has adopted an unnecessarily high standard of Puritanism and education for the office of Sajjadanashin. The decree mentions no standard; but the learned Subordinate Judge was apparently (judging from his observations regarding the fitness of Shah Malihuddin, inclined to hold that a properly qualified Sajjadanashin must have a working knowledge of Arabic or Persian, these being the languages in which are generally written books on Suffism, the philosophy the traditions of which form the *raison d'être* of a Darvesh's Khanqah. There was in our opinion no error in this. Tottenham and Ameer Ali, JJ., in 1893 observed that the first plaintiff in that suit was disqualified on the ground among others that admittedly he had no knowledge of Arabic. As to Puritanism of living, it is true that religions are in one sense matters of indifference to the Sufi; but he does regard them as serving to lead to realities and considers Islam as among those which are more advantageous for this purpose than others (see Hughes' Dictionary of Islam, 1885, sub nomine Sufi). The institution with which we are dealing is moreover in the main a Sunni institution, and there is no reason why the Sajjadanashin of such an institution should be at liberty to give offence to the Sunni community by attending *nauch parties* (and worse) of flouting prayers and refraining from spiritual exercises as the late Sajjadanashin is found to have done."

32. It is also of some significance to notice that in a book titled 'Muslim Law as administered in India & Pakistan' by Shri K.P. Saksena, it is stated as under:

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"...A sajjadanashin maintains unbroken the spiritual line from the original preceptor, by virtue of his directions or by a valid custom. When the previous sajjadanashins were usually eldest sons, the law of primogeniture cannot be presumed to govern the succession from this circumstance, as it is contrary to Muslim Law, and specially as this office involves personal qualifications. The mere fact of owning an ancestral tomb and earning one's livelihood by piri muridi and offerings at the tomb, cannot make any one a sajjadanashin..."

In view of the decision of the Patna High Court as also the comments made by Shri Saksena, an holder of office of Sajjadanashin must have special qualification. He has to be a man of learning. He must be wise.

33. We have noticed hereinbefore, the admission of the plaintiff in his deposition.

34. The jurisdiction of the Board of Revenue being limited, no title could have conferred upon the plaintiff. Title in or over a land will depend upon the statutory provisions. A title does not remain in vacuum. It has to be determined keeping in view the law operating in the field, viz., religious law or statutory law or customary law, etc.

Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense. The provisions of Rule 13 of the Matmi Rules laying down a rule of primogeniture will have no application in relation to the offices of Sajjadanashin and Mutawalli, which are officers of different nature. They are stricto sensu not hereditary in nature. It is well-settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title.

Inheritance or succession to a property is governed by statutory law. Inheritance of an office may not be governed by law of inheritance; but, the office of Sajjadanashin is not ordinary

A office. A person must possess the requisite qualifications to hold the said office.

In *Suraj Bhan and Others v. Financial Commissioner and Others* [(2007) 6 SCC 186], this Court held:

B "...It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or *jamabandi* have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide *Jattu Ram v. Hakam Singh*)..."

[See also *Narain Prasad Aggarwal (D) By LRs. v. State of M.P.* 2007 (8) SCALE 250]

D 35. Only because an observation has been made by the Board of Revenue, the same by itself did not confer any jurisdiction upon the civil court, if it was otherwise barred. If the suit was barred under the principles of *res judicata*, Section 12 of the Code of Civil Procedure bars filing of another suit. [See *Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas and another*, Civil Appeal No. 3495 of 2008, decided on 12.05.2008]

F 36. The High Court might have been correct had the plaintiff – respondent would have obtained title by reason of a separate transaction. The entry of the revenue records did not give rise to a fresh cause of action so as to take away the effect of principles of *res judicata*. [See *Anwar Khan Mehboob Co. v. State of Madhya Pradesh and Others* (1966) 2 SCR 40]. If the order of the Board of Revenue is taken to its logical conclusion, as has been contended by Mr. Mathur, the same would be rendered wholly illegal and without jurisdiction. It would be a nullity.

H 37. Submission of Mr. Mathur that the respondents are estopped and precluded from questioning the jurisdiction of the Board of Revenue is equally without any merit. If the Board of

Revenue had no jurisdiction to decide the question of title, its decision being without jurisdiction would be a nullity. [See *Chief Justice of Andhra Pradesh and Another v. L.V.A. Dikshitulu and Others* - AIR 1979 SC 193, *MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.* (2004) 8 SCC 619 and *Hasham Abbas Sayyad v. Usman Abbas Sayyad and Ors.* (2007) 2 SCC 355]

38. A jurisdictional fact would not attract the principles of estoppel as there can be no estoppel against statute.

39. Respondents themselves claimed their rights only under the Matmi Rules. The Matmi Rules do not recognize any transfer of property. If they do not recognize any transfer of property, by getting their names entered as a Mutawalli in terms of the Rules, they cannot claim exclusive possession.

The genuineness or otherwise of validity of either of the Wills, vis-à-vis, the nature of the grant as also the nature of the properties in question must be determined by an appropriate court of law. Whereas respondent No.1 claims his right, title and interest under one Will purported to have been executed by Tajuddin; respondent Nos. 2 and 3 claimed their right by virtue of another Will. The inter se disputes between the parties are said to be pending in some other proceedings. That is how the suit must be held to have abated. The recognition of right in favour of Tajuddin was personal in nature. If he has died, name of another person as Mutawalli must be entered in the register of revenue. We may, however, hasten to add that by saying so we are not suggesting that the entry made in the revenue records is final in nature. What would be the effect thereof is one question but the very fact that entire case of the respondent based on Wills which is prohibited in terms of the Matmi Rules is another. So long their right vis-à-vis the bequeathment by Tajuddin is not determined, no decree for possession can be granted in their favour. It is furthermore evident that although the learned District Judge, in his judgment dated 7.9.1953 purported to have proceeded on the basis that Tajuddin was not validly elected or

- A selected for technical reasons, the fact remains that the suit of the plaintiff was dismissed. If a suit was dismissed, he could not have claimed his right as Sajjadanashin or Mutawalli. It is true that in the said suit, the right of the appellant as a validly elected Sajjadanashin and Mutawalli was not determined.
- B learned Trial Judge stated in his judgment that there was a valid declaration in favour of Faqrudin.

40. It may further be true that the land in question were not Wakf lands but 'Wakf Aulad'. Indisputably, however, both Wakf land as also the land in question are under the management of Mutawalli. He, apart from the Wakf land, holds the land in suit on behalf of the beneficiaries. The present appellants are also beneficiaries of the Wakf. If the right to recover possession must vest in a Mutawalli and if by reason of his status of 'Matmi', Tajuddin did not become a Mutawalli, which declaration in his favour must be held to have been legally made by the High Court, the respondents relying on or on the basis of the purported Wills executed in their favour cannot claim independent right to recover possession.

- E 41. In K.P. Saksena's Muslim Law as administered in India & Pakistan, at page 572, it is stated :

- F "A worshipper can enforce his individual right in connection with a mosque, but he cannot sue for the recovery of an unauthorized alienation of waqf property; the Mutawalli alone can have the right to institute a suit for its recovery. A mutawalli can maintain a suit for recovery of possession of the waqf property against a trespasser, although it does not vest in him. A representative suit by two worshippers to set aside an alienation by the Mutawalli is, however, maintainable even without the sanction under Section 92 of the Civil Procedure Code, or Section 14 of the Religious Endowments Act. The waqf property may, like other trust properties, be recovered from third persons under circumstances referred to in the Indian Trusts Act, Section 63. In case of an unlawful alienation or a mortgage of the

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mosque property by its manager, any person interested may seek remedy in a civil court and restore the property to the trust, and the same is true also in cases where waqf property is auctioned in execution of a decree not binding on the trust. Twelve years' limitation will run from the confirmation of the auction sale. An order of the District Judge appointing a person to perform the duties of the 'mutawalli' of certain properties during the minority of a ward would not operate as bar to a suit for possession by a person claiming to be trustee."

42. The question came up for consideration in *Gnanasambanda Pandara Sannadhi v. Velu Pandaram & Anr.* [XXVII (1899-1900) Indian Appeals 69] wherein the judicial committee held as under :

"Their Lordships are of opinion that there is no distinction between the office and the property of the endowment."

43. The said principle was applied in a case of *Debendra Nath Mitra Majumdar v. Sheik Safatulla* [AIR 1927 Calcutta 130, at 136], stating :

"That the right of the plaintiff to hold the properties of the wakf is a right appurtenant to his office as the Mutwalli cannot be disputed : *Gnanasambandha Pandara Sannadhi v. Velu Pandara* [(1899) 23 Mad.271].

44. For the aforementioned reasons, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

N.J.

Appeal allowed.