small fraction of the total value of the estate. The purchasing power of the rupee has gone down considerably and the authorities on which Mr. Sikri places his reliance cannot furnish a good guide for deciding whether the gift which was made in the present case was reasonable.

S. Raghbir Singh Sandhawalia *v.* The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh, Simla

Bhandari, C. J.

For these reasons, I would hold that the gift of a joint family asset of the value of Rs. 2,40,000 by Shri Raghbir Singh, *karta* of the family, to his wife Sardarni Ahalya Bai, being a gift of affection of a reasonable share of ancestral movable property, is valid and effective and divests the family of its title to 300 shares of the Simbholi Sugar Mills Limited even if the said gift was made without the consent of the other adult coparcener, namely, Shri Raghbir Singh's son Shri Harindar Singh.

Let an appropriate answer be returned.

TEK CHAND, J.—I agree.

Tek Chand, J.

B. R. T.

APPELLATE CIVIL

Before Bhandari, C. J. and Tek Chand, J.

S. ANUP SINGH,—*Defendant-Appellant.*

versus

SARDARNI HARBANS KAUR,— *Plaintiff-Respondent.*

Regular First Appeal No. 25(P) of 1954.

1957

Sept., 25th

Code of Civil Procedure (V of 1908)—Sections 2(2) and 9—Orders of Ijlas-i-khas as of the erstwhile Patiala State—Whether amount to decree—Civil Courts, whether competent to question their validity—Constitutional Law—Position and powers of the Rulers of Pre-constitutional Indian States—Powers of the Ruler of erstwhile Patiala State—Comparison with those of the King of England—Legal maxims relating thereto—Whether applicable—Commands of the Ruler—How far final—Courts, whether

entitled to give effect to the intent of the Ruler—Indian Evidence Act (I of 1872)—Sections 5 and 65—Secondary evidence—Objection as to the admissibility of—When should be raised—Whether it can be raised for the first time in appeal.

Held, that the Civil Courts have no jurisdiction to question the validity of the decisions of the Ijlas-Khas of the erstwhile Patiala State as that was the command of the sovereign which had the force of the law as well as that of a decree.

Held, that for determining the extent of powers of the Ruler of Patiala when orders of the Ijlas-i-Khas were issued, comparison with the royal prerogative of the King of England who is a constitutional monarch will not be apt. Certain legal maxims relating to the Crown and to the principal attributes, functions and powers of the Sovereign, as understood in England, will obscure the issue arising in the case of a Ruler of Patiala, who was subject to no constitutional restraints so far as internal matters were concerned. A constitutional king is not omnipotent. It is said of the British King, that "he is under no man, yet he is under God and the law, for, the law makes the king." (*Rex non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem*). The king of England is both *sub Deo* (under God) and *sub lege* (under law), but an absolute Ruler in an Indian State, like Patiala, could not conceivably be deemed to be beneath the law (*sub lege*), The King in England cannot confer a favour on one subject to the injury and damage of other (*Non potest Rex Gratiam facere cum Injuria et Damno aliorum*). But this rule cannot hold good in the case of the Maharaja of Patiala. With respect to the Indian Potentate, it cannot be said that he is subject to the law (*Rex legi subjectus est*). Regarding him, it would be more correct to say, that he was the living law (*Rex est lex vivens*). To say that 'the King can order nothing except through his regularly constituted Parliament' (*Rex nil potest jubere nisi per curiam legitime constituam*) is to indicate the attribute of constitutional, in contradistinction to, despotic, or absolute monarch. It, therefore, follows that such restraint, as has been imposed upon the powers of the British Kings, through the process of centuries, beginning from Magna Carta till the present times, cannot be construed to be fettering the powers of the Rulers of pre-con-

stitutional Indian States. Sovereignty no longer vests in the King alone, but in the King-in-Council and the King no longer rules but only reigns. In contrast, the ruling dynasty of Patiala, after a brief period of independence, soon became a vassal State under the British Government. It surrendered its independence to the Paramount Power in all external matters, but retained autocratic power so far as internal administration was concerned, but within the limited domestic sphere, the Maharaja did not share his sovereign rights with any constitutional organ in the State, either legislative, executive or judicial.

Held, that finality attaches to the deliberate and conscious commands of the Ruler, but if as a result of proved oversight, or clear mistake, it can be established, that it was never the intention of His Highness, that the garden should also be included in the properties to be redeemed, the Courts cannot be considered to have disobeyed the command of His Highness. On the other hand, it would be their duty to give effect to the Ruler's real intent. The king may be assumed to possess the quality of omnipotence but he has not got the attribute of omniscience. He may be all powerful but cannot be all knowing, and therefore, not infallible. Especially in doubtful cases, the mind of the king is presumed to be in conformity with the law, and with what it should be (*Eadem mens praesumitur regis quae est juris, et quae esse debet praesertim in dubiis*).

Held, that the proper time to object to the admissibility of the evidence is when the evidence is tendered, particularly so in a case like this when D.W. 21 had clearly stated that he had brought the original records with him. A party cannot be allowed to lie by until the case comes up in appeal. If a strict formal proof had been insisted upon at the trial, it might have been forthcoming or the party affected might have taken steps to make the evidence admissible. An objection, as to the production of secondary evidence, instead of the original, cannot be allowed to be taken for the first time at the appellate stage. The documentary evidence produced in this case was not *per se* inadmissible. It was not an objection as to the relevancy of the document which could be raised at any time, but as to its admissibility, and such an objection should have been raised when the evidence was tendered.

Gurdwara Sahib Siri Teg Bahadur Gaga v. *Piyara Singh* (1), *Sham Lal, etc.* v. *Mahant Narain Muni, etc.* (2), *Ameer-un-Nissa Begum* v. *Mahboob Begum* (3), *Director of Endowments, Government of Hyderabad, etc.* v. *Akram Ali* (4), *Gopal Das* v. *Sri Thakurji* (5), *Sahzadi Begam* v. *Secretary of State for India* (6), and *Jahangir* v. *Sheoraj Singh* (7), relied on.

First Appeal from the decree of Shri Narindar Singh, District Judge, Patiala, dated the 17th April, 1954, partly decreeing the suit of the plaintiff-respondent.

D. C. GUPTA and M. S. SETHI, for Appellant.

H. L. SIBAL and L. D. KAUSHAL, for Respondent.

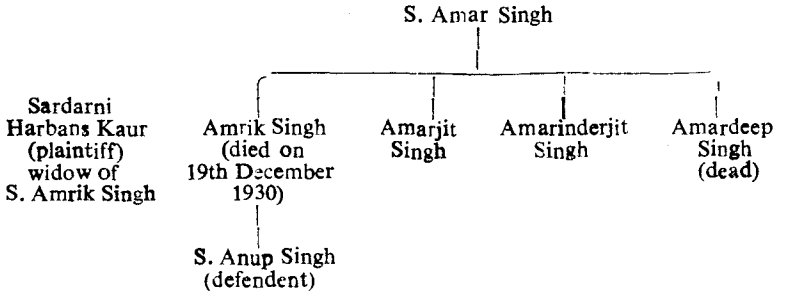
JUDGMENT

Tek Chand, J.

TEK CHAND, J.—This appeal is a regular first appeal instituted by the defendant from the judgment and decree of the District Judge, Patiala, dated 17th April, 1954, passed in a suit for possession relating to three properties. Plaintiff's claim for the possession of 33 bighas and 5 biswas of land comprising of a garden was decreed and her suit as to the rest of the properties was dismissed. The parties were directed to bear their own costs. The defendant has instituted this appeal contending that the decree for the possession of the garden passed in favour of the plaintiff respondent should be set aside. The plaintiff has filed cross-objections praying that her suit should also have been decreed with regard to the land in village Khera and the house known as Amarindar Hall, Patiala. The plaintiff Sardarni Harbans Kaur is the stepmother of

(1) A.I.R. 1953 Pepsu 1.
(2) Judicial Committee Reports Patiala 253 at page 264.
(3) A.I.R. 1955 S.C. 352.
(4) A.I.R. 1956 S.C. 60.
(5) A.I.R. 1943 P.C. 83.
(6) I.L.R. 34 Cal. 1059 (P.C.).
(7) A.I.R. 1915 All. 334.

defendant S. Anup Singh. The pedigree-table of the family is reproduced below:—



There were three properties which were the subject-matter of the suit:—

(1) agricultural land measuring 362 *bighas* and 5 *biswas* in village Khera:

(2) a house known as Amarinder Hall, Patiala; and

(3) land consisting of garden measuring 33 *bighas* and 5 *biswas*.

In her plaint, Sardarni Harbans Kaur alleged, that the suit properties had been acquired by her deceased husband S. Amrik Singh during his lifetime, of which, he was the absolute owner. On 4th Poh, 1969 Bk. the garden had been purchased in the name of two persons S. Amrik Singh and one Daulat Ram. In Sambat 1972 the share of Daulat Ram was also purchased by S. Amrik Singh. On 27th Chet, 1985 Bk. (1928 A.D.) S. Amrik Singh made an oral gift of the garden in favour of his wife Sardarni Harbans Kaur, and the mutation was sanctioned in her name. On 9th December, 1930, he executed a will, creating life-interest in the house Amarinder Hall in her favour. Probate was granted to her on 1st Phagan 1991 Bk. (1934 A.D.). She was in possession of the garden during the life-time

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

of her husband, and took possession of Amarinder Hall and of the land in village Khera, on the death of her husband in 1930. On 19th Poh, 1989 Bk. (2nd January, 1933) she mortgaged the agricultural land at village Khera and Amarinder Hall, for a sum of Rs. 10,000 in favour of His Highness the Maharaja of Patiala, and executed a registered deed of mortgage on 24th Poh, 1989 Bk. (7th January, 1933). It is important to note that the garden was not included in the mortgaged property. His Highness died on 24th March, 1938, and the present Ruler was installed on the *Gaddi* on 6th/7th April, 1938. On 9th April, 1938, she alleged, that she was forcibly dispossessed by the defendant. In 1940 A.D. the entire property came under the Court of Wards. In this suit, she has claimed possession of the three properties named above, on the ground that she was the absolute owner of the garden and had life-interest in the other two. She also sues for *mes ne* profits realised by the defendant, while he remained in wrongful possession of the suit-properties.

The defendant traversed these allegations both on facts and law. In his preliminary objections, he alleged, that the present suit was not competent, and the court had no jurisdiction to try it, for the reason, that a decision had already been given by His Highness on the report of the Inquiry Committee constituted under his orders in the year 1941. This decision was made after the Inquiry Committee had submitted its report which was then considered by the Cabinet, and upon which final orders were passed. It was also contended that the plaintiff's suit was barred by time, and that he had become absolute owner by adverse possession.

On the merits, the defendant contended, that he along with his father had formed joint Hindu family and his father could not make a gift of the garden which formed a part of the Hindu joint family property. On the same grounds he questioned his father's right to execute the will. As the sole surviving member of the joint Hindu family he claimed absolute ownership of the entire property. He further contended, that the plaintiff had no right to mortgage the agricultural land in village Khera and Amarinder Hall, for Rs. 10,000 in favour of His Highness. In the alternative he claimed that he was entitled to compensation for improvements made by him in the garden and the house, amounting to Rs. 29,000.

It may be stated here that in 1943, a second Inquiry Committee was set up to settle disputes between the other members of the family and S. Anup Singh.

The following issues were framed:—

1. Has this Court no jurisdiction to entertain this suit because of—

   (a) the appointment of an Inquiry Committee by Ijlas-i-Khas Order No. 12 of 13th May, 1941, and its report, dated 7th August, 1941, modified by the Cabinet on the 6th September, 1941, and finally accepted by the Ijlas-i-Khas on 17th June, 1942; and

   (b) the appointment of the second Inquiry Committe,—*vide* Ijlas-i-Khas Order No. 5571/817-AR-99, dated 17th March, 1943, and its report

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

dated 23rd Bhadon, 1994 Bk., accepted by the Ijlas-i-Khas on some unknown date which decision was conveyed to the defendant by the Private Secretary,—*vide* his letter No. 1221, dated 11th July, 1948.

If so, under what provisions of law?

2. If issue No. 1 is decided against the plantiff, is she entitled to institute this suit by virtue of Articles 13 and 31 of the Constitution of India.

3. Is this suit barred by the Covenant according to which the Patiala and East Punjab States Union was formed? If so, under what section?

4. Was the property in dispute the joint Hindu family property of the defendant and his deceased father ; the defendant, therefore, got it by survivorship ?

5. Whether the plaintiff's suit is within time ?

6. Has the defendant become owner of the property in dispute by adverse possession ?

7. Is the plaintiff entitled to get possession of the property in dispute without payment of Rs. 10,000 to the defendant paid by him on her behalf to the Patiala Government ?

8. Whether the defendant has effected improvements on the property in dispute; and if so, to what extent ? Is he entitled to reimburse the same; and if so, to what amount ?

9. Is the plaintiff entitled to get *mesne* profits ? If so, how much ?

On the first issue, the trial Court held, that the orders of His Highness were final and could not be questioned in a civil Court, but the order of His Highness was not intended to relate to the garden and the mention of the garden in the document, Exhibit D. W. 21/B—a letter from the Private Secretary to His Highness addressed to the Revenue Minister reproducing the order of the Maharaja—was as a result of a clerical mistake. The District Judge, therefore, held that the plaintiff was the absolute owner of the garden and was entitled to its possession. On the second issue it was held, that the plaintiff was not competent to bring a suit with respect to the matters which had been the subject-matter of the final order passed by His Highness but in respect to the garden her suit was competent. The third issue was not pressed by the defendant and was decided against him. On the fourth issue, the District Judge found, that the property in suit was not the joint Hindu family property consisting of the defendant and his deceased father and the issue was decided against the defendant. The fifth and sixth issues were decided in plaintiff's favour. The suit was held to be within limitation and the defendant's adverse possession was not established. Issue No. 7 was decided against the plaintiff, except that she was the absolute owner of the garden. Issue 8 was decided against the defendant and it was held that he was not entitled to any improvement, as he had also obtained benefit out of the property during the years he was in wrongful possession. Issue No 9 was decided against the plaintiff and no question of *mesne* profits arose and she was not found to be the owner of the two properties.

The District Judge passed a decree for the possession of 33 *bighas* and 5 *biswas* of land,

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

comprising of the garden, in favour of the plaintiff and against the defendant and dismissed her suit with respect to the rest of the claim.

The first question that has been raised in appeal relates to the finality and unassailability in a civil Court of the decision given by His Highness. The brief history of the circumstances in which His Highness gave his decision are as under:—

Under Ijlas-i-Khas ordered No. 12, dated 13th May, 1941 (*vide* Exhibit D. W. 24/E), His Highness set up a committee of Sardar Kesho Ram Passey, Judge, High Court, and Sardar Dhanna Singh, District and Sessions Judge, Patiala, to examine the question as to how far the settlement made under the will executed by late Colonel Amrik Singh was just and equitable. The committee was to give opportunity to both parties to represen their cases and to submit its report to His Highness. The properties, with respect to which, there was controversy between the parties, were set out and separately considered by the committee. The committee was of the view, that the garden was validly gifted to Sardarni Harbans Kaur and therefore her title to it was established. The committee rejected S. Anup Singh's claim that the garden should be treated as ancestral property because his father Colonel Amrik Singh and his grandfather S. Amar Singh had been cremated there. The commiteee adversely commented on the conduct of Sardarni Harbans Kaur in mortgaging 310 *bighas* of land in village Khera and the Amarinder Hall for a sum of Rs. 10,000. This, according to the committee, she had done, with the object of heavily burdning these properties to the detriment of S. Anup Singh, while maintaining her own life-interest unaffected. The Committee reported, that Sardarni Harbans Kaur

should be called upon to pay the mortgage money with interest to the mortgage (Ruler of Patiala) and get the properties redeemed if she desired to retain her life tenure. If she failed to redeem the properties she would be deemed to have lost her life-interest. In the event she allowed her life-interest to be extinguished, rights of ownership should be immediately vested in S. Anup Singh subject to the charge of mortgage. This report was considered by the Cabinet on 9th June, 1942, and recommended for acceptance, with the amendment, that Sardarni Harbans Kaur might be allowed a period of six months within which to pay up the amount of Rs. 11,700 which figure represented the principal and the interest on the mortgage. On 17th June, 1942, this report was approved by His Highness.

Sardarni Harbans Kaur admittedly did not pay the amount despite the sum having been demanded from her repeatedly. It is not denied by her that the amount was paid by S. Anup Singh, and the debt which had been incurred by her by mortgaging Khera land and Amarinder Hall was discharged by him. In accordance with the recommendations of the committee which had received the approval of His Highness, S. Anup Singh entered into possession and became the owner of the properties on the redemption of the mortgage. The properties which were under mortgage and had been redeemed by S. Anup Singh were agricultural land in village Khera, Amarinder Hall, Patiala, and a house 'Narain Villa' in Simla (the last-mentioned property is not the subject-matter of the suit) but did not include the garden which had never been the subject-matter of the mortgage. The contention of S. Anup Singh is, that the decision of His Highness with respect to the agricultural land at village Khera, Amarinder Hall, Patiala, and

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

Narain Villa in Simla cannot be questioned and reviewed by a court of law. He also claims that under the orders of His Highness on the report of the second Inquiry Committee the garden also was declared to be his property.

As the dispute between S. Anup Singh and his uncles had not been settled, a second Inquiry Commission was set up by His Highness *vide* orders of Ijlas-i-Khas, dated 17th March, 1943, with a view to finally determine all matters in controversy between the several members of their family. The members of this committee were Sardar Kesho Ram Passey, Judge, High Court, and Sayad Raza Mohammed, District and Sessions Judge, Patiala. Before the second committee the position taken up by S. Anup Singh was that he and his father did not constitute a joint Hindu family along with S. Amarjit Singh and S. Amarinderjit Singh. The committee in its report dated 31st May, 1946, stated that it would deal with the claims of S. Amarjit Singh and S. Amarinderjit Singh, sons and sardarni Kulwant Kaur, widow of S. Amar Singh. Sardarni Harbans Kaur also desired that dispute with her stepson which was the subject-matter of previous decision should also be reopened, but this, the second committe declined to do. The position taken by the contestants before the second committee may be stated in the words of the report:—

> It is contended by S. Amarjit Singh, his brother S. Amarinderji Singh and Sardarni Kulwant Kaur that the four sons of S. Amar Singh constituted along with their father a joint Hindu family and that after the death of S. Amar Singh also the family continued to be joint and was not disrupted till the death of S. Amrik Singh.....that .....The applicants aver after the death of S. Amar Singh, Colonel

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

Amrik Singh became the head of the family and managed its property as its *karta* and all the property, moveable and immoveable, that was in his (Colonel Amrik Singh's) possession at the time time of death was joint family property or property which had been acquired from the family nucleus. S. Anup Singh and Sardarni Harbans Kaur, on the other hand, maintain that S. Amrik Singh was neither joint with his father nor with his brothers and whatever he owned and possessed was exclusively his own."

In these proceedings S. Anup Singh has taken a complete somersault, and his contention now is, that there was a joint family and the property in question including the garden was joint Hindu family property. With regard to the garden this committee was of the opinion, that it had been purchased by S. Amrik Singh and it was dealt with as his exclusive property, and as such, he had gifted it to his wife Sardarni Harbans Kaur in 1985 Bk. With regard to the land in village Khera measuring 362 *bighas* 1 *biswa*, the committee was of the view, that it had been purchased by Colonel Amrik Singh and it was his self-acquired property. It was stated that besides drawing a salary of Rs. 1,000 a month, he had been in receipt of over Rs. 10,000 as *Inayat-i-Khusarwana* (royal bounty) from His Late Highness. It was, therefore, his self-acquired property. With respect to Amarinder Hall the committee was of the view that that too was not a joint family property.

The report of this committee was considered by His Highness and the following order was passed,—*vide* Exhibit D.W. 21/B:—

"We have carefully considered this case and command as follows:—

1. * * * * * *
2. * * * * * *
3. * * * * * *

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

4. *Garden near Motibagh Palace.* Fro the material before us, we are n fully satisfied that this garden w a separate property of late Colon Amrik Singh, as from all the even concerning the property held b him during his life-time, it woul appear that he acted as *'karta'* c the joint property. Nevertheles in view of the fact that he gifted i to his wife in 1985 Bk. and certai other facts such as the cremation o his grandmother and father by Col Amrik Singh in this garden, anc that it was held by his wife as a gift and later on, mortgaged with the Ruler which position has remained intact so far, we decide that the claim of Sardars Amarjit Singh and Amarinderjit Singh for its partition be disallowed. Sardarni Harbans Kaur was called upon to redeem the property by repayment of the amount due within six months —*vide* orders passed on the Special Committee's report, failing which the property was to be made over to S. Anup Singh, subject to his liability to pay the mortgage money, but she failed to do so. S. Anup Singh is being charged interest on the amount accordingly. He should, therefore, be called upon to pay the loan amount before the 13th of July, 1948, failing which the property shall become the property of the mortgage.

5. *Land in village Khera and site near the Amarinder Hall.* We accept

findings of the Committee in view of the fact that there is no conclusive proof that the family remained joint until Col. Amrik Singh's death.

6. * * * * * *

7. *Amarinder Hall.* We approve of the recommendation made by the Committee in regard to the division of this property."

The finding of the District Judge on the first issue to the effect that it is not within the competence of the Court to question the decision of His Highness with respect to the suit properties, has been questioned before us. For determining the extent of the powers of the Ruler of Patiala when orders of the Ijlas-i-Khas were issued, comparison with the royal prerogative of the King of England who is a constitutional monarch will not be apt. Certain legal maxims relating to the Crown and to the principal attributes, functions, and powers of the Sovereign, as understood in England, will obscure the issue arising in the case of a Ruler of Patiala, who was subject to no constitutional restraints so far as internal matters were concerned. A constitutional king is not omnipotent. It is said of the British King, that "he is under no man, yet he is under God and the law, for, the law makes the king." (*Rex non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem*). The King of England is both *sub Deo* (under God) and *sub lege* (under law), but an absolute Ruler in an Indian State, like Patiala, could not conceivably be deemed to be beneath the law (*sub lege*). The King in England cannot confer a favour on one subject to the injury and damage of other (*Non potest Rex Gratiam facere cum*

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

Injuria et Damno aliorum). But this rule cannot hold good in the case of the Maharaja of Patiala. With respect to the Indian Potentate, it cannot be said that he is subject to the law (*Rex legi subjectus est*). Regarding him, it would be more correct to say, that he was the living law (*Rex est lex vivens*). To say that 'the King can order nothing except through his regularly constituted Parliament' (*Rex nil potest jube nisi per curiam legitime constituam*) is to indicate the attribute of a constitutional, in contradistinction to, a despotic, or absolute monarch. It, therefore, follows that such restraint, as has been imposed upon the powers of the British Kings, through the process of centuries, beginning from Magna Carta till the present times, cannot be construed to be fettering the powers of the Rulers of pre-constitutional Indian States Sovereignty no longer vests in the King alone, but in the King-in-Council and the King no longer rules but only reigns.

There are a number of legal maxims relating to the powers, functions and duties of the King and some of them cannot be easily reconciled *inter se*. Their true scope has to be considered in the light of historical perspective, and they cannot be accepted, as abstract propositions, laying down absolute principles of uniform applicability. Most of these legal maxims were evolved by mediaeval jurists, seemingly for describing the kingly powers and functions, but in effect, for putting reins and curbs on them.

In seeking judicial guidance from their epigrammatic terseness and pithy generalisations, which are said to embody 'the wisdom of many and the wit of one' Courts in this country have to be circumspect, as similar conditions, which were the cause of the creation of these maxims, and

which led to their growth and development, have not always prevailed in India. In England at the time of Norman Conquest the executive, the legislature and the judicial functions were exercised by the King-in-person. But in consequence of a gradual evolution the result now is that the King-in-Council is the Executive, the King-in-Parliament is the Legislature, and the King in his Courts, through his Judge administers justice. In England the transformaton from absolute to constitutional monarchy which spanned several centuries had four notable landmarks, viz.,

Magna Carta—1215

the Petition of Right—1628
the Bill of Rights—1689; and
the Act of Parliament—1701.

After 1701, the few bastions of kingly powers soon crumbled and King of England was shorn of all his arbitrary powers and became a mere figurehead, the sovereignty vesting in the Parliament.

In contrast, the ruling dynasty of Patiala, after a brief period of independence, soon became a vassal State under the British Government. It surrendered its independence to the Paramount Power in all external matters, but retained autocratic power so far as internal administration was concerned, but within the limited domestic sphere, the Maharaja did not share his sovereign rights with any constitutional organ in the State, either legislative, executive or judicial.

In *Gurdwara Sahib Siri Teg Bahadur Gaga* v. *Piyara Singh* (1), a Full Bench of the erstwhile Pepsu High Court examined the question as to the powers of Maharaja of Patiala. There, in his

(1) A.I.R.1953 Pepsu 1 (F.B.).

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

capacity as the Ruler of Patiala State, the Maharaja passed an executive order, depriving a subject of his property and conferred the same on a Gurdwara Committee. It was held in that case, that the erstwhile Patiala State was an independent and Sovereign State, and its Ruler, so far as internal matters were concerned, exercised powers identical with those exercised by the Parliament in England. So far internal matters were concerned "his words had the weight and authority of law, and he exercised all the powers of a sovereign and discharged all his functions as such in matters judicial, executive and administrative. In his sovereign capacity he had the fullest control over his subjects and their property in his territories and could pass all kinds of orders."

Sir Jai Lal as President of the Judical Committee of the Ijlas-i-Khas, in the case of *Sham Lal etc.*, v. *Mahant Narain Muni etc.* (1), expressed the view that "no suit was maintainable in the Civil Courts to contest the validity of an order passed by His Highness Shri 108 Maharajadhiraj Mahendra Bahadur....."

Two recent pronouncements of the Supreme Court have set all doubts at rest. In *Ameer-un-Nissa Begum* v. *Mahboob Begum* (2), the facts were that by a Firman dated 19th February, 1939(the Nizam of Hyderabad, had constituted a Special Commission to investigate and submit a report to him in a case of succession to a deceased Nawab, which was transferred to the Commission from the file of Darul Quaza Court. By a second Firman dated 26th June, 1947, the report of the commission was declared as worthy of implementation and it was directed that it be

(1) 2 Judicial Committee Reports Patiala 253—264.
(2) A.I.R. 1955 S.C. 352.

implemented. The question was, whether the Firman had the force of a decree and therefore, capable of executive. B. K. Mukherjee, C.J., delivering the judgment of the Supreme Court observed:—

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

The above view was endorsed in *Director of Endowments, Government of Hyderabad, etc.* v. *Akram Ali,* (1), and Bose J. at page 62 said—

> "Now the Nizam was an absolute sovereign regarding all domestic matters at that time and his word was law. It does not matter whether this be called legislation or an executive act or a judicial determination because there is in fact no clear cut dividing line between the various functions of an absolute ruler whose will is law.

(1) A.I.R. 1956 S.C. 60.

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

Whatever he proclaimed through his Firmans had the combined effect of law and the decree of a Court: see the judgment of this Court in— *Ameerunnissa Begum* v. *Mahboob Begum*, (1).

In the light of the above discussion, I am of the view that the Court of the District Judge had no jurisdiction to question the validity of the decision of the *Ijlas-i-Khas*, made in this case, as that was the command of the sovereign, which had the force of the law as well as that of a decree.

Mr. Sibal has contended, that the Ruler's order upon which reliance has been placed by the plaintiff has not been proved according to law. He argued, that Exhibit D. W. 21/B, which was a demi-official letter dated 11th July, 1948, from the Private Secretary to His Highness addressed to the Revenue Minister reproducing the commands on the report of the inquiry committee, was no proof in law of the Maharaja's orders. S. Balwant Singh appeared as defendants's witness and stated that he had brought all the papers summoned from the *Ijlas-i-Khas*. He then stated that the committee submitted their report on 31st May, 1946 to His Highness on which orders dated 10th July, 1948 were passed, which were duly communicated to the Revenue Minister by the Private Secretary,—*vide* his D.O. letter No. 1221, dated 11th July, 1948. The defendant's witness brought the actual file which had been summoned from him, but the defendant S. Anup Singh, did not ask for its production and contented himself with its copy being placed on the file and with the statement on oath of D.W. 21 S. Balwant Singh. Under these circumstances, the objection as to the inadmissibility of the document, in the absence of the original order is without force. The proper time of object to the admissibility of the evidence is when the evidence is tendered, particularly so in a case like

(1) A.I.R. 1955 S.C. 352.

this when D.W. 21 had clearly stated that he had brought the original records with him. A party cannot be allowed to lie by until the case comes up in appeal. If a strict formal proof had been insisted upon at the trial, it might have been forthcoming or the party affected might have taken steps to make the evidence admissible. An objection, as to the production of secondary evidence, instead of the original, cannot be allowed to be taken for the first time at the appellate stage. The documentary evidence produced in this case was not *per se* inadmissible. It was not an objection as to the relevancy of the document which could be raised at any time, but as to its admissibility, and such an objection should have been raised when the evidence was tendered: See *Gopal Das* v. *Sri Thakurji* (1). *Shahzadi Begam* v. *Secretary of State for India* (2), (P.C.); and *Jahangir* v. *Sheoraj Singh* (3). I, therefore, hold that His Highness did pass the order reproduced in Exhibit D.W. 21/B.

At this stage I may examine the argument advanced by Shri Dalip Chand Gupta counsel for S. Anup Singh, that the garden under the orders of Ijlas-i-Khas should be deemed to have become his client's property. He has referred to a passage, relating to the garden near Motibagh Palace, in Exhibit D.W. 21/B, which has already been reproduced. That passage no doubt suggests, that the Ruler was under the impression that the garden in question also formed a part of the property mortgaged with him. The reference to the garden appears to be parenthetical. The emphasis was on the fact, that the claim of Sardars Amarjit Singh and Amarinderjit Singh with respect to the garden was untenable, because it

(1) A.I.R. 1943 P.C. 83.
(2) I.L.R. 34 Cal. 1059.
(3) A.I.R. 1915 All. 334.

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

had been gifted by Colonel Amrik Singh to his wife Sardarni Harbans Kaur. It was erroneously assumed that it formed part of the mortgaged property. The mortgage deed dated 7th January, 1933, does not include the garden, as one of the properties mortgaged by her in favour of His Highness. Again, Exhibit P.C./1, dated 28th Phagan, 1999 Bk., which is a letter addressed to the Private Secretary to His Highness by the Revenue Minister, when listing the mortgaged properties, does not refer to the garden. The Committee's report Exhibit D.W. 21/A, leaves no doubt that the properties which were mortgaged were agricultural land at village Khera, Amarinder Hall, Patiala, and Narain Villa, Simla, and no others. The argument of Shri Dalip Chand Gupta is, that even if in consequence of an error, or because of incidental reference, the garden was said to be a part of the mortgaged properties, it should be deemed to have been duly mortgaged and, therefore, should belong to S. Anup Singh, who had redeemed the mortagage, on the ground, that the Ruler's palpably mistaken order was sacrosant, and therefore, inviolable.

This argument is fallacious. Finality, no doubt, attaches to the deliberate and conscious commands of the Ruler, but if as a result of proved oversight, or clear mistake, it can be established, that it was never the intention of His Highness, that the garden should also be included in the properties to be redeemed, the Courts cannot be considered to have disobeyed the command of His Highness. On the other hand, it would be their duty to give effect to the Ruler's real intent. The King may be assumed to possess the quality of omnipotence but he has not got the attribute of omniscience. He may be all

powerful but cannot be all knowing, and therefore, not infallible. Especially in doubtful cases, the mind of the King is presumed to be in conformity with the law, and with what it should be (*Eadem mens praesumitur regis quae est juris, et quae esse debet praesertim in dubiis*).

In the words occurring in Broom's Legal Maxims, Tenth Edition, at page 23—

> "It must further be observed that, even where the king's grant purports to be made *de gratai speciali, certa scientia et mere motu* (of our special grace, certain knowledge, and mere motion the grant will be void, if it appears to the Court, that the king was deceived in the purpose and intent thereof; and this agrees with a text of the civil law, which says that the above clause *non-valet in his in quibus praesumitur principem esse ignorantem* (is of no avail where it may be presumed that the prince was ignorant); therefore, if the king grant such an estate as by law he could not grant, for as much as the king was deceived in the law, his grant is void."

From what has been stated above, it cannot be inferred from the causal reference to the garden in Exhibit D. W. 21/B, erroneously assuming it to be a mortgaged property, that it was not in fact gifted to Sardarni Harbans Kaur by her deceased husband. In holding, that the garden belonged to Sardarni Harbans Kaur, as her absolute property, the learned District Judge did not pass any judgement, which contravened any command of the Ruler.

S. Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

The next question is, whether the garden in fact was the self-acquired property of late S. Amrik Singh of which he could, in law, make a gift. Mr. Dalip Chand Gupta contends that the property including the garden should be deemed as joint Hindu family property in the hands of S. Amrik Singh and, therefore, inalienable. He has submitted that the District Judge should have decided issue No. 4 in his favour, and should have held, that the property in dispute was the joint Hindu family property of his client, S. Anup Singh, and his deceased father. S. Amar Singh, the father of S. Amrik Singh, had one ancestral house, and one *kothi* at Jullundur, and about 400 *bighas* of land in village Mehadpur. The income of the agricultural land was admitted by the parties to be Rs. 400 to Rs. 500 per annum. One house used to be rented, and it did not fetch more than Rs. 8 per month. According to the estimate of S. Anup Singh, the annual yield of the entire property left by his grandfather S. Amar Singh was about Rs. 2,000 per annum. But this estimate cannot be supported from his previous statement. The learned District Judge was not wrong in holding that the total annual income from the ancestral property was about Rs. 1,000. S. Amar Singh had a fairly large family, and it could not be said, that whatever was left, after meeting the household expenses out of the income of Rs. 1,000 per annum, furnished a sufficient nucleus for purchasing property including the garden. S. Anup Singh, in his previous statement, Exhibit D.W. 24/P. 1, stated—"My father maintained a separate account of the income of the property which he regarded as joint and ancestral. As for the income from his own property is concerned, accounts with respect to were kept distinctly separately." The above statement cannot be reconciled with his

present contention. The explanation of his counsel is that the previous statement was made under different circumstances when there was a dispute between his client and his uncles. In other words, he made an untrue statement, because at that time, it suited his purpose to do so, in the litigation with his uncles, who had contended that the property was joint. In this litigation, his interest lies in contending that the property was joint, and therefore, he has conveniently made a different and a contradictory statement. This argument neither does credit to S. Anup Singh, nor does it show that the present statement and not the former is correct. The District Judge was justified in concluding that the nucleus was insufficient to enable S. Amrik Singh to purchase the property as alleged by the defendant. S. Anup Singh, also admitted in his own statement that his father was separate from his grandfather. In view of this statement, it cannot be concluded that S. Amrik Singh purchased the property from the nucleus furnished by the joint property. On the other hand, there is sufficient material on the record to show that the acquisitions made by S. Amrik Singh, were out of his own income, which was very substantial, he being an Inspector-General of Prisons. P.W. 5 Pt. Lachhman Das, who was at first Mukhtar-i-Am of S. Amar Singh, then of his son S. Amrik Singh, and now of Sardarni Harbans Kaur, stated that on the assumption of powers by His Highness in 1911 he gave Rs. 10,000 to S. Amrik Singh, as *bakhshish*. In his statement, Exhibit D.W. 24/P-1, S. Anup Singh stated, "we own no joint family garden in Patiala. The garden in Patiala which is situated near Motibagh Palace was purchased by my father." In view of S. Anup Singh's own statements and the very small income yielded by the joint Hindu family property, the only reasonable

S Anup Singh
v.
Sardarni
Harbans Kaur

Tek Chand, J.

inference that can be drawn is, that the garden was purchased by S. Amrik Singh, with funds provided from his own earnings. In my view this property cannot be considered to be a joint Hindu family property. In the words of Lord Buckmaster in *K. L. S. V. E. Annamalai Chetty* v. *K. L. S. V.E. Subramanian Chetty and others* (1),—

> "A member of a joint undivided family can make separate acquisition of property for his own benefit, and unless it can be shown that the business grew from joint family property, or that the earnings were blended with joint family estate, they remain free and separate."

Sir George Rankin in *Bhuru Mal* v. *Jagannath* (2), cited the above passage with approval. The case of *Beli Ram* v. *Sardari Lal* (3), cited by the learned counsel for the appellant is distinguishable, because it was found as a fact, that there was substantial nucleus of ancestral property to give the property in suit the character of ancestral property.

Taking into consideration, the inadequacy of the income of the joint family property, in the life-time of S. Amar Singh, the substantial earnings of S. Amrik Singh, on account of his salary and other personal emoluments, the former statements of S. Anup Singh, and the manner in which the garden was dealt with by S. Amrik Singh, there is left no doubt in my mind, that it was the self-acquired property of S. Amrik Singh, over which he had unfettered of alienation. By gifting this property to his wife, he made her an absolute owner. From the evidence on the record

(1) A.I.R. 1929 P.C. 1.
(2) A.I.R. 1942 P.C. 13.
(3) A.I.R. 1930 Lah. 613(2).

of this case the learned District Judge could not have come to a different conclusion on issue No. 4, which was rightly decided against the defendant-appellant.

Lastly, there is no convincing proof, forthcoming on the record, as to the improvements claimed to have been made by the defendant, and, of their exact of even approximate value. The benefits obtained by him as a result of his wrongful possession, spread over many years, abundantly compensate him for such expenses as might have been undertaken by him in making unauthorised improvements.

In conclusion I agree with the fiindings of the District Judge, being of the view that a decree for possession, of 33 *bighas* 5*biswas* comprising of the garden near the Motibagh Palace, Patiala, was correctly passed in favour of the plaintiff and the rest of her claim was rightly dismissed. I find no force in the appeal and in the cross-objections, both of which are dismissed. I leave the parties to bear their own costs throughout.

BHANDARI, C. J.—I agree.

Bhandari, C. J.

B. R. T.

REVISIONAL CIVIL.

Before Bhandari, C. J.

LAKHA SINGH AND OTHERS,—*Petitioners*

versus

HARBHAJAN SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 315 of 1954.

1957

Sept., 26th

The Indian Trusts Act (II of 1882)—Sections 43 and 48—Whether one of the trustees is competent to refer a matter in which the trust is interested to arbitration without obtaining the concurrence of his co-trustees.