

that Smt. Fatto had become an absolute owner after the extinction of the occupancy rights and on the conferment of the ownership rights. Once it is held that Smt. Fatto became an absolute owner of the land, the plaintiff must fail because she, as an absolute owner, could make a gift to whomsoever she liked, and in this case the gift is made to the daughter who is the next heir. In any case, it is settled law that an alienation of property which belongs absolutely to a female cannot be controlled by the reversioners of the husband, and they would have no *locus standi* to bring the present suit.

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For the reasons, given above, the defendant's appeal is allowed and the plaintiff's appeal is dismissed, with the result that the plaintiff's suit fails and is dismissed.

In the circumstances of the case, there will be no order as to costs.

DULAT, J.—I agree.

Dulat, J.

K. S. K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

HARDIAL SINGH,—Appellant.

versus

THE STATE OF PEPSU,—Respondent.

Regular Second Appeal No. 56(P) of 1955.

Sovereign power—Grant made in exercise of—Whether can be repudiated by Successor State—Act of State—Meaning of—Suit to challenge the repudiation of the grant—Whether maintainable.

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The Ruler of Nabha State had made a grant of Malwa House to the appellant. The Patiala and East Punjab States Union was formed on 20th August, 1948, by the merger of eight States including Nabha. The Union repudiated the grant in 1952. The question arose whether the repudiation could be made and whether it could be challenged in municipal Courts.

Held, that 'Law' in a broad sense consists of the principles or rules of human conduct which are enforced in Courts of law and do not include any special rule for a particular person or a particular case. However, there are instances when Acts of Parliament in England have been passed for the benefit of persons seeking divorce and it cannot be denied that such an Act would constitute 'Law'. So long as it emanates from the sovereign power a rule, even if applicable to individuals, must be regarded as law and in that sense the grant made by the ruler in favour of the appellant was an item of personal law which was liable to be superseded by laws of the new Union.

Held, that the repudiation of a grant can cease to be justiciable only if it could be regarded as an act of State. The term, "act of State," means "an act of the Executive as a matter of policy performed in the course of its relations with another State, including its relations with the subjects of that State, unless they are temporarily within the allegiance of the Crown". An act of State to be such can be exercised only against the subjects of another State unless it be in the course of assumption of sovereign powers by the new State. The repudiation of the grant by the State of Pepsu took place in 1952 after its formation and even after the Constitution of India had been in force granting equal rights of citizenship to all the subjects of the Union of India. The repudiation could be justified only as an act of State which could be exercised by a sovereign power alone over the subjects of another such power during the course of acquisition of territories or otherwise. Those conditions did not obtain in the instant case, and the present suit is, therefore, clearly within the jurisdiction of the civil Courts.

Second appeal from the decree of Shri S. L. Chopra, Additional District Judge, Patiala, dated the 16th February, 1955, reversing that of Shri Shamshad Ali Khan, Sub-Judge,

II Class, Patiala (C) dated the 30th April, 1954, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.

B. R. AGGARWAL, for Appellant.

M. R. SHARMA, for Respondent.

JUDGMENT

SHAMSHER BAHADUR, J.—This appeal involves a question of Constitutional law and arises out of a grant made to the appellant Hardial Singh of the property known as 'Malwa House' at Nabha by the ruler of that State. The rent-free grant was made by the former ruler of Nabha in the exercise of his sovereign powers to the appellant who was related to him. The State of Nabha subsequently came to be merged in the Patiala and East Punjab States Union when proceedings were taken to eject the appellant from this property. The present suit was brought for a declaration that the grant could not be repudiated by the new State of Pepsu. A number of pleas were raised on behalf of the State of Pepsu before the trial Judge who decreed the suit. In appeal, the learned Additional District Judge of Patiala accepted the position adopted by the State of Pepsu that the sovereign rights of the ruler of Nabha had been surrendered and its subsequent merger in the State of Pepsu which repudiated the grant in exercise of its sovereign powers rendered the dispute non-justiciable. This is now the only point which has been canvassed in appeal preferred by Hardial Singh.

Shamsher
Bahadur, J.

The question which calls for determination is whether the grant of the property which had been admittedly in possession of the appellant before the formation of the Patiala and East Punjab States Union could be revoked by the new State

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after the territory of Nabha had been assimilated in the Union. The Union of the Patiala and East Punjab States was formed on 20th of August, 1948. The actual covenant signed by the eight rulers including Nabha was signed on 5th of May, 1948. The administration of the State of Nabha was taken over by the Rajpramukh of Pepsu on 20th of August, 1948, on which date Pepsu Administration Ordinance No. 1 of Samvat 2005 was promulgated in pursuance of which all Laws, Ordinances, Acts, Rules; Regulations, Notifications, Hidayat Firman-i-Shahi, having force of law in Patiala State on the date of commencement of this Ordinance applied *mutatis mutandis* to the territories of the covenanting States and with effect from that date all laws in force in the said State immediately before that date stood repealed.

The counsel for the appellant contends that the individual grant cannot be elevated to the position of 'law' within the meaning of this Ordinance. It was a grant *simpliciter* given by the ruler of Nabha in the exercise of his sovereign powers and clause (b) of Article VI of the Covenant protected it. Under this clause, "all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the Union and shall be discharged by it". A similar contention had been raised in the recent Supreme Court authority of *Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income-tax* (1), and it was found untenable.

No doubt 'law' in a broad sense consists of the principles or rules of human conduct which are enforced in Courts of law and do not include any special rule for a particular person or a particular case (*vide Corpus Juris Secundum* Volume 52.

(1) A.I.R. 1958 S.C. 816

page 1024). However, there are instances when Acts of Parliament in England have been passed for the benefit of persons seeking divorce, and it cannot be denied that such an Act would constitute 'law'. (Salmond on Jurisprudence pages 38-39, 1957, Edition). So long as it emanates from the sovereign power a rule, even if applicable to individuals, must be regarded as law and in that sense the grant made by the ruler in favour of the appellant was an item of personal law which was liable to be superseded by laws of the new Union.

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The next question is whether the grant had actually been repudiated by the State of Pepsu. The repudiation of a grant can cease to be justiciable only if it could be regarded as an act of State. The term. "act of State," means "an act of the Executive as a matter of policy performed in the course of its relations with another State, including its relations with the subjects of that State, unless they are temporarily within the allegiance of the Crown". (Wade and Phillips on Constitutional Law, Fourth Edition, page 193). An act of State to be such can be exercised only against the subjects of another State unless it be in the course of assumption of sovereign powers by the new State, according to the rule laid down in the judgment of the *Supreme Court* cited aforesaid at page 823 at paragraph 13:—

"In law, therefore, the process of acquisition of new territories is one continuous act of State terminating on the assumption of sovereign powers *de jure* over them by the new sovereign and it is only thereafter that rights accrue to the residents of those territories as subjects of that sovereign. In other words, as regards the residents of territories which come

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under the dominion of a new sovereign, the right of citizenship commences when the act of State terminates and the two, therefore, cannot co-exist.”

The Covenant was signed between the eight rulers of the States on 5th of May, 1948, and on 20th of August, 1948; all persons residing in the territories of the Covenantee States became citizens of Pepsu. It seems that it was in about 1952 that the State of Pepsu exercised its sovereign right to repudiate the grant which had been made by the former ruler of Nabha in favour of the appellant. This act of repudiation, in my opinion, could not be defended as an act of State and once that conclusion is arrived at, the claim, of the appellant cannot be thrown out on the ground that the municipal Courts have no jurisdiction.

A similar question came for consideration in *Virendra Singh and others v. The State of Uttar Pradesh* (1). The petitioners were granted *jagirs* by the ruler of Sarila State in one village and by the ruler of Charkhari State in three villages in January, 1948. A Union was formed in March, 1948, of 35 States including these States and called the United States of Vindhya Pradesh. The particular villages were subsequently absorbed in the United Provinces (now Uttar Pradesh) by an order of the Governor-General. The Government of Uttar Pradesh in consultation with the Government of India repudiated the grant which had been made by the rulers of Sarila and Charkhari States. It was held by the Supreme Court that the confiscation could not be justified as an act of State.

It seems to me that the ruling of the decision in *Virendra Singh's case* (1), is fully applicable in

(1) (1955) 1 S.C.R. 415

the instant case, where also the repudiation of grant has taken place after the formation of the Patiala and East Punjab States Union and even after the Constitution of India had been in force granting equal rights of citizenship to all the subjects of the Union of India. The repudiation could be justified only as an act of State which could be exercised by a sovereign power alone over the subjects of another such power during the course of acquisition of territories or otherwise. Those conditions did not obtain in the instant case, and the present suit is, therefore, clearly within the jurisdiction of the civil Courts. Whether or not the grant could be confiscated by legislation or other process of law is a different matter. The plaintiff is certainly entitled to have his claim adjudicated. I would, therefore, allow this appeal and reversing the decree and judgment of the learned Additional District Judge of Patiala restore that of the trial Judge. There would be no costs of this appeal.

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LETTERS PATENT APPEAL

Before A. N. Bhandari, C. J. and D. Falshaw, J.

HUKAM SINGH AND OTHERS,—Appellants.

versus

DULI AND OTHERS,—Respondents.

Letters Patent Appeal No. 108 of 1956.

*Punjab Relief of Indebtedness Act (VII of 1934)—
Object of—Laws relating to usury—Construction of—Section 30—Benefit of—Whether allowable to the legal representative of a debtor.*

1959

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Held, that the Punjab Relief of Indebtedness Act, 1934, was enacted with the object of protecting borrowers whose