

PETITIONER:
DAYARAM & ORS.

Vs.

RESPONDENT:
DAWALATSHAH & ORS.

DATE OF JUDGMENT 08/01/1971

BENCH:
SHAH, J.C. (CJ)
BENCH:
SHAH, J.C. (CJ)
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 681 1971 SCR (3) 324
1971 SCC (1) 358

ACT:
Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1, of 1951-SS. 3, 14-S. 14 scope of-Section only intended to determine the Proprietary rights in the land qua the State-Dhanora-Zamindari-Succession by lineal primogeniture-'Nearest male relative' does not mean eldest male relative.

HEADNOTE:
Under the Chanda Patent and the terms recorded in the Wajibul-Arz the Dhanora Zamindari was impartible and on the death of the holder it devolved upon his eldest son and in the absence of a legitimate or an adopted son it devolved upon the nearest male relative. The succession to the Zamindari was subject to the power of the Governor to dispossess a person found unfit to observe the conditions of loyalty, good police administration and improvement of the estate. The respondent instituted an action for possession of certain immovable properties including the zamindari and for recovery of compensation, in respect of malguzari lands, paid to the appellants in consequence of the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estate, Mahals, Alienated Lands) Act, 1951. They claimed the Zamindari relying upon the rule of primogeniture and other estates as devisees under a Will. The trial court decreed the suit and the High Court affirmed the decree with slight modifications. in the appeal to this Court the appellants urged that (1) the Zamindari devolved on the death of the holder on the male relative who is senior most in age and not the eldest member in the senior line; (2) by the order of the Governor the Zamindari was conferred upon the first appellant as he was found suitable to hold the zamindari and since the Government had the power to determine inheritance and the right to remove a person, the holder of the zamindari had merely a life interest; and (3) the compensation officer had decided by his order under s. 14 of the Act that compensation in respect of malguzari land was payable to the first appellant and since no suit was filed by the plaintiffs for setting aside that decision within the period specified, the order of the compensation officer became final and conclusive.

HELD : (1) By the use of the expression "the nearest male relative" the test of propinquity alone may be applied and when there are two or more claimants equally removed from the common ancestor the eldest male member in the senior most line will be preferred. The contest between the parties had to be adjudged in the light of the rules of lineal primogeniture governing an impartible estate. In determining a single heir according to the rules of primogeniture the class of heirs who would

325

be entitled to succeed the property if it were partible must be ascertained first, and then the single heir applying the special rule must be selected. By the expression "nearest male relative" it was not intended to confer the estate upon the eldest male relative of the Zamindar. The High Court was, therefore, right in holding that the Zamindari devolved upon the first respondent to the exclusion of the first appellant. [333 C-F]

(2) The power vested in the Governor to take extraordinary steps to protect the interest of the zamindari by the removal of the holder did not restrict the title of the zamindar to a mere life interest. The power had to be exercised in accordance with the custom of the family and an order by the Governor purporting to exercise powers under the Chanda Patent contemplated a quasi judicial inquiry. The order does not show that any inquiry was made for determining the rights of the contesting claimants. [334 G]

(3) Section 14 of Act 1 of 1951 does not invest the compensation officer with jurisdiction to determine competing claims of persons claiming proprietary rights to the property vested in the Government by the operation of s. 3 of the Act. Section 14 is intended to determine only the proprietary rights in the land qua the State. [339 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2433 of 1966. Appeal from the judgment and decree dated August 2, 1965 of the Bombay High Court, Nagpur Bench in Appeal No. 113 of 1959 from original decree.

V. S. Desai, V. N. Swamy, K. Rajendra Chaudhuri and K. R. Chaudhuri, for the appellants.

M. N. Phadke and A. G. Ratnaparkhi, for the respondents.

The Judgment of the Court was delivered by Shah, C.J. Dawlatshah and Ranvirshah-sons of Pratapshah-instituted an action in the Court of the Additional District Judge Chanda, for a decree for possession of property immovable (including the Zamindari of Dhanora) and movable specified in the Schedules annexed to the plaint, and for an order for payment of mesne profits and also for recovery of the amount of compensation in respect of certain lands received by the defendants from the Government of Madhya Pradesh and for an order declaring

326

their right to receive the balance of compensation remaining to be paid. The plaintiffs relied upon the following genealogy

Gangashah

Niru	Bhakta	Sakru	Kajur	Raju
Thakur	Thakur	Thakur	Thakur	Thakur
Sitaram	Tanba		Chatturshah	
Thakur	Thakur		(dead)	
	Nilkanthshah			
	Pratapshah			

Dawaltshah (Platff No. 1)	Ranwirshab (Platff. No. 2)	Gulab Shah (dead)	Lallshah dead)	
Hanmantrao	Amarshah Basu Died Dec. 9, 1950)	Chandarshah (dead)	Karanshah (dead)	Niranshah
Diwakarrao (Died Sept., 8, 1932)				

Ballarshah

Karansbah

Dayaram Indersbah (Deft. dt. No. 1)	(Deft. No. 2)
Govinda	Budha
(dead,)	Rama
	Laxman

The plaintiffs claimed that the property in suit originally belonged to Gangashah. Gangashah had five sons: Hiru, Bhakta, Sakru, Kajur and Raju. The branches of Sakru and Kajur became extinct a long time ago. The branch of Hiru (who was

327
the eldest among the five sons of Gangashah) because extinct with the death of Amarshah on December 6, 1950. The plaintiffs claimed the Zamindari held by Amarshah relying upon the rule of primogeniture, and the other estate of Amarshah as devisees under the will of Amarshah executed on December 3, 1950. They submitted that the Dhanora Zamindari was granted to Sitaram ancestor of Amarshah as an impartible estate, devolving by the rule of primogeniture; that the Zamindari on that account devolved on the death of Amarshah upon Pratapshah and that on the death of Pratapshah and Zamindari devolved upon the first plaintiff. The plaintiffs also claimed that the other property including Malguzari lands devolved upon them under a will executed on December 3, 1950 whereby Amarshah devised his estate in their favour. Accordingly the first plaintiff claimed that he was entitled to the Zamindari on the death of Pratapshah on January 27, 1951 and the plaintiffs claimed the other estate of Amarshah as devisees under his will. The plaintiffs submitted that Dayaram the first defendant took wrongful possession of the Zamindari and other property, movable and immovable of Amarshah.

The defendants by their written statement maintained that the genealogical table set up by the plaintiffs was incorrect, that by the order of the Governor of Madhya Pradesh dated November 9, 1951, the Zamindari was conferred upon the 1st defendant Dayaram as he was found suitable to hold the, Zamindari and the decision of the Governor was binding upon the plaintiffs; that the decision of the Compensation Officer regarding Malguzari lands which vested in consequence of the enactment of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act 1 of 1951, had become binding and conclusive against the plaintiffs because no suit challenging the decision was instituted within two months from the date thereof and the plaintiffs were on that account not entitled to claim the compensation paid or payable in respect of the Malguzari lands; that Amarshah did not execute the will set up by the plaintiffs; and that Amarshah had made a will dated December 8, 1950 under which his estate was devised in favour of the defendants.

The Trial Court held that the Dhanora Zamindari was impartible and was governed by the rule of primogeniture and Pratapshah father of the plaintiffs being the eldest member of the seniormost branch from among the descendants of the common ancestor Gangashah was entitled to the Zamindari;

that the plaintiffs were entitled to receive compensation in respect of the Malguzari lands and the decision of the Compensation Officer did not operate to deprive the plaintiff of the right to those lands or compensation payable in respect thereof; that the will set up by the plaintiffs

328

dated December 3, 1950 was genuine and the plaintiffs were under the will entitled to the estate devised in their favour by Amarshah; that the will dated December 8, 1950, set up by the defendants was "a fabricated will" and conferred no right or title upon the defendants; and that the genealogical table set up by the plaintiffs represented the true relationship between the descendants of Gangashah. In appeal by the defendants, the High Court of Bombay confirmed the decree of the Trial Court with a slight modification. The High Court held that the genealogical table set up by the plaintiffs was correct, that according to the custom governing succession Dhanora Zamindari devolved upon Pratapshah on the death of Amarshah, and on the death of Pratapshah the first plaintiff became entitled to the Zamindari, that the order of the Governor recognising Dayaram as Zamindar was not binding and conclusive, for it was not shown that in making the order the Governor had acted in exercise of the power conferred by the Chanda Patent; that the order was contrary to the customs and the law governing the Zamindari; that the decision of the Governor did not oust the jurisdiction of the the Civil Court; that the will dated December 8, 1950 set up by the defendants was not genuine and the will set up by the plaintiffs dated December 3, 1950, was genuine; and that the plaintiffs' suit with regard to Malguzart lands was not barred by the decision of the Compensation Officer. The High Court accordingly confirmed the decree passed by the Trial Court in respect of the Zamindari replying upon the rule of inheritance incorporated in the Wazibul-Arz of the Chanda District and by' succession under the will dated December 3, 1950 in respect of the other property except as to certain occupancy lands held by Amarshah.

With certificate granted by the High Court the defendants have appealed to this Court.

Certain concurrent findings on which not much argument was advanced at the Bar may first be set out. The High Court agreeing with the Trial Court on appreciation of evidence held that the genealogy set up by the plaintiffs represented the true relationship between the parties. Again the High Court agreeing with the Trial Court held that the will dated December 3, 1950 set up by the plaintiffs was genuine while the will dated December 8, 1950 set up by the defendants was not genuine. The argument that the High Court did not give due weight to certain important circumstances in reaching their conclusion relating to the will set up by the plaintiff is without substance. The circumstances relied upon are that the writing instrument with which the body of the will was written and the writing instrument with which

329

Amarshah, it was claimed, signed or executed the will were different, that the will was not registered, that the appearance of the will was suspicious, that the will was unnatural because it devised the estate in favour of the plaintiffs after giving a life interest in favour of the testator's widow Ratnabai, that the will had not been produced before the revenue authorities and before the Compensation Officer when disputes in relation to the estate of Amarshah were pending before those authorities, and that it

was produced for the first time nearly seven years after the death of Amarshah, and that the scribe who wrote the will did not belong to the village to which Amarshah belonged. The Trial Court and the High Court have reached the conclusion that on the circumstances no suspicion as to the genuineness of the will dated December, 1950 arose. It may be noticed that the plaintiffs were, at the date of their father's (Pratapshah's) death minors, and soon after Pratapshah's death, their mother abandoned them and re-married. Thereafter no one attended to the pending litigation. Failure to produce the will before the revenue authorities was therefore not a circumstance in the view of the High Court, which militated against the genuineness of the will. In the view of the Courts absence of registration, appearance of the will, the contents thereof, the dispositions, thereunder, and the fact that the writer of the will belonged to another village did not in the circumstances of the case give rise to any suspicion. We do not think that sitting in appeal we would be justified in interfering with the conclusion recorded by the Trial Court and confirmed by the High Court on what is essentially a conclusion on a question of fact.

The will set up by the defendants is not proved to be a genuine will executed by Awarshah. This again is a concurrent finding of the two Courts and must be accepted in this Court. No argument has been advanced to persuade us to take a different view. The rights of the parties must be adjudged in the light of these findings.

The dispute between the parties relates to three set of properties-

- (a) Dhanora Zamindari
- (b) Malguzari lands;
- (c) Occupancy lands and movables.

The ancestors of the parties held an extensive Zamindari in the Chanda District. After the advent of the British rule, in that region, the revenue authorities commenced settlement operations. An inquiry was held by the Settlement Officer in connection with the lands held by the family of the parties and statements of some

330

members were recorded. Chattarshah s/o Kajur stated that the Zamindari of Dhanora was standing in the name of his cousin Sitaram and that all the members of the family were joint and maintained themselves out of the income from the Zamindari. In his statement Sakru admitted that the rule of primogeniture prevailed in the family. He stated that Hiru was his eldest brother and Sitaram was the son of Hiru and the Zamindari was recorded in the name of Sitaram according to Awwal Haqq i.e. rule of primogeniture from ancient times, even though he was senior in age, and that there was no quarrel between him and Sitaram and that he and Sitaram were living jointly and were taking the income from the Zamindari.

The Settlement Officer made an order on November 2, 1867 that the "Zamindari is of ancient tenure and the present Zamindar Sitaram Thakur has proved his right to be Zamindar. Subject to the conditions to be embodied in patent of proprietary right. I confer proprietary right in the Zamindari of Dhanora on Sitaram Thakur". The Settlement Officer observed that conferment of proprietary rights was subject to conditions to be embodied in a patent of proprietary rights. It may reasonably be inferred that a formal grant was made in favour of Sitaram. The form of the grant which is known as "Chanda Patent" is reproduced in Aitchison's "Collection of Treaties, Engagements and Sanads"

Vol. II, pp. 573-574. Under the Chanda Patent it was declared that the tenure shall be indivisible, and non-transferable (save to the nearest male heir the transfer in such case being subject to the approval of the Chief Commissioner) the land shall be held by one person, the Zamindar or Zamindarin for the time being and shall be held on conditions of (i) loyalty (ii) good police administration and (iii) improvement and cultivation of the estate. Clauses V, VI, VII of the grant relating to succession to the Zamindari held under the Patent :

"V. Subject to the provisions contained in Clause VI, the order of succession shall be as under :-

On the death of the Zamindar, the estates shall devolve upon his eldest son. In default of a son, and when adoption has not taken place, the succession should preferably devolve on the nearest male kinsman, the widow receiving a suitable Maintenance.

VI. In the event of the first in order of succession being, in the opinion of the local Government, unfit to carry out the conditions of Clause IV, the Zamindaree 'shall devolve upon the nearest heir who possesses the required qualification.

331

VII. The Zamindar, in the case of gross misconduct, shall be liable to removal by the local Government; and if such removal be ordered, the succession shall take place as if the Zamindar removed had died."

Tenure of the grant is entered in the Wajibul-arz. The relevant recitals in the Wajibul-arz are as follows

PART-1

Rights and liabilities of Zamindar in relation to Government.

(1) Watan

Zamindar's Watan is not partible and it cannot be given to anyone other than quite close (the nearest), male heir. Changes taking place in this way should have sanction of the Governor-in Council. The Zamindari shall be in the name of only one person and the Zamindari has been granted to the Zamindar in possession at present on the conditions of this remaining loyal to the Government, managing his estate properly and improving the cultivation. (2) Heirs

On the death of Zamindar the estate shall devolve upon his eldest son. If there is no legitimate or adopted son, it shall devolve upon a very close (the nearest) male relative. If there arises a dispute regarding right of inheritance, the Governor-in Council will decide it in accordance, with the custom in that family. If the Governor-in-Council finds that the first heir is unable to abide by the conditions stated in BAB (clause). the Zamindari shall be granted to a quite close (the nearest) male heir possessing the necessary qualifications.

(3) Dispossessing the Zamindar and forfeiting his rights.

Governor-in-Council may dispossess the Zamindar on account of his behaviour and bad administration. Such dispossession may be for a few days or permanent. If it is for a few days, the Deputy Commissioner will manage the Zamindari on behalf of the Zamindar and if the order of dispossession is permanent, the Zamindar shall so to say be deemed to have died and the heir will get the right." The entries in the Wajibul-arz substantially reproduce the terms of the Chanda

Patent as set out in Vol. II of Aitchison's "Collection of Treaties, Engagements and Sanads".

One Major C. B. Lucie Smith made a report relating to the Land Revenue settlement of the Chanda District, Central Provinces, 1869. At pp. 179 to 180 Major Lucie Smith has referred to the Zamindarees of the Chanda District. He has stated under the head "Zamindarees".

332

"The Zamindarees were settled by me; and in order to explain the principles of settlement adopted it will be necessary to touch first upon the questions of tenure and history.

The weight of testimony goes to show that the Zamindars are the descendants of men on whom were conferred tracts of country, more or less wild with the object of their being brought under cultivation and order maintained. Naturally, . . . while, the law was weak and its administrators distant the Zamindar, as the lord on the spot, exercised large powers but powers apparently never recognised by either the Gand or the Maratta Government. He was undoubtedly regarded as a noble, bound to furnish a small contingent when required by his sovereign; but there is nothing to warrant the supposition that he possessed an absolute right in the soil; indeed, as far as my experience goes, such a right is foreign to the ideas of the races of this part of India.

The rulers of the day evidently made and unmade Zamindars at their pleasure;.....

Under these circumstances it appeared that the Chanda Chiefs, though the Nobles of the Country, possessed no absolute rights in the soil, and that it rested with Government to confer it; and in conferring it, to prescribe such conditions as might be deemed fitting. A scheme of conditions to be embodied in the, patent of proprietary right, and in the administration paper of the Zamindarees, was therefore drawn up, based upon the usages actually existing from ancient times; and, with one exception, the proposed arrangements were sanctioned in their entirety by the Government of India, who directed that they were to be taken as a general model for those to be applied to the Zamindarees of the Bala ghat district and to the non-feudatory Zamindarees of Chutteesgurh.

The provision not approved as that on the death of a Zamindar, the estate should in default of a son, devolve upon his widow. This code of succession has obtained among the Chanda Chiefs from time immemorial, and is the rule not only among them but among all classes of landholders in the district. It suits especially the character of the Gond women..... Government, however, after weighing the arguments urged', decided that it was conducive to the interests of

333

the Zamindarees that the, succession should devolve only upon a male member of the family, and the clause was altered accordingly."

Pratapshah and the 1st defendant Dayaram were descendants of Gangashah and they were related to Gangashah in the same degree. But Pratapshah was the descendant of Bhakta, and Dayaram was the descendant of Raju. Bhakta was the elder of the two brothers. It is recited in the Wajibul-arz that the Dhanora Zamindari is impartible, that on the death of the holder it devolves upon his eldest son and in the absence of a legitimate or an adopted son it devolves upon the nearest male relative. Devolution of, the Zamindari closely resembles the traditional rule of liberal primogeniture. If the holder dies leaving him surviving no son legitimate or

adopted, the Zamindari devolves upon a descendant from the common ancestor of the nearest degree and in the event of there more, descendants from the common ancestor being in the same degree, the descendant in the senior line is preferred. Succession to the Zamindari is subject to the power of the Governor to dispossess a person found unfit to observe the conditions of loyalty, good police administration and improvement and cultivation of estate. But if the nearest in the line of succession is not selected the estate must be given to the nearest heir who has the prescribed qualifications and is a successor to the Zamindar. When the Zamindar is removed, succession takes place as if the Zamindar so removed had died. By the use of the expression "nearest male relative" the test of propinquity alone may be applied and when there are two or more claimants equally removed from the common ancestor the eldest male member in the senior most line will be preferred. In adjudging the plaintiffs claim the Court must determine whether Pratapshah-father of the plaintiffs, was the nearest male relative of Amarshah.

On the death of Amarshah there were two male relatives they were Pratapshah father of the plaintiffs and the 1st defendant Dayaram. The contest between them had to be adjudged in the light of the rules of lineal primogeniture governing an impartible estate which are well-established :

Succession is governed by the rules which governs succession to partible property subject to such modifications only as flow from the character of the impartible estate; the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class who would be entitled to succeed to the property if it were partible under the general Hindu law; and in the absence of a special custom, the rule of primogeniture furnishes a ground of preference.

334

Subramanya Pandya Chokka Talawar v. Siva Subramanya Pillai(1). In determining a single heir according to the rule of primogeniture the class of heirs who would be entitled to succeed to the property if it were partible must be ascertained first, and then the single heir applying the special rule must be selected.

Counsel for the first defendant submitted that under the terms of the Chanda Patent the Zamindari devolves on the death of the holder on the male relative who is the senior most in age, and not on the eldest member in the senior line. There is nothing in the Chanda Patent which supports that contention. By the use of the expression "nearest male relative" the rule of primogeniture is prescribed, it is not intended to confer the estate upon the eldest male relative of the Zamindar.

Counsel also submitted that under the terms of the Chanda Patent and the terms recorded in the Wajib-ul-arz the Governor having the right to determine inheritance and the right to remove a person who is not loyal or does not manage the property or does not improve the cultivation or who is guilty of bad behaviour or bad administration, it must be assumed that the holder of the Zamindari has merely a life interest and on the death of the holder, the Governor re-grants the land consistently with the rules of succession according to the law and custom amongst the members of the

family but subject to the dominant purpose of good administration and loyalty to the Government. Counsel for the first defendant relied upon certain circumstances which he claimed established that the interest of the Zamindar was restricted to his life and on his death there was resumption and re-grant of the Zamindari by the Governor. Counsel submitted that the Zamindari was impartible and devolved upon the nearest male heir, that the sanction of the Governor was necessary for transfer, and also for recording inheritance, that loyalty, good management and improvement of cultivation were the conditions for holding the lands and that if the behaviour of the Zamindar was found unsatisfactory or that he was not capable of good administration he was liable to be removed. On that ground, said Counsel, the Government alone was competent to decide a dispute arising out of inheritance. But the power to take extraordinary steps to protect the interest of the Zamindari by the removal of the holder does not restrict the title of the Zamindar to a mere life interest. The incidents of the tenure are restrictions on the estate of the Zamindar, but those restrictions do not make him a mere life-tenant. Under the Chanda Patent the lands of the Zamindari held by the family were confirmed in 1867 in favour of Sitaram. On his

(1) I. L. R. 17 Mad. 316 at p. 325.

335

death they devolved upon Hanmantrao. There is no evidence that any fresh grant was made. On the death of Hanmantrao the lands devolved upon his son Diwakarrao who died on September 8, 1932. On the death of Diwakarrao dying without leaving any male descendant there arose a dispute between Pratapshah and Amarshah. Pratapshah claimed to be the adopted son of Diwakarrao and on that ground entitled to take the Zamindari. An inquiry was held and it was decided that Pratapshah failed to prove the adoption set up by him. On the death of Amarshah again without leaving any male lineal descendant disputes arose. The evidence is not clear as to whether any formal grant was issued in favour of Sitaram. There is no evidence that recognition of the heirs of the successive Zamindars was accompanied by the issue of fresh patents or grants. Succession was merely recognised by the revenue authorities. The argument that the grant was for life of the grantee is therefore not supported by the terms of the Chanda Patent, nor by the entries in the Wajib-ularz. nor by the history of the Zamindari. The right to determine inheritance it is true vests in the Governor but the power is exercisable in accordance with and not in violation of the custom of the family. In determining the heir the Governor is not granting afresh the Zamindari; he merely determines the successor in accordance with the custom of the family. The right of the Governor to remove a holder who is disloyal or does not manage his estate properly or does not improve cultivation or is otherwise of "bad behaviour" or guilty of bad administration, does not involve a condition that the interest of the Zamindar is only for his life. When a holder of the Zamindari is removed, the Governor is bound to hand over the Zamindari to the next heir in the order of succession if the Zamindar removed had died and the heir will get the right.

Counsel, then contended that in any event the decision of the Governor in 1950 declaring Dayaram to be the successor on the death of Amarshah was 'binding and conclusive and could not be reopened. Counsel urged that Pratapshah and the 1st defendant Dayaram were related to the common ancestor in the same degree, and it was open to the Governor

to select one of the two members of the family related to the last holder in the same degree even though the person selected did not belong to the senior-most line. But if succession to the Zamindari is governed by the rule of lineal primogeniture, selection of a member of a branch in preference to a member of the senior branch would be plainly illegal.

Again, the evidence does not warrant the view that the Governor purported to pass any order in pursuance of the provisions of the Chanda Patent or the rules of succession recorded in

336

the Wajib-ul-arz. The order of the Governor is in the form of a memorandum addressed to the Deputy Commissioner, Chanda, dated November 9, 1951 and it states that

"Government are pleased to recognise Shri Dayaram Bapu son of Ballarshah Bapu Raj Gond as the Zamindar of Dhanora Zamindari in the Carchiroli tahsil of the Chanda District till the date of vesting of the Zamindari in the State Government".

There is no evidence that the Governor made any enquiry to determine the successor of Amarshah. An order by the Governor purporting to exercise powers under the Chanda Patent contemplates a quasi-judicial inquiry. The order does not show that any inquiry was made for determining the rights of the contesting claimants or that any notice was issued to them or that they were heard before the Governor decided the issue. There is nothing in the pleadings in that behalf. The Governor is invested with quasi-judicial power, and if there be a dispute, the dispute must be decided after holding an inquiry, and the decision must be reached consistently with the rules of natural justice and in accordance with the custom of the family. A bald statement that the "Government are pleased to recognise Dayaram Bapu son of Ballarshah Bapu as the Zamindar of Dhanora Zamindari" does not disclose the reason for rejecting the claim of Pratapshah who according to the custom of the family was "the nearest male relative". There is no evidence on the record that the Governor was even aware that there were other claimants and if he was aware what their claims were and that the Governor had considered those claims before recognizing the claim of Dayaram. In the 'absence of any evidence that the order was made by the 'Governor in exercise of the power conferred by the Chanda Patent it is unnecessary to consider whether any order made by the Governor is in exercise of the powers of the patent excludes the jurisdiction of the civil court. The decision of Governor was apparently reached without any inquiry and was plainly contrary to the rules of Hindu Law and the custom of the family in the light of which alone the Governor was by the express mandate competent to adjudicate the claim.

It is true that there were mutation proceedings in regard to the Zamindari before the Naib Tahsildar Garchiroli Tahsil. The Naib Tahsildar by his order dated May 9, 1951 held that the dispute relating to the mutation was raised by Pratapshah, that Amarshah had died issueless, that the genealogical tree set up by Daulatshah son of Pratapshah was incorrect being unsupported by reliable evidence,, that copies of settlement of 1867 were mere statements of interested persons, that the genealogical tree filed by Dayaram resembled the genealogical tree filed by Pratapshah

337

and was held to be genuine; that Amarshah had clearly

admitted in his statement that Dayaram was entitled to succeed to the Zamindari after him and that Dayaram was the nearest male kinsman to the deceased Amarshah. This decision of the Naib Tahsildar proceeded upon a genealogy produced by Dayaram which on the findings of the Trial Court as well as the High Court in this case is incorrect. The decision of the Naib Tahsildar in a mutation proceeding even as a piece of evidence has little evidentiary value when it is founded on a material piece of evidence which was untrue. The proceedings were carried in appeal before the Deputy Commissioner. The Deputy Commissioner confirmed the order by his decision dated August 8, 1951. He also accepted the genealogy set up by Dayaram and held that there were no other nearer male descendants in the branch and that Pratapshah was one degree more removed than Dayaram. In view of the infirmity attaching to the genealogy relied upon by the Revenue Officer that decision has also little evidentiary value.

The orders passed by the Governor and the revenue authorities do not exclude the jurisdiction of the civil court to decide the question of kinship. In that view we agree with the High Court that the Zamindari originally confirmed in favour of Sitaram must according to the tenure as recorded in the Wajib-ul-arz devolve upon the first plaintiff Dawalatshah to the exclusion of the first defendant Dayaram. The right in Malguzari land was since the death of Amarshah extinguished by the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1 of 1951. The Malguzari lands are by the devise contained in the will dated December 3, 1950 given to the plaintiffs. Compensation in respect of the lands would therefore belong to the plaintiffs. But it is urged that notwithstanding the devise, because of the order of the Claim Officer under Section 14 of Act 1 of 1951, the plaintiffs were not entitled to agitate the question of heirship. It is enacted by s. 3 of the Act that on and from a date to be specified by a notification by the State Government in that behalf, all proprietary rights in an estate, mahal, alienated village or alienated land as the case may be, in the area specified in the notification, vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances. Section 4 sets out of the consequences of the vesting of the land in the Government by virtue of the notification issued under s. 3. Section 8 provides for assessment of compensation payable to every proprietor, who is 8-L807SupCI/71

338

divested of proprietary rights. The compensation is to be, determined in accordance with the rules contained in Sch. 1. Section 12 requires that a proprietor who is divested of proprietary rights by virtue of a notification issued under s. 3 shall, within such period as may be prescribed, file a statement of claim in the prescribed form and specify the particulars mentioned therein. Section 13 authorises the Compensation Officer to determine the amount of compensation. Section 14 provides:

"(1) If during the course of an enquiry by the Compensation Officer, any question is raised regarding the proprietary right in any property divested under Sec. 3 and such question has not already been determined by a court of competent jurisdiction, the

Compensation Officer shall proceed to enquire summarily into the merits of such question and pass such orders as he thinks fit."

(2) The order of the Compensation Officer under sub-section (1) shall not be subject to any appeal or revision, but any party may, within two months from the date of such order, institute a suit in the civil court to have the order set aside, and the decision of such court shall be binding on the Compensation Officer, but subject to the result of such suit, if any, the Compensation Officer shall be final and conclusive".

Counsel for Dayaram urged that the Compensation Officer had decided by his Order dated August 30, 1951 that compensation in respect of the Malguzari land was payable to Dayaram and since no suit was filed by the plaintiffs for setting aside that decision, the order of the Compensation Officer became final and conclusive and could not be reopened in a suit filed more than six years after that date. We are unable to accept that contention. The Compensation Officer is entitled to decide a question only regarding the proprietary right in the property divested under S. 3. He is not concerned with determination of any question relating to a private dispute between two or more persons who make competing claims in the matter of compensation, relying upon their respective titles. A question regarding the proprietary rights may in ordinary course be raised only in a claim against the State, and if that claim be decided against the claimant in a summary inquiry held by the Compensation Officer, a suit to set aside the decision must be filed within two months from that date and if no suit is filed, the order becomes final and conclusive. S. 14 was enacted with a view to put an end to disputes with regard to the claims to proprietary rights which by

339

virtue of the notification issued under s. 3 are extinguished. It is not intended by an Order under section 14 to determine complicated questions of title by the adjudication of a revenue officer in a summary inquiry without even a right of appeal and to make his adjudication conclusive unless a suit be filed within two months from the date of the order. That is also clear from the terms of s. 35(7) of Act 1 of 1951 which provides

"The payment of compensation under this Act to the creditors of a proprietor or to the proprietor in accordance with the prescribed manner shall be a full discharge of the State Government from all liability to pay compensation for the divesting of proprietary rights, but shall not prejudice any rights in respect of the said rights to which any other person may be entitled by due process of law to enforce against the person to whom compensation has been paid as aforesaid".

The Civil Court is declared competent to determine disputed questions with regard to title to 'compensation. We agree with the High Court that s. 14 of Act 1 of 1951 does not invest the Compensation Officer with jurisdiction to determine competing claims, of persons claiming proprietary rights to the property vesting in the Government by the operation of s. 3 of the Act. Section 14 is intended to determine only the proprietary rights in the land, qua the State.

Finally it was urged that the Trial Court granted Rs.

10,000/as mesne profits, and even though- the, High Court disallowed the claim of the plaintiffs with regard to certain items no reduction was made in the total amount of mesne profits awarded corresponding to the claim disallowed. Counsel for the plaintiffs concedes that the High Court was in error in not reducing the amount of mesne profits awardable to the plaintiffs. He agrees that instead of the figure of Rs. 10,000/- awardable to the plaintiff Rs. 8,000/- should be substituted. We modify the mesne profits awarded. Subject to this modification, this appeal fails and is dismissed with costs.

K.B.N.

Appeal

dismissed.

340

JUDIS