IN THE HIGH COURT OF MADHYA PRADESH
A T J A B A L P U R

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

FIRST APPEAL No. 904 of 2026

CNR No.: MPHC010349982026

RAO DEVENDRA SINGH S/O RAO SHOBHAGY SINGH (DEAD) WORKING TRUSTEE SHRI OMKARESHWAR PUBLIC TRUST SH

Versus

SHRI OMKARESHWAR TEMPLE PUBLIC TRUST AND OTHERS

Appearance:

Shri Sanjoy Ghose, Senior Advocate assisted by Shri Harshvardhan, Shri Nishant Khatri and Shri Siddharth Shukla – Advocates for the appellant.

Shri Ajay Bagadiya, Senior Advocate assisted by Shri Arpit Kumar Oswal, Ms. Priya Sharma - Advocates for the respondent No.3.

JUDGMENT

(RESERVED ON : 14.08.2026)

(PRONOUNCED ON : 06.11.2026)

Per*: *Justice Vivek Jain

The present appeal under Section 96 of Code of Civil Procedure has been filed being aggrieved by the order dated 24.11.2025 passed in MJC No.229/2025 by the II[nd] District Judge, Khandwa whereby the application under Section 26(2) of M.P Public Trust Act, 1951 has been decided by the

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trial Court. By the said order, the trial Court has decided the question of succession to the office of working trustee of Shri Omkareshwar Temple Public Trust, Khandwa.

02. Very briefly stated, to appreciate the arguments of the learned counsel for the rival parties that would be narrated infra, the facts are that the public trust known as Shri Omkareshwar Temple Public Trust, Omkareshwar, Tehsil Punasa, District Khandwa (East Nimar) has been constituted to manage Omkareshwar temple which is one of the 12 Jyotirlingas in India. By an order dated 19.01.1967 passed by the District Judge, (East Nimar) Khandwa in MJC No.5/1963, it was held that Rao Sobhag Singh, who was the scion of erstwhile Jagirdar family, shall be the working trustee of the trust during his lifetime and succession to that office shall be governed by the principle of primogeniture subject to suitability of the claimant when succession opens. It was mentioned therein that when the eldest son is found unsuitable then the other son in order of seniority shall be eligible to be appointed as working trustee. Each time the succession opens, the question will have to be decided by the District Judge, Khandwa.

03. Rao Sobhag Singh expired somewhere in the year 1971, leaving his three sons behind him. His eldest son Rao Shivsharan Singh by uncontested succession, succeeded to the office of working trustee. He was

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the father of present respondent No.3. However, he was removed from office by a judgment dated 30.11.1999 passed by the II[nd] Additional District Judge, Khandwa (East Nimar) in RCSA No.22/1995. This judgment was passed holding the eldest son of Rao Sobhag Singh i.e Rao Shivsharan Singh, to be unsuitable, having exhibited a misconduct in handling of financial matters of the Trust, which was not befitting working trustee. His personal conduct was also found to be unbefitting working trustee.

04. The youngest son of Rao Sobhag Singh i.e Rao Devendra Singh was appointed working trustee by the same judgment dated 30.11.1999. He continued as working trustee, but towards end of his life, Rao Devendra Singh moved an application on 02.05.2025 that now he wants to get his younger son i.e Vinay Pratap Singh, appointed as working trustee. It was stated therein that his elder son, namely Dharmesh Singh is not willing to be appointed as working trustee.

05. During pendency of the said application, Rao Devendra Singh expired and the present appellant Vinay Pratap Singh was substituted as legal representative of Rao Devendra Singh and continued the application before the District Judge. In the said application, the present respondent No.3 raised objection saying that since he is the son of elder brother Rao Shivsharan Singh and the *Gaddi*/seat was passed on to his uncle Rao

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Devendra Singh only on account of unsuitability of his father, therefore, as per the law of primogeniture which has been recognized by the scheme framed by the District Judge vide order dated 19.01.1967, the seat has to revert back to the senior-most branch i.e the branch of eldest son being the only branch as per law of primogeniture which should hold the seat.

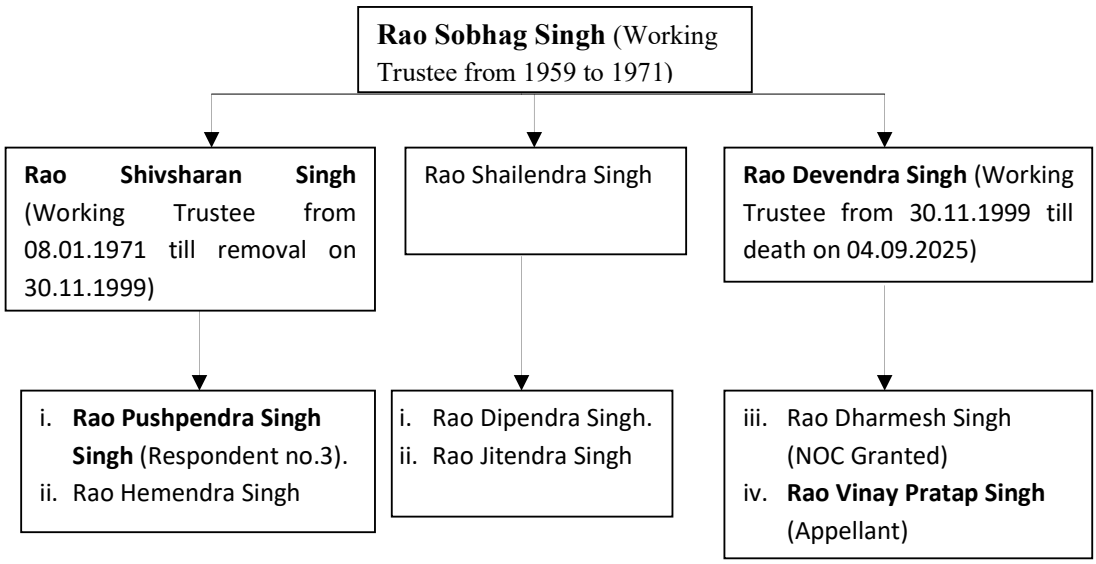
06. This assertion of the respondent No.3 has been upheld by the trial Court and it has been held that the respondent No.3 who is the eldest son of Rao Shivsharan Singh who in turn was the eldest son of Rao Sobhag Singh, has a right to be appointed as working trustee. Accordingly, respondent No.3 has been ordered to be appointed. While ordering so, the consent of other legal heirs of eldest son Rao Shiv Sharan Singh, as well as legal heirs of Rao Shailendra Singh, who was middle son of Rao Sobhag Singh, has been taken. This is in addition to the consent of the head priest and other priests of Omkareshwar temple. It has also been held that the respondent No.3-Rao Pushpendra Singh, is suitable to hold the office of working trustee.

07. Against this order passed by the District Judge, now the appellant Vinay Pratap Singh is before this Court in appeal on the assertion that the succession as per law of primogeniture has to be lineal and it cannot go ambulatory. In sum and substance, the contention of the appellant is that once, upon unsuitability of Rao Shivsharan Singh, succession passed on to

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the branch of youngest son i.e Rao Devendra Singh, then upon death of Rao Devendra Singh, the lineal succession among the sons, grandsons etc. of Rao Devendra Singh would take place and it would not revert back by shifting the line again to the branch of eldest son of Rao Sobhag Singh, i.e Rao Shivsharan Singh, who already stood disqualified by the District Judge by judgment dated 30.11.1999.

08. After having narrated the basic facts, this Court would record the arguments of the counsel for the rival parties. Prior to that a brief family tree would enable the arguments to be appreciated in proper manner.



09. The undisputed scheme framed by the District Judge vide order dated 19.01.1967 is contained in the schedule-A to the said order. The said scheme is as under:-

1. *"That the non-applicant shall during his lifetime be the working trustee of the trust property which is the subject-matter of dispute.*

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2. *That succession to the office or working trustee will be governed by the principle of primogeniture subject to suitability of the claimant at the time when succession opens i.e. if the eldest son is found unsuitable other son in order of seniority will be eligible for being appointed as working trustee. The question of succession each time when it opens will have to be decided by the District Judge, Khandwa.*
3. *The continuance of the working trustee and appointment of his successors and their continuance as such will depend on their suitability, good behaviour and proper maintenance of the trust.*
4. *Rao Sobhag singh and his successors while performing the duties of working trustee shall get 1/4th share of the net income of the public trust as their remuneration. In computing the net incomes, the usual annual recurring expenses for running the trust and for the upkeep and day to day maintenance of the subject matter of the trust shall be deducted from the gross income.*
5. *The terms of the compromise shall be made applicable with effect from 11-8-1959 but this compromise shall not affect and is without any prejudices whatever to the expenditure incurred by Rao Sobhag Singh in contravention of the objects of the trust which will be recoverable in accordance with the proceedings already pending with the Registrar of Public Trust, Khandwa, under section 23 of the Act.*

6 (a). There shall be a committee of management called Shri Omkareshwar Public trust Committee consisting of seven members constituted in the following manner-

(1) One by the Gram panchayat Mandhata.

(2) One fron Janpad Panchayat Punasa.

(3) One by Jila Panchayat East Nimar.

*(4) *** Blank ****

(5) Two to be nominated by Registrar public trust.

(6) The non-applicant Rao Sobhag Singh who will be the managing trustee and after him, his successors as stated in para 2 above.

(7) One to be nominated by Rao Sobhag singh."

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10. Learned counsel for the appellant had vehemently argued that the dispute is basically between two competing lines i.e line of Rao Shivsharan

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Singh and the line of Rao Devendra Singh. Respondent No.3 claims in line of Rao Shivsharan Singh who ceased to be working trustee in the year 1999, whereas the appellant claims through Rao Devendra Singh who became the working trustee in the year 1999 and continued in office till this death on 04.09.2025. The appellant, therefore, claims succession in the line of last working trustee who held the office when the succession opened i.e on 04.09.2025 whereas the respondent No.3 seeks to revive the line of an earlier holder. The controversy is therefore not as to who is the eldest male member of the family traced from Sobhag Singh, who undisputedly, is the respondent No.3. The dispute is that from whom the succession is required to be traced i.e from which person the senior most male member has to reckoned, either from the branch of Rao Devendra Singh; or from a college/collegium of successors including all the successors from the original working trustees i.e Rao Sobhag Singh who expired in the year 1971; or from the branch of Shiv Sharan Singh, i.e. the senior Branch of the family.

11. It is argued that the scheme of 1967 framed by the District Judge is the starting point. It does not provide that upon every vacancy, the eldest male descendant of Rao Sobhag Singh shall be selected afresh. It provides for primogeniture subject to suitability when succession opens and provides for next son in order of seniority, where the eldest is unsuitable.

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12. It is argued that there are two concepts of primogeniture. One is lineal primogeniture, which is the only valid concept, and the other is ambulatory form of succession. Lineal primogeniture is a rule of devolution through a line and the office passes successively descending from one holder to the person entitled to succeed him under the prescribed Rule within the same branch. An ambulatory form of succession on the other hand, treats the descendants of the original ancestors as a continuing pool or college of possible successors from which senior most person is selected whenever a vacancy occurs. Thus, lineal primogeniture establishes a line whereas an ambulatory form of succession creates a pool or college of successors. The succession in the present case would be lineal primogeniture and reliance is heavily placed on the judgment of the Madras High court passed in the case of ***A. Arputham v. Minor A.V. Yagappa by mother and guardian Elizabeth Mary Ammal*** reported in ***1964 SCC online Mad 180*** by arguing that where the Court has to determine whether trusteeship has to devolve by ordinary lineal primogeniture, or whether the senior most of the male descendants of the original ancestors was to be selected, then by rejecting the later construction, the Madras High Court explained that accepting such an interpretation would mean that a college of male descendants of the family was effectively created from which senior most person would be selected. It is argued that the Madras High Court held that such an interpretation

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would make the succession ambulatory in the sense of going up and down in the genealogical tree of the family. In absence of anything to that effect stated in the scheme framed by the District Judge in 1967, an ambulatory form of primogeniture cannot be stated to have been set up by the order of the District Judge of the year 1967. It is argued that when a collegial body concept is there, then the said collegial body theory treats all male descendants of the original ancestor as a continuing pool of competing claimants. Whenever a vacancy occurs, the entire genealogy is reopened and respective branches are compared afresh and the office may pass to whichever branch contains the senior most claimant at that point of time. It is argued that the Madras High Court in the case of ***A. Arputham*** (supra) rejected the said form of primogeniture as it would make the succession ambulatory. It is argued that the aforesaid case further distinguished between succession to the heir of the last holder and succession from the descendants of the original ancestors. Succession to the heir of last holder is lineal whereas the succession from the descendants of the original ancestor is an ambulatory form of succession. By relying on the aforesaid judgment, it is argued that the succession has to be traced from the last holder of office, and not from the original holder of office. Therefore, succession has to be from the last holder of office i.e Rao Devendra Singh, and not from the entire line of Rao Sobhag Singh by comparing all the

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cousins of the present appellant together, and appointing the respondent No.3 being the eldest cousin.

13. It is vehemently argued that the legal effect of 1999 judgment of the District Court dated 30.11.1999 would be that the line of Rao Shivsharan Singh got extinguished upon holding Rao Shivsharan Singh to be unsuitable to hold the office. The operating line thereafter became the line of Rao Devendra Singh i.e the youngest son, once the line of Rao Shivsharan Singh became disqualified upon holding Rao Shivsharan Singh to be unsuitable.

14. Learned counsel for the appellants has reiterated his submissions by contending that the only principle wholly consistent with the scheme of 1967 would be that once a person has succeeded and became lawful holder of the hereditary office, then the next succession cannot be determined by ignoring that intervening shift of line of succession and travelling backwards to the original founder, which would make the succession ambulatory. It would defeat the very purpose of succession by primogeniture, which simply means that it would pass on lineally from one generation to another in that manner and would not go back and forth between different branches of the same original ancestor.

15. It is argued that what happened vide the judgment dated 30.11.1999 was not a mere change in the person managing the trust. Rao Devendra

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Singh became the lawful holder of the office under the scheme and continued as working trustee for more than 25 years till his death on 04.09.2025, and now the succession has to be reckoned from the line of Rao Devendra Singh as the line shifted.

16. The learned counsel for the appellant further argued that if the position prevailing in 1999 is tested by a simple hypothetical examination, then the issue becomes clearer. He argued that assuming Rao Shivsharan Singh had simply died in office in the year 1999 before being found unsuitable, then the office upon his death would not have passed sideways to his younger brother but would have passed to his son being the eligible descendant in accordance with the scheme. The shift took place in the year 1999 only because Rao Shivsharan Singh was declared unsuitable and since it was a case of unsuitability of Rao Shivsharan Singh, therefore, succession passed on sideways to his youngest brother and not downwards to his son i.e the respondent No.3 who was also major at the time when Rao Shivsharan Singh was declared disqualified by the District Judge being unsuitable. Therefore, the succession travelling sideways in the year 1999 would infer that it has travelled sideways once and for all and now there cannot be any reverting back to the line of Rao Shivsharan Singh again by reckoning the succession back and forth between various branches/lines of original holder of office Rao Sobhag Singh.

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17. The learned Senior counsel for the appellant has argued that the appellant does not seek to dilute the rule of primogeniture. On the contrary, his claim gives effect to the law of primogeniture because once Rao Devendra Singh became the last lawful working trustee, his succession had to be considered in his line. His elder son, since is unwilling to hold the office, therefore, the present appellant who is younger son of Rao Devendra Singh, is the next one in line as per law of primogeniture. By drawing instances from succession in British royal family, it is argued that upon abdication of king Edward VIII, his brother King George VI ascended the throne. If King Edward VIII had any issue, then the succession would not have been claimed by the children of Edward VIII after his abdication and it once and for all, it would travel to the line of King George VI. It is argued that the system of primogeniture is to be found in the kingship and it was intended to avoid partitions of the Estate which used to reduce the size and strength of the Estate with each succession. It was meant to keep the Estate intact by ensuring that only one person would succeed to the seat of the entire Estate, while others could claim maintenance from the Estate, but not share in seat of the Estate.

18. It is further argued that the impugned order passed by the District Judge, confuses the expression ‘eldest male in the family’ with the expression ‘successor of the last holder’. It is further argued that the suitability clause in the scheme as contained in clause 2 is not incidental. It

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demonstrates how the scheme intended succession to operate. At the opening of succession, the person first in the prescribed order is considered for suitability and if the eldest son is found unsuitable then the scheme expressly provides that the others in order of seniority become eligible for appointment. Once Rao Shivsharan Singh was found unsuitable and removed, then Rao Devendra Singh was thereafter appointed under the scheme and it amounts to a conclusive shift in the line of succession which would now not go back again to the line of Rao Shivsharan Singh. The learned senior counsel has contended that all the judgments relied by the respondent No.3 are irrelevant and no attempt can be made to again make a shift to depart away from the line of Rao Devendra Singh. This shift has become conclusive between the members of the family, and would never revert back to the line of Rao Shivsharan Singh.

19. Therefore, it is argued that the judgment under challenge be set aside and the appellant be held entitled to succeed the office of working trustee on the principle of primogeniture which has to be operate lineally, rather than ambulatory. The counsel for the appellant has also vehemently argued that there are some observations as to conduct of the respondent no.3 in the order of the District Judge dated 30.11.1999, in mentioning that the conduct of Rao Shivsharan Singh as well as his son is not proper.

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20. *Per contra*, learned counsel for the respondent No.3, in his turn has countered the aforesaid assertions of learned counsel for the appellant and has argued that it is not a case of ordinary inheritance of private property but it is a succession to fiduciary office in a public trust and the succession has been regulated by an initial scheme contained in the order of the District Judge dated 19.01.1967. The controlling instrument is the scheme itself and the rights of all competing claimants have to stand or fall upon the true construction of the scheme itself. It is argued that the appellant seeks to introduce into a scheme, a proposition which has no expression therein. It is argued that the interpretation suggested by the appellant amounts to interpretation that when a claimant of senior branch is found unsuitable then the junior incumbent takes charge becoming a fresh root of succession and all future successions stand permanently confined to the junior branch. The scheme neither expressly nor by necessary implication creates any such consequences. It is argued that it is settled law that succession has to be reckoned in relation to the senior branch till the senior branch is exhausted and mere declaration of one member of senior branch as unsuitable would not extinguish the rights of the successors in the senior branch. The member of Junior Branch i.e Rao Devendra Singh took charge only because clause-2 in the scheme mentioned that if the eldest son is found unsuitable, then other son in order of seniority will be eligible for being appointed working trustee. In case of unsuitability, therefore, right

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was given for consideration to the younger brother, but it would not mean that the rights of the sons of elder brother would be extinguished because law of primogeniture by necessary implication means that senior branch has to be given precedence over the junior branch. It would simply be the case of the junior branch continuing in the office as regent or care taker for life, and it cannot be treated to be the successors in the junior branch getting title to the *gaddi*/office to exclusion of successors in the senior branch. It is argued that clause 6(a)(6) of the scheme mentioning that the successors of Rao Sobhag Singh would be the managing trustees after him, only means that it will create a college of successors of Rao Sobhag Singh, everytime the succession opens and, therefore, it would mean that every time succession opens, then the senior most successor in the entire family of Rao Sobhag Singh would be appointed subject to his suitability. It is argued that the succession is not lineal but as per clause 6(a)(6) of the scheme dated 19.01.1967, it is by necessary implication collegial in nature by mentioning that successors of Rao Sobhag Singh would be considered after Rao Sobhag Singh. Therefore, every time, succession would be traced to Rao Sobhag Singh, and not to any of his sons or grandsons, etc.

21. It is argued the scheme itself is the source and measure of the right of succession. Succession is not being capable of being transmitted according to the personal wishes of the incumbent, because it is succession of the office of working trustee of a Trust. The determination is to be

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entrusted every time to the District Judge, and not to the members of the family. The primogeniture has to be respected, but it is subjected to suitability of the incumbent in order of seniority which means that among all the surviving successors of Rao Sobhag Singh, the eldest would be selected, unless found unsuitable.

22. It is further argued that the scheme contemplates primogeniture subject to suitability, and not simpliciter lineal primogeniture. The task has been given to judicial authority every time to determine the successor. It means that there has to be application of mind in the matter and it is not simpliciter a case of lineal primogeniture in mechanical manner, otherwise the jurisdiction would not have been vested to the District Judge to determine the name of working trustee every time succession opens.

23. It is further argued that the judicial precedents concerning impartible estates recognize the significance of the senior branch and when the aforesaid principles are read alongwith the scheme in the present case, then they necessarily give rise to only one conclusion i.e the elder most/senior most surviving successor of Rao Sobhag Singh has to be appointed as working trustee, subject to his suitability. The scheme establishes a hereditary order of priority originating from Rao Sobhag Singh governed by seniority/primogeniture and conditioned by the personal suitability of the claimant at each opening of succession.

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24. It is further argued that the scheme in the present case incorporates a special and qualified principle of primogeniture and not classical lineal primogeniture in all its technical trappings. It is further argued that for all times to come, Rao Sobhag Singh only would remain the root of succession whenever the succession would open up, which is the only and necessary implication of express language of clause 6(a)(6) of the scheme dated 19.01.1967. The expression “others in order of seniority” discloses a hierarchical order of succession which establishes a predetermined hierarchy. The first preference is exhausted before the Court descends to the next order of seniority. Thus, the younger branch is reached because the preferential claimant is unavailable or unsuitable at that particular opening. The younger branch does not acquire an irreversible superiority over the elder branch for all future instances of succession.

25. It is further argued that removal of Rao Shivsharan Singh was personal disqualification of the said person and it does not disqualify or extinguish his entire branch. It is undisputed that Rao Shivsharan Singh was removed in 1999 on account of findings related to his financial and personal conduct and Rao Devendra Singh was thereafter lawfully appointed as working trustee in accordance with clause 2 of the scheme dated 19.01.1967. The respondent No.3 did not question the legality of that appointment because it was as per the scheme. It is argued that such removal upon finding of unsuitability did not result in civil death of the

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entire branch represented by Rao Shivsharan Singh. The order of District Judge passed in 1999 removed Rao Shivsharan Singh, but it did not cast any clouds on respondent No.3, nor it declared the descendants of Rao Shivsharan Singh as unsuitable.

26. The allegation that in the order of District Judge dated 30.11.1999 whereby Rao Shiv Sharan Singh was removed, there are observations as to the conduct of the respondent No.3, was countered by pointing out to para 5 of the judgment dated 30.11.1999. It is stated that therein the arguments of the other side is that Rao Shivsharan Singh and his son used to call the coconuts offered in the temple and sell those coconuts. It was the argument of the other side as recorded in the order. However, in the findings para, nothing of this sort has been mentioned regarding conduct of son or sons of Rao Shivsharan Singh. Even otherwise, Shiv Sharan Singh had two sons and it is not clear that this argument is pointed to which of the two sons.

27. The learned counsel for the respondent No.3 has also argued that the judgment dated 30.11.1999 is not an amendment of the original scheme framed in 1967, which mentioned that at every time the succession opens, the successors of Rao Sobhag Singh would have to be considered for being appointed as working trustee, and a judicial order implementing the scheme would not operate as amendment of that very scheme. Even if there is something in the order of the District Judge in appointing the youngest

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brother of Rao Shivsharan Singh namely Rao Devendra Singh as working trustee and not considering the middle brother Rao Shailendra Singh, it might be because Rao Shailendra Singh did not wish to be appointed as working trustee and he did not challenge that appointment. Anything done by judicial order cannot be treated to be a silent amendment to the scheme dated 19.01.1967. It is reiterated that suitability is claimant specific, and suitability or unsuitability is not branch specific. In other words, the branch of Rao Shivsharan Singh descended from him would not be unsuitable only because Rao Shivsharan Singh at some point of time was found unsuitable.

28. It is argued that the judgment in the case of ***A.Arputham*** (supra) relied by the appellants is misplaced because the judgment therein ultimately turns upon construction of the particular instrument governing succession in that case. The Court therein construed the expression contained in the instrument questioned therein, as referring to the heir of the last holder, rather than re-opening succession from the original holder. However, the scheme dated 19.01.1967 framed in the present case is different in nature and it by necessary implication implies that succession would be from the college of all successors of Rao Sobhag Singh surviving every time the succession opens by referring to following language of clause 6(a)(6) of scheme dated 19.01.1967 which is once again reproduced as under:

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"6(a)(6) The non-applicant Rao Sobhag Singh who will be the Managing Trustee and after him, his successors as stated in para 2 above."

29. Therefore, it is argued that the present appeal be dismissed, and the order passed by the District Judge appointing respondent No.3 as working trustee be given a stamp of approval by this Court.

30. Heard learned counsel for the parties at length and perused the record.

31. The question in the present case that arises for consideration, is the mode of working out of primogeniture that has to be followed upon death of Rao Devendra Singh, who in his lifetime had expressed intention to appoint the appellant as working trustee. Before the application could be decided, during pendency of proceedings, he expired on 04.9.2025 and the present appellant was substituted as legal representative in place of Rao Devendra Singh.

32. The application that was filed by Rao Devendra Singh was in fact, filed during his lifetime and the scheme did not contemplate abdication by the working trustee. Even if it is to be taken that there is always an inherent option available with holder of an office to abdicate from the office, then also the scheme does not contemplate that the abdicator of office would choose his successor. Therefore, by necessary implication, upon

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abdication, the office would be vacant and as per scheme dated 19.01.1967, the question of succession was to be decided by the District Judge.

33. The question that the character of respondent No.3 has been found to be tainted by the District Judge in his judgment dated 30.11.1999, which is the same judgment whereby the father of respondent No.3 has been removed, is taken up first. If the character of respondent No.3 has been found to be tainted, then the respondent No.3 will have no right to be appointed as working trustee. In para 5 of the aforesaid judgment, the application filed before the District Judge has been reproduced wherein allegation was that Rao Shivsharan Singh and his son (un-named) used to call the offered coconuts from the temple and sell the said coconuts. This was only an allegation before the District Judge recorded in para 5, but in the entire findings part, the District Judge has not given any such finding regarding any such named or unnamed son of Rao Shivsharan Singh having indulged in any such activity. Therefore, something which was in contents of an application before the District Judge, cannot be read to be the finding of the District Judge, that too when even the son is not named and admittedly there were two sons of Rao Shivsharan Singh. There can be no presumption of any finding against the character of Rao Pushpendra Singh, by something which was only alleged against an un-named son of Rao Shivsharan Singh. Therefore, this Court discards the aforesaid argument of learned counsel for the appellant, that the character of

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respondent No.3 has been held to be tainted by the District Judge in the judgment dated 30.11.1999, which is the same judgment, whereby his father had been removed on the ground of unsuitability.

34. The succession in question is by law of primogeniture and it is not a succession to private property. Law of primogeniture used to be applied in successions to jagirs and kingships where it was intended that the estate should not be divided with each succession and the estate should remain consolidated and unified with death of jagirdar or king. The other members of family had only a right to get maintenance from the jagir/estate.

35. Recently the Hon'ble Supreme Court in the case of ***Tikka Shatrujit Singh v. Sukjit Singh, 2026 SCC OnLine SC 971*** has considered in detail the mode of primogeniture to be applied. The Hon'ble Supreme Court has drawn distinction between personal property of the ruler vis-a-vis public property or privileges associated with *gaddi*. It has been held therein that personal property would be liable to be apportioned and partitioned among the successors as per the law of succession, which is now in vogue, and only the public properties or special privileges associated with seat/*gaddi* can be said to be impartible and subjected to succession by law of primogeniture. The Hon'ble Supreme Court in the aforesaid case held as under:-

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"65. The conspectus reading of all the above decisions clearly brings out a distinction between the personal and private properties of an erstwhile ruler, as declared by him under the covenant of merger/accession and those belonging to the State. All the aforesaid decisions also make it clear that the covenant of merger only protected the succession to the Gaddi and to the personal rights according to law and custom or by rule of primogeniture but not with regard to the properties declared to be the private properties inasmuch as after the merger the ruler became a citizen of the country but with certain privileges, and without any sovereign control over public properties or over the subjects. Therefore, the succession to such private ancestral properties must be in accordance with the personal law of the ruler and not as per any custom or rule of primogeniture.

xx xx xx

94. On the basis of the above discussion, our conclusions are summarized as under:—

(i) There is a general presumption in India that the estate of the ruler and monarch of a princely state, as per the custom, stands governed by the rule of male lineal primogeniture;

(ii) After the signing of the agreement of merger and notification of certain properties as the personal private properties of the Maharaja, only the perceived throne devolved according to the rule of primogeniture, but not the personal private properties of the ruler;

(iii) Following the lapse of the British paramountcy and the signing of the agreement of merger, the Maharaja assumed the status of the ruler only for the namesake to succeed to the Gaddi and to enjoy certain privileges attached to it, the personal private properties declared to be so by him would devolve upon his successors in accordance with the Muslim/Hindu Law or subsequently in accordance with the Hindu Succession Act and not by the rule of primogeniture;

(iv) The Division Bench decision in Trijugi Narain (supra) would not override the ratio laid down by the three-Judges

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> *Bench in the cases of Travancore, Talat Fatima Hasan (Rampur) (supra) and Faridkot. The Three-Judge Bench decision in the Faridkot case, being the latest in time, may be without referring to Trijugi Narain (supra), the ratio laid down therein would prevail and thus the properties declared to be the personal private properties of the ruler would devolve not according to the rule of primogeniture but according to the personal law, whether Muslim Law or Hindu Law;*
>
> *(v) Finally, of the four immovable properties, three, as stated earlier, are in the joint names of the family members. Therefore, irrespective of the applicability of the rule of primogeniture or the Hindu law, they are liable to division between the joint holders; and*
>
> *(vi) Lastly, the only immovable property which remains is the property at Mussoorie, i.e., Kapurthala Chateau, and St. Helens, Mussoorie would devolve upon the successors under Hindu Law and are divisible amongst the family members."*

36. It has further been held in the aforesaid case that succession by primogeniture will take place only to *gaddi*, and not to private properties of the ruler. *Gaddi* and private properties are two distinct connotations. Even where it has been provided in the covenant whereby merger of a princely state took place in India recognizing succession by primogeniture, then also, private properties will not be impartible, and would be succeeded upon being partitioned as per law of succession.

37. In the case of ***Deepinder Kaur v. Amrit Kaur, (2022) 9 SCC 658***, it has been held that a person who relies upon existence of a custom/primogeniture, must discharge onus of proving the same to the satisfaction of Court. The specific custom is to be pleaded and proved by

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way of cogent evidence. In that case also, the theory of personal properties of the ruler being different from privileges and dignities of seat/*gaddi* of ruler was underscored by the Hon'ble Supreme Court. The present case in hand relates to seat/*gaddi* of the office of working trustee, which is not a private property, hence, it will devolve as per primogeniture.

38. The argument of the counsel for respondent No. 3 is taken up at the outset to consider that as to whether there has to be college of successors each time when a succession opens, which was vehemently argued, heavily referring to Clause 6 (a)(6) of the Scheme dated 19.01.1967, which mentions that after Sobhag Singh, his successors as stated in para 2 of the scheme shall be the working trustee. In the opinion of this Court, this clause cannot be read to mean that there would be a college of successors of Rao Sobhag Singh and even if this interpretation is accepted, then it would give rise to absurd results. Suppose succession is to be reckoned after further fifty years and five generations down the line from Rao Sobhag Singh, then there would be hundreds of successors of Rao Sobhag Singh. In that event, controversies may even arise even as to genealogy of many of such successors, which would make it so chaotic, that it would be impossible for the District Judge to decide the question of succession. Clause 6(a)(6) has to be read along with Clause 2, which categorically mentions that succession to the office of working trustee will be governed by the principle of primogeniture subject to suitability of the claimant at

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the time when succession opens. It further mentions that if eldest son is found unsuitable, then other son in order of seniority will be eligible for being appointed as working trustee. The succession being made by college of successors is something which is not contemplated in the rule of primogeniture as is known to classical Hindu law and it was always lineal succession, which has to be followed in cases of succession.

39. This Court will deal with in detail the law relating to manner in which primogeniture has to be followed and the consequences of declaration of eldest son as unsuitable and whether it would amount to the entire branch to be declared unsuitable and extinguished for the purpose of succession.

40. Learned counsel for the appellant had relied on the judgment in the case of ***A. Aruputham (supra)*** to contend that succession by primogeniture by necessary implication means that the elder son and after him the senior-most male member among the heirs in his line from generation to generation shall manage the properties. By heavily relying on the said judgment, which has been affirmed by the Hon'ble Supreme Court in the case of ***A. Aruputham v. A.V. Yagappa, (1971) 3 SCC 808***, it was argued that when there is a shift in the line, then this shift is conclusive in nature and in the present case when the line has shifted from Rao Shivsharan Singh to Devendra Singh, then the line of Devendra Singh is the only valid

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line now and succession is to be reckoned from the perspective of Devendra Singh being the original person for this time of succession.

41. While confirming the aforesaid judgment of the Madras High Court in case of ***A. Aruputham (supra)***, the Hon'ble Supreme Court in case of ***A. Aruputham (supra)*** considered the position that the decision of the case hinges on the correct translation of the portion, the original of which was in Tamil language. The Hon'ble Supreme Court confirmed the aforesaid judgment looking to the specific language of the instrument, which was in Tamil and it was held that learned trial Judge was familiar with the language so also the Judges of the High Court found that it is the correct translation of the instrument that the elder son and after him the senior-most male member shall be the heir in line from generation to generation. Before the Hon'ble Supreme Court, it was disputed that correct translation has not been made by the trial Court and the High Court, which was negatived by the Hon'ble Supreme Court and ultimately the judgment of the High Court was confirmed. The Hon'ble Supreme Court in para 3 of the aforesaid judgment held as under:-

> ***"3.*** *The decision of the case hinges on the correct translation of the portion previously extracted, the will being in Tamil language. The learned Trial Judge was familiar with the language as also the learned Judges of the High Court concurred in holding that according to the correct translation the testator provided that his elder son Arulanandaswamy and after him the seniormost male member amongst the heirs in his line from generation to*

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generation shall manage the 'A' Schedule properties. The suggestion which was made in the courts below and before us that according to the correct translation it would be the appellant who would be entitled to be the trustee of 'A' Schedule properties cannot possibly be accepted. As stated before the trial court and the learned Judges of the High Court were agreed that on a correct rendering of the relevant portion of the will into English the appellant's claim could not be sustained. The appellant cannot ask us to differ from that view without having moved for a translation being made here of the relevant portion of the will if it was sought to be established that the translation before the High Court was not correct. The High Court has given other additional reasons for coming to the conclusion at which it arrived. Dealing with the contention urged on behalf of the appellant that the will prescribed a special or peculiar rule of succession whereby the rule of primogeniture would apply only to a limited extent and the office would devolve on the senior most among the existing descendants of Arulanandaswamy at the time when the office fell vacant, the High Court observed "if this contention were to be accepted, it would mean that the trusteeship would not be successive but ambulatory, in the sense of going up and down the genealogical tree of the family. There is no warrant for this view in the document." The High Court further pointed out that the peculiar rule of devolution contended for by the appellant was generally unknown in this country. It was said that such a rule obtained amongst the members of the royal family of Cochin. But as the testator was a Roman Catholic Christian the High Court considered it more probable that his intention was to prescribe the rule of lineal primogeniture for the trusteeship rather than the complicated rule which the appellant contended for and which would become more and more difficult to apply with the passing of generations. According to the High Court the present case was one of hereditary trusteeship under the law by which succession could be traced only to the last holder and not to the document."

42. Therefore, it is evident that no binding ratio has been laid down by the Hon'ble Supreme Court in the aforesaid case that would apply to every other case. No ratio as to the manner in which primogeniture has to be

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construed in every case, has been laid down even by the Madras High Court. This is because the judgment is on the basis of interpretation of a particular deed, which clearly mentions that the eldest son will manage the properties and after him the senior-most male member amongst "his" heirs in line from generation to generation shall manage the scheduled properties. The judgments of the High Court and the Supreme Court in ***A. Aruputham (supra)*** are, therefore, in view of the peculiar language of the instrument and it cannot be inferred that in every case succession has to be construed in that manner only.

43. This Court having discarded the theory of collegium of successors as suggested by the counsel for the respondent No.3, is alive to the fact that primogeniture has always to be lineal in nature, otherwise that would defeat the very concept of primogeniture. However, in what manner lineal primogeniture has to be considered and construed, is to be decided in this case. Whether the succession being reverted to the senior line would amount to ambulatory succession or succession from college of successors, or it would be just a mode of lineal succession, this has to be considered.

44. The scheme in the present case is silent in the manner primogeniture is to operate, apart from mentioning in para 2 of the scheme that if the eldest son is found suitable, then others in order of seniority will be eligible for being appointed as working trustee.

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45. It is settled in law that the rule of primogeniture applies to impartible estates. The matter in the present case is not personal property of the holder of the *gaddi* and it is succession to a *gaddi* and privileges attached to gaddi and not to a private property and therefore, the rule of primogeniture has been considered by this Court.

46. The question was considered first time by the Madras High Court in the case of ***Subramanya Pandy Chokka Talavar vs Siva Subramanya Pillay & Ors.*** reported in ***ILR 17 MAD 316,*** whereby it was held that succession is governed by rules, which govern succession to partible property subject to such modifications, as may flow from the character of impartible estate. The only modification which impartibility suggests in regard to right of succession is the existence of a special rule for selection of a single heir, who would be entitled to succeed to property if it was partible under the general Hindu law. In absence of a special custom, the rule of primogeniture furnishes a ground of preference. In determining a single heir according to the rule of primogeniture, the class of heirs who would be entitled to succeed to the property in case it was partible must be ascertained first, and then the single heir applying the special rule must be selected. The aforesaid judgment, which is of the year 1896, was cited with approval by the Hon'ble Supreme Court in the case of ***Dayaram v. Dawalatshah (1971) 1 SCC 358***, wherein it has been held as under:-

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> *"**12.** 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 rule of lineal primogeniture governing an impartible estate which are well established:*
>
> > ***"Succession is governed by the rules which govern 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****."***
>
> *Subramanya Pandya Chokka Talawar v. Siva Subramanya Pillai [ILR 17 Madras (316 at p. 325)] . 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."*
>
> (Emphasis supplied)

47. This question was also considered by the Privy Council in the case of ***Baijnath Prashad Singh v. Tej Bali Singh, AIR 1921 PC 62***. In the aforesaid case, the Privy Council laid down that succession will be regulated according to the rule which obtains under the Mitakshara law in an undivided joint family so far as selection of the person entitled to succeed is concerned, i.e. the person will be designated by survivorship, although then according to the custom of impartibility, he will hold the estate without others sharing it. The Privy Council held as under :-

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> *"Up to this point, with the single exception of the Tipperah case [12 M.I.A. 523 (1869).] which as stated was not under Mitakshara law, the law is all one way and seems to affirm these propositions:—*
>
> *(1) The fact that a raj is impartible does not make it separate or self-acquired property.*
>
> *(2) A raj, though impartible, may in fact be self-acquired or it may be family property of a joint undivided family.*
>
> *(3)* ***If it is the latter, succession will be regulated according to the rule which obtains in undivided joint family, so far as the selection of the person entitled to succeed is concerned, i.e., the person will be designated by survivorship although then, according to the custom of impartibility, he will hold the raj without the other sharing it****."*
>
> (Emphasis supplied)

48. Therefore, it is clear that the basic principles of succession as per Mitakshara law can be considered to deal with the question of the eligible persons to succeed, and then to arrive at the single person entitled to succeed, the law of primogeniture has to be applied.

49. The removal of Shivasharan Singh was upon finding him to be unsuitable by the judgment of the District Judge dated 30.11.1999. The Mitakshara law has considered in detail the consequences of a person as member of family being found unsuitable and whether the disqualification is personal, or the disqualification travels down to his generations. Chapter II, Section X, Verse 9-10 of Mitakshara, as found in "Law of Inheritance

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According to the Mitakshara", translated by by H.T. Colebrooke, Ed. 1869, published by Thacker Spink & Co., provides the consequences of disqualification as under: -

> *"9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects.*
>
> *10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like*."

50. The aforesaid provision in the law of Mitakshara relating to inheritance implies that a person upon being declared disqualified, does not disqualify their progeny if free from similar defects.

51. Further guidance can be taken from Chapter II, Section I, Verse 10 of same translation of Mitakshara, which again relates to inheritance and is as under:-

> *"10. MENU likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son. So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally : thus is the law settled."*

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52. The aforesaid provision also gives some relevant answer to the dispute arising in the present case that when a person who keeps the estate of his brother and maintains the widow, must if he (son of brother) raises up the issue, must deliver the estate to the son of brother.

53. Therefore, it is clear that in case of the brother being out of succession in accordance with the aforesaid two provisions of the law relating to inheritance by Mitakshara, the rights of the successors of brother, who had not succeeded either upon death as laid down in Chapter II Section I, or upon being disqualified as laid down in Chapter II Section X as quoted aforesaid, right of son of that brother does not go away.

54. The question of shift of branches from one to another among the sons of the original holder of office was considered by the Privy Council in the case of ***Baijnath Prashad Singh (supra)*** in the following manner:-

> *"This is the keynote of the position. The question of how to select the head of the family in a joint family is part of the general law. That the custom of impartibility does not touch it is shown by the long list of authorities above cited, and there is, in their Lordships' view, no necessary logical deduction from the decisions in the Sartaj Kuari [L.R. 15 I.A. 51 (1888).] and the second Pittapur cases [L.R. 45 I.A. 148 : s.c. 23 C.W.N. 173 (1918).] which forces them to an opposite conclusion.*
>
> *It is true that in a very recent and unreported case [Since reported: 24 C.W.N. 857 (1920).] (Bishun Prakash Narayan v. Janki Koer) as to the succession to the Bettiah raj a different result was indicated. One of*

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> *their Lordships was a party to that judgment, and their Lordships have consulted the other members of the Board who decided that case. Their Lordships are satisfied that in that case the Appellant, who was wrong on the merits, practically invited a decision upon the off-hand view that the Sartaj Kuari [L.R. 15 I.A. 51 (1888).] and the second Pittapur cases [L.R. 45 I.A. 148 : s.c. 23 C.W.N. 173 (1918).] concluded the question, and his view was accepted without argument and without citation of the authorities. In these circumstances, their Lordships while not doubting the soundness of the decision do not hold themselves bound by the reasons given.*
>
> *Their Lordships are,* ***therefore, of opinion that, this zamindry being the ancestral property of the joint family, though impartible, the successor falls to be designated according to the ordinary rule of the Mitakshara law, and that the Respondent, being the person who in a joint family would, being the eldest of the senior branch, be the head of the family, is the person designated in this impartible raj to occupy the Gaddi****. The decision appealed against was right. They will humbly advise His Majesty that the appeal should be dismissed with costs."*
>
> (Emphasis supplied)

55. The Privy Council considered that earlier views taken by the Privy Council were incorrect and in case of impartible zamindari, the successor falls to be designated according to the ordinary Rule of Mitakshara law and the person in the joint family who being eldest of the senior branch would be the head of the family and would be the person designated in impartible raj to occupy the *gaddi*. The question of succession going from one line to

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another was also dealt with by the Privy Council by citing with approval the judgment in the case of ***Kaliyana Rengappa vs Yuvah Rengappa*** reported in ***LR 32 IA 261 : 1905 SCC Online PC 20*****,** wherein the Privy Council had held as under:-

> "*Lord Macnaghten: These consolidated appeals have been brought from a judgment and decree of the High Court of Judicature of Madras, which varied a judgment and decree of the District Court of Trichinopoly. The litigation relates to the title to a zemindari known as the zemindari of Udayar Palayam. The principal question is whether the zemindari is a partible estate, as was held by the Court of first instance, or an impartible estate descendible according to the rules of primogeniture, as the High Court has determined. There were two other questions raised on the appeals which may be mentioned for the purpose of putting them aside. It was objected by the appellant in the first five appeals that, assuming the estate to be impartible, still he was entitled as the preferable heir. Further, it was asserted that if he was to be held entitled only to maintenance, the maintenance allowed was insufficient in amount. On the other hand, the principal respondent, the appellant in the eleventh appeal, alleged that the allowance was extravagant, and appealed on that ground. The first of these two questions is concluded by authority.* ***It is settled in accordance with a ruling of this Board that when impartible property passes by survivorship from one line to another it devolves, not on the coparcener nearest in blood, but on the nearest coparcener of the senior line—a position held by the principal respondent****: Naraganti v. Venkatachalapati.*[18] *As regards the second of these two questions, it is sufficient to say that it is not the practice of this Board to interfere in a question as to the amount of maintenance. That is a matter with which the Courts in India are better qualified to deal*."
>
> (Emphasis supplied)

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56. Therefore, from the aforesaid judgments of the Privy Council, it is clear that to ensure the member of senior branch to hold the seat, if the impartible property passes from one line to another, it would still be lineal primogeniture. It was held that property devolves not on the coparcener nearest in blood, but on the nearest coparcener of senior line.

57. The aforesaid judgment was considered by the Bombay High Court in the case of ***Sahebgouda Rayangouda Patil v. Basangouda Sahebgouda Patil, 1930 SCC OnLine Bom 191*** in the following manner:-

> *"But if it is proved that the impartible estate was the family property and descended as such, the rule of survivorship would apply. If the property is joint family property the question as to who is the next heir according to the rule of lineal primogeniture has been determined by the decision of the Privy Council in Baijnath Prasad Singh v. Tej Bali Singh (6) where it was held that the successor to an ancestral impartible estate in a joint Hindu family governed by the Mitakshara is designated by survivorship, although he will hold the estate according to the custom of impartibility; consequently the* ***eldest member of the senior branch succeeds in preference to the direct senior lineal descendant of the common ancestor if the latter is more removed in degree. The estate passes by survivorship from one line to another according to primogeniture, and devolves not on the member nearest in blood but on the eldest member of the senior branch****."*

(Emphasis supplied)

58. The aforesaid judgments were considered in *Mayne's Treatise on Hindu Law and Usage, 12th Edition* at page 638, in the following manner:-

> *"But the case is however different under the Mitakshara law where the disqualified person is the son of the deceased.*

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Where his disqualification is congenital, he would have no right by birth, according to the express text of the Mitakshara in II, x, Placitum I. Where the disqualification arises after birth and disentitles him to take his father's property or to a share on partition, it is clear that the right by birth which is already vested in him is not destroyed by the subsequent disqualification but lies dormant, Placitum 7 of the Mit., II, x, would undoubtedly apply to a case where the supervening disquali-fication is removed, and possibly also to a case where the congenital disqualification is subsequently removed. In the former case, but for the disqualification, he would have taken as an unobstructed heir, whether the property was ancestral property or the father's self-acquired property. His right in such a case which was dormant becomes active and enforceable and if the disqualification ceased, he would be entitled to divest the person in whom the estate was vested in the meantime as for an obstructed inheritance. So too, if a son is born to a disqualified person, whether the disqualification was congenital or arose subsequent to his birth, that son would be entitled to divest the estate of anyone who had taken the estate in the meantime. The views expressed by Peacock, C.J., in Kalidas v Krishan, a Dayabhaga case, as to the Mitakshara rule were only obitor dicta and have been dissented from by a Full Bench of the Madras High Court in Krishna v Sami, where the distinction between an obstructed and an unobstructed inheritance is clearly laid downs. But in Bapuji v Panduranga where a man died leaving his undivided son born deaf and dumb and his undivided brother's son, it was held that the nephew succeeded to the entire family estate on the death of the uncle and that a son born to the disqualified son could not divest the nephew to the extent of his share. In Pawadewav Venkatesh, where a widow succeeded to her husband's estate in the presence of a disqualified son, it was held that a son born subsequently to the latter would not divest the widow's estate. Both these decisions overlook the well-established distinction between the lineal succession of the male issue which is unobstructed and collateral succession which is obstructed. Even the congenitally disqualified son's right being latent, would come into operation when the disqualification ceases, as it does in the case of an after-born son. The Allahabad,

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Bombay and Patna High Courts have adopted the view laid down in Muthusami v. Meenamma."

59. Though epics and mythologies are not strict sources of law, but they can be referred to have an insight about ancient Indian legal philosophy. They also give insight into fundamental societal norms, customs and traditions that have been followed in the Indian society over generations. Some answer to the question of disqualification and consequences of disqualification or unsuitability of head of one branch and unsuitability travelling to his children can be drawn from epic Mahabharata also. In the said epic, when to fulfill the wishes of his father, Devavrat (later known as *Bhishma*) promised the father of Satyavati that he would not claim the throne despite being the eldest son, then doubt was cast by father of Satyavati that if in future Devavrat (*Bhishma*) marries and has children, then they would claim the throne. It was then Devavrat (*Bhishma*) took the vow "*Bhishma pratigya"* that he would maintain celibacy throughout his life. This example from epic Mahabharata and the *Bhishma pratigya* which he took, led to a peculiar series of events, that eventually culminated in the entire epic Mahabharata. This vow was only to avoid the situation that has arisen in the present case. It can be gathered that as per system that might then be prevailing, the father of Satyavati suspected that even if *Bhishma* abdicates the throne, then his children would be valid claimants to be throne, because they would be deriving from the senior branch of the family (*Bhishma*) and they would succeed to the exclusion of those

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children of Shantanu, who would be gotten from Satyawati and would form junior Branch of the family. In *"Adi Parva" of Mahabharat, translated into English Prose and published by Protap Chandra Roy, Bharata Press, Calcutta*, the aforesaid incident is narrated in "Sambhava Parva" in the following manner :-

> *"Vaisampayana continued, "O thou of the Bharata race, Deva-brata having heard these words, and moved by the desire of benefiting his father, thus answered in the hearing of the assembled chiefs. 'O thou foremost of truthful men, listen to the vow I utter. There hath been born no man nor shall be, who would have the courage to take such a vow! I shall accomplish all that thou demandest! The son that may be born of this maiden shall be our king.' Thus addressed, the chief of the fishermen, impelled by desire of sovereignty (on behalf of his daughter's son) to achieve the almost impossible, then said, 'O thou of virtuous soul, thou art come hither, full manager on behalf of thy father Shantanu of immeasurable glory. Be thou also the sole manager on my behalf in the matter of the bestowal of this my daughter. But, O amiable one, there is something else to be said, something else to be reflected upon by thee! O thou suppressor of the foe, those that have daughters, from the very nature of their obligations, must say what I say. O thou devoted to truth, the promise thou hast given in the presence of these chiefs for the benefit of Satyavati hath, indeed, been worthy of thee.* ***O thou of mighty arms, I have not the least doubt of its never being violated by thee. But I have my doubts in respect of the children thou mayst beget.'"***
>
> ***Vaisampayana continued, "O king, the son of Ganga devoted to truth having ascertained the scruples of the chief of the fishermen, then said, moved thereto by the desire of benefiting his father, 'Chief of the fishermen, thou best of men, listen to what I say in the presence of the assembled kings! Ye kings, I have before long relinquished my right to the throne. I shall now settle the matter of my children. O fisherman, from this day I adopt the vow of Brahmacharya (study and meditation in***

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> ***celibacy.) If I die sonless, I shall yet attain to regions of perennial bliss in heaven.'"***
>
> *Vaisampayana continued, "Hearing these words of the son of Ganga, all the down of the fisherman's body stood erect in glee, and he replied, 'I bestow my daughter.' Immediately after, the Apsaras and the Gods with the tribes of the Rishis began to rain flowers from the firmament upon the head of Deva-brata and exclaimed, 'this one is Bhishma (the terrible)'.*
>
> (Emphasis supplied)

60. Later in the same epic, question of succession arose between Kauravas and Pandavas. Dhritarashtra being blind was considered unsuitable for being appointed a king and therefore, kingship went to Pandu, who later expired and then Dhritarashtra held the throne. Later a question cropped up as to whether Dhritarashtra held the throne as a full king, or only as regent till the children of Pandu came of age. When rifts became more prominent, precipitating into attempt on the life of Pandavas in *Laksha-grih* incident, then without conclusively deciding this question and to avoid war, as a compromise formula, the kingdom was divided and the Pandavas were asked to occupy the seat of king in their new capital, *Indraprastha*.

61. Neither classical law, as interpreted by various High Courts and the Privy Council, nor the practices and customs reflected in the epics support the inference that the disqualification or unsuitability of the first member of the senior branch extinguishes the succession rights of his descendants.

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Neither the Mitakshara law of inheritance nor any judicial precedent considered above contemplates such a consequence.

62. It is a case of contest between cousins and the eldest son of Rao Sobhag Singh having been declared unsuitable, the only question that arises is whether his children would also be consequentially extinguished from being considered, and that has to be answered in negative. The children of Rao Shivsharan Singh are not disqualified in the race of succession and since it is to be determined by law of primogeniture, then the children of Rao Shivsharan Singh being members of senior branch of the family, are entitled to hold the seat/*gaddi* of working trustee. The respondent No.3 being son of Rao Shiv Sharan Singh, eldest son of Rao Sobhag Singh, has rightly been appointed by the District Judge. The judgment of the District Court is hereby upheld by this Court to be based upon proper and correct findings.

63. In view of the detailed reasons contained in this judgment above, whereby the judgement of the District Court has been upheld, the appeal fails and is **dismissed**.

(VIVEK JAIN)
JUDGE

pk/rj

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