

58. Upshot of conclusions (*supra*) is that all writ petitions fail and are hereby dismissed. No costs.

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2012 (2) WLN 78 (Raj.)

Rajasthan High Court (Jaipur Bench)

HON'BLE MS. JUSTICE BELA M. TRIVEDI

**Altat Hussain S/o Fida Hussain
(Deceased) Through LRs**

Versus

**Deewan Syed Ale Rasool Ali Khan
Through LRs & Ors.**

S.B. Civil Writ Petition No. 144/2011;; S.B. Civil Misc. Stay
Application No. 130/2011—Decided on 24.09.2011.

(A) Civil Procedure Code, 1908—Sec. 47(3)—Representative of the Decree Holder—Right to execute the Decree—Right to execute the Decree already stood decided by Apex Court (*vide* AIR 1987 SC 2213)—Executing Court rightly refused to reopen the question by taking fresh evidence—Constitution of India—Art. 141—Effect of finding. [Paras 2 & 5]

(अ) सिविल प्रक्रिया संहिता, 1908—धारा 47(3)—डिक्री धारक का प्रतिनिधि—डिक्री को निष्पादित कराने का अधिकार—डिक्री को निष्पादित कराने के अधिकार को पहले ही एपेक्स न्यायालय द्वारा (द्वारा ए.आई.आर. 1987 एस.सी. 2213) निर्णित कर दिया गया है—निष्पादन न्यायालय ने नये साक्ष्य लेने के द्वारा प्रश्न को पुनः खोलने से सही इंकार किया—भारत का संविधान—अनुच्छेद 141—निष्कर्ष का प्रभाव।

(B) Civil Procedure Code, 1908—Sec. 11 Explanation VII—*Res Judicata* in execution proceedings—Executing Court ordered on 10.8.2010 that before deciding the issue of Right of the First Respondent to execute the Decree Evidence shall be recorded—Again *vide* order dt. 22.12.2010 the same Court refused to record the evidence as the issue had already stood concluded by decision of Apex Court—Held, Earlier the Court left the question open so the Rule of *Res Judicata* is inapplicable. [Para 6]

(ब) सिविल प्रक्रिया संहिता, 1908—धारा 11 स्पष्टीकरण सप्तम—निष्पादन कार्यवाहियों में पूर्व न्याय—निष्पादन न्यायालय ने दिनांक 10.8.2010 को आदेश दिया कि प्रथम प्रत्यर्थी के डिक्री को निष्पादित कराने के अधिकार के विवाद को निर्णित करने से पूर्व साक्ष्य दर्ज की जावे—फिर आदेश दिनांक 22.12.2010 के द्वारा उसी न्यायालय ने साक्ष्य दर्ज करने से इंकार कर दिया क्योंकि विवाद को पहले ही एपेक्स न्यायालय के निर्णय द्वारा निपटा लिया गया था—निर्णित, पहले न्यायालय ने प्रश्न को खुला छोड़ दिया था अतः पूर्व न्याय का नियम लागू नहीं है।

(C) Dargah Khwaja Saheb Act, 1954—Sec. 13 & 21—Succession to the Hereditary Office of Sajjaadanashin of the Dargah Khwaja Saheb Ajmer—Customary Rule of Succession by primo geniture is applicable—Section 13 is general provision while Section 21 deals with Suits pending on the date of commencement of the Act—1980 RLW 317 referred. [Paras 7 to 14]

(स) दरगाह ख्वाजा साहब अधिनियम, 1954—धारा 13 एवं 21—दरगाह ख्वाजा साहब अजमेर के सज्जदानशीन के वंशानुगत कार्यालय के बाबत उत्तराधिकार—अग्रजाधिकार के द्वारा उत्तराधिकार का प्रथागत नियम लागू—धारा 13 सामान्य प्रावधान है जबकि धारा 21 उन दावों से संबंधित है जो अधिनियम के प्रभाव में आने की दिनांक को लंबित थे—1980 आर.एल.डब्ल्यू. 317 का हवाला दिया।

Cases Referred to :

Arjun Singh vs. Mohindra Kumar and Ors. reported in AIR 1964 SC 993;; *Satyadhyan Ghosal and Others vs. Smt. Deorajin Debi and Another*, AIR 1960 SC 941;; *Syed Saulat Hussain vs. Syed Illamuddin and Others*, RLW 1980, 69;; *Dargah Khwaja Sahib Ajmer*, RLW 1980 317;; *Syed Saulat Hussain vs. Syed Ilamuddin*, AIR 1987 SC 2213;; AIR 1987 SC 2213;; RLW 1980, 69;; RLW 1980 317.

Petition Dismissed.

याचिका खारिज।

APPEARANCES:

Mr. M.M. Ranjan, Sr. Advocate with Mr. Rajat Ranjan, Advocates, for the Petitioners.

Mr. Anil Mehta with Mr. Gulam Najmi, Advocates, for the Respondents.

Bela M. Trivedi, J.—Though this case has a chequered history, the issue involved in the present petition is very small. The petitioners, who are the original judgment-debtors, have filed the present petition under Art. 227 of the Constitution of India challenging the order dt. 22.12.2010 passed by the learned District Judge, Ajmer (hereinafter referred to as the Executing Court) in Civil Execution Petition No. 8/2010 (11/1991).

2. The facts in nut shell giving rise to the present petition are that a final decree dt. 29.01.1940 (original decree dt. 03.05.1933) passed by the Court of Additional District Judge, Ajmer Merwara in the suit being No. 9/29 filed by Shri Dewan Syed Ale Rasool Ali Khan Sajjadanashin Hazrat Khwaja Moinuddin Hassan Chishti, was sought to be executed by filing an Execution Petition, by the present respondent No.1 Shaikhul Mashaikh Dewan Syed Zainul Abedin Ali Khan S/o Shaikhul Mashaikh Dewan Syed Ilmuddin Ali Khan claiming to be Sajjadanashin, Khwaja Moinuddin Chisti Saheb. In the said execution petition, the office of the executing Court had raised certain objections and the matter was put up before the Executing Court. The Executing Court *vide* its order dt. 05.10.2002 partly allowed the objections by holding that though the execution petition with regard to the declaration was barred by limitation, the same was maintainable so far as the decree of injunction was concerned. The said order was challenged by way of revision before this Court by the decree-holder and this Court *vide* order dt. 10.04.2006 had disposed of the said revision petition. It appears that the present petitioners thereafter again raised the objections before the executing Court as regards the maintainability of the execution petition and also raised the ground of limitation. However, the executing Court *vide* its order dt. 10.08.2010 dismissed the said objections of the petitioners by observing that the High Court had already set-aside the earlier order passed by the executing Court with regard to the issue of limitation, and that whether the person, who was executing the decree *i.e.* the present respondent No.1 was entitled to execute the same or not, or whether he was successor of the Dewan *i.e.* original decree-holder or not, was a matter of evidence. It further appears that the respondent No.1 thereafter submitted an application under Order

RAJPUTANA GAZETE NO. 48 JILD 12 PRINTED 17TH ZIL HIJ. 1308 HIJRI.
(IMPERIAL GAZETTE OF INDIA 1ST JANUARY 1877)

In the Rajputana Gazetteer dated 17th Zilhaj, 1308 Hijri it is mentioned that the British Govt. has admitted a chair and full respects to the Sajjadanashin and his family in all the British Darbars and also admitted that the Honourable Viceroy Governor General himself pays full respects to them by standing alert before them in the meetings of the Council, in the British Royal Assembly of the year 1877 the Government keeping in view the ancestral honours of the Sajjadanashin Dewan Ghayasuddin, bestowed upon him the title 'SHAIKHUL MASHAEIKH' Which never bestowed to any person till this day.

'SHAIKHUL MASHAEIKH' :- (The head of all muslims religious heads, Sufis, Saints, and Sajjadanashin of all Dargah's of India & Asia)

Hazrat Khwaja Moinuddin Chishty R.A. was one of the descendants of the illustrious family of Hazrat Ali (K.W.), the son in law and cousin of the Holy Prophet Mohammed (P.B.U.H.) when he was in Medina, one night he had a "BHASHARAT" (Prophetic dream) from the Holy Prophet ordering him to go to Ajmer (India)

The life and mission of Hazrat Khwaja Saheb R.A., one of the greatest spiritual redeemers of India, was dedicated to this noble cause of "love and peace towards all humanity Hazrat Khwaja Moinuddin Chishty (R.A.) was the greatest preacher and founder of Islam in India. He brought the message of "Universal love and peace. He is the great Sufi saint (of Chishtia Silsila) not only of India but of entire Asia. And thus being descendant & hereditary sajjadanashin of Hazrat Khwaja Moinuddin Chishty (R.A.), who is known as holly Dargah Dewan Sahieb is the **SHAIKHUL MASHAEIKH**.

