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September 8.

THAKUR BRIJ RAJ SINGH AND ANOTHER

v.

THAKUR LAXMAN SINGH AND ANOTHER

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Maintainability of suit—Istimrari estate—Adoption by widow—Suit challenging factum and validity of adoption—Enactment providing for confirmation of adoption by Central Government and conditional right of suit—Bar of suit—Ajmer Land and Revenue Regulation, 1877 (Regulation II of 1877), ss. 23, 24, 119.

After the death of B, the holder of an istimrari estate, on September 28, 1947, leaving no male issue, the Court of Wards took over the estate and issued a notice under the provisions of the Ajmer Land and Revenue Regulation, 1877, inviting claims to the estate. While the enquiry was pending, an application was filed to the effect that the appellant was adopted on February 24, 1948, by the widow of B and that steps should be taken for the confirmation of the adoption under the third proviso to s. 23 of the Regulation. On September 10, 1951, the adoption was confirmed by the President of India. Thereupon the first respondent instituted a suit for a declaration, inter alia, that the appellant was not adopted as a fact and, in the alternative, the adoption was invalid and illegal. The appellant in his defence pleaded that after the confirmation of the adoption by the Central Government, which must be deemed to have considered and decided the factum and legality of the adoption, such questions could not be challenged in a civil court in view of s. 119, read with s. 23, of the Regulation and that, therefore, the suit was not maintainable.

Held, (S. K. Das, J., *dissenting*), (1) that though under s. 23 of the Ajmer Land and Revenue Regulation, 1877, an adoption made by a widow is not deemed valid until confirmed by the Central Government, such confirmation cannot confer validity on the adoption if it be otherwise invalid under the general law; and (2) that under s. 119(1) of the Regulation the only thing done, ordered or decided by the Central Government which cannot be impeached, is the confirmation, but the decision to grant confirmation does not imply an ouster of the jurisdiction of the civil courts to examine the facts and acts of the the parties, which preceded the proceedings for confirmation.

Accordingly, the present suit brought in the civil court seeking relief not with reference to the confirmation but for a declaration that the adoption is invalid, is not barred under ss. 23 and 119 of the Regulation.

Per S. K. Das, J.—The confirmation referred to in the third proviso to s. 23 of the Regulation necessarily involves a determination of two facts, viz., (a) whether the widow has power to

adopt, and (b) whether she has in fact adopted a son to the late istimrardar, as otherwise, divorced from these two facts, the confirmation has no meaning and no intelligible content. Since under s. 119 no suit lies to obtain a decision contrary to the order of confirmation, on a proper construction of ss. 23 and 119 of the Regulation, the present suit is barred.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8/1955.

Appeal by special leave from the judgment and decree dated January 7, 1954, of the former Judicial Commissioner's Court, Ajmer, in Civil First Appeal No. 28 of 1953.

A. V. Viswanatha Sastri, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the appellants.

B. Sen and *I. N. Shroff*, for the respondents.

1960. September 8. The Judgment of M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ., was delivered by Hidayatullah, J. S. K. Das, J., delivered a separate Judgment.

Hidayatullah J.

HIDAYATULLAH J.—This appeal, with the special leave of this Court, is against the judgment dated January 7, 1954, of the Judicial Commissioner of Ajmer in Civil First Appeal No. 28 of 1953, by which the judgment of the Senior Subordinate Judge, Ajmer, dismissing the suit of the first respondent was reversed.

The facts of the case are as follows: One Thakur Banspradip Singh was the Istimrardar of Sawar. He died on September 28, 1947, leaving no male issue either by birth or by adoption. After his death, the Court of Wards took over the estate, and a notice under s. 24 of the Ajmer Land and Revenue Regulation, 1877 (Regulation No. II of 1877) was issued inviting claims to the estate. One Thakur Khuman Singh, who was the father of Thakur Laxman Singh (respondent No. 1), Thakur Brij Raj Singh (appellant No. 1) and Thakur Inder Singh of Rudh (respondent No. 2) preferred claims. While this enquiry was pending, Thakur Khuman Singh died, and Thakur Laxman Singh's name was substituted in his place. During

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the enquiry, the Deputy Commissioner referred some interlocutory matter to the Chief Commissioner, and the Chief Commissioner fixed the case for hearing on February 25, 1948. On that date, an application was filed to the effect that Thakur Brij Raj Singh was adopted on February 24, 1948, by Rani Bagheliji, the widow of Thakur Banspradip Singh, and that the Chief Commissioner should move the Governor-General to confirm the adoption under the third proviso to s. 23 of the Regulation. From the judgment of the Senior Subordinate Judge, it appears that the application was opposed. The matter must have been referred to the Governor-General, because on September 10, 1951, the Secretary to the Government of India, Ministry of Food and Agriculture, conveyed to the Chief Commissioner the intimation that the President of India was pleased to confirm the adoption.

Thakur Laxman Singh thereupon filed the present suit joining Thakur Brij Raj Singh, Rani Bagheliji of Sawar and Inder Singh of Rudh as defendants. Two reliefs, among others, were claimed. These were :—

"That it may be declared :—

(a) that Deft No. 1 was not adopted as a fact by Deft No. 2 and is not her adopted son, and in the alternative, the adoption of Defendant No. 1 by Deft No. 2 is invalid and illegal; and

(b) that plaintiff is the nearest kin and heir to late Th. Banspradip Singh."

The learned Subordinate Judge did not frame issues bearing upon these reliefs, but framed a preliminary issue:

"Is the suit barred by ss. 24 and 119 of the Ajmer Land and Revenue Regulation of 1877 ?"

He held that the two sections barred the suit and dismissed it with costs. On appeal to the Judicial Commissioner at Ajmer, the judgment of the Senior Subordinate Judge was reversed. The learned Judicial Commissioner was then moved by Thakur Brij Raj Singh and Rani Bagheliji Singh for a certificate under Arts. 133(1)(a) and (c) of the Constitution,

which he declined because, in his opinion, his judgment was not final. This Court was then moved for special leave, which was granted, and the present appeal has been filed.

We are concerned in this appeal with the interpretation of ss. 23, 24 and 119 of the Regulation in the light of the pleadings and the nature of the claim. Before we set out these sections, we wish to examine generally some other provisions of the Regulation bearing upon this matter. The Regulation in question is divided into six Parts, and Part II deals with certain interests in lands, providing *inter alia* for succession to the holders of such lands. Part II is itself divided into nine sections, and Section C deals with Istimrari estates. Section 20 defines an "Istimrari estate" as one in respect of which an Istimrari sanad has been granted by the Chief Commissioner with the previous sanction of the Governor-General-in-Council before the passing of the Regulation. The section has been amended by the Adaptation Orders subsequently passed, in a manner now very familiar. An "istimrardar" is defined to mean a person to whom such sanad has been granted or "any other person who becomes entitled to the istimrari estate in succession to him as hereinafter provided". Rules of succession are to be found in ss. 23 and 24. Section 23 provides for succession to the estate where there is male issue, and s. 24, when there is no such male issue. The remaining sections of Section C deal with tenants, alienation, maintenance, expropriation etc., with which we are not concerned. In this way, the succession to an Istimrari estate is governed by ss. 23 and 24, and any dispute arising in respect of succession has to be resolved as provided in those sections.

Section 23 reads as follows:

"*Succession to estate where there is male issue*:—

When an Istimrardar dies leaving sons or male issue descended from him through males only whether by birth or adoption or when after the death of an Istimrardar his widow has power to adopt and adopts a son to him, the istimrari estate shall devolve as nearly as may be according to the custom of the family of the deceased:

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Provided—

1st, *Rule of Primogeniture.*—that the descent shall in all cases be to a single heir according to the rule of primogeniture;

2nd, *What adoptions valid.*—that no adoption shall be deemed valid unless it is made by a written document deposited with the Collector or the Registrar of the district;

3rd, *Adoption by widow.*—that no adoption made by a widow shall be deemed valid until confirmed by the Central Government."

The contention of the rival parties is as to the interpretation which is to be placed upon the third proviso, taken with the opening words of the section. One side contends that after the confirmation of the adoption, no dispute remains which can go to a Civil Court, in view of the bar contained in s. 119, to which we shall refer presently. The other side contends that in view of the opening words of s. 24, a question under s. 23 can be taken to a Civil Court for adjudication, and that s. 119 does not bar such a suit. Sections 24 and 119 may now be quoted:

"24. *Succession to estate when there is no male issue*:—Any question as to the right to succeed to an istimrari estate arising in a case not provided for by section 23 shall be decided by the Central Government, or by such officer as it may appoint in this behalf:

Provided that the Central Government, if it thinks fit, instead of deciding such question itself or appointing any officer to decide the same, may grant to any person claiming to succeed as aforesaid a certificate declaring that the matter is one proper to be determined by a Civil Court.

The person to whom such certificate is granted may institute a suit to establish his right in any Court otherwise competent under the law for the time being in force to try the same, and such Court may, upon the production of such certificate before it, entertain such suit.

119. Except as hereinbefore expressly provided,—

(a) *Proceedings under Regulation not to be im-*

peached.—everything done, ordered or decided by the Central Government, State Government or a Revenue officer under this Regulation, shall be deemed to have been legally and rightly done, ordered or decided;

(b) *Limitation of jurisdiction of Civil Courts*.—no Civil Court shall entertain any suit or application instituted or presented with a view to obtaining any order or decision which the Central Government, the State Government or a Revenue Officer is under this Regulation empowered to make or pronounce."

Before we consider these sections, it is necessary to examine briefly the nature of the case, because ss. 23 and 24 contemplate different kinds of cases. The main reliefs which have been claimed have been set out by us earlier. It will be noticed that two declaratory reliefs have been claimed. The first, which is in two parts, is that Thakur Brij Raj Singh was not adopted by Rani Baheliji, and that the adoption was invalid and illegal. This is a matter which falls within s. 23 and not s. 24. The second relief is for a declaration that the plaintiff is the nearest kin and heir to late Thakur Banspradip Singh. If Thakur Banspradip Singh left no male issue either by birth or by adoption, then the matter of succession is *prima facie* governed by s. 24. That section requires that such a dispute shall be decided by the Central Government or an officer appointed in this behalf. There is, however, a proviso that the Central Government may, instead of deciding such question itself or appointing any officer to decide the same, grant to any person claiming to succeed as aforesaid, a certificate declaring that the matter is one proper to be determined by a Civil Court. *Ex facie*, therefore, if the matter fell only within s. 24, the plaintiff could not have filed a suit without a certificate as contemplated. We are not required to express any opinion upon the merits of any contention that may hereafter be presented to the Courts for their decision, because the matter is at a stage prior to that when such pleas can properly be raised. The third relief originally claimed a perpetual injunction against Thakur Brij Raj Singh who,

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should the question of adoption be decided against him, would have had to fight the original dispute, for which a notice under s. 24 of the Regulation had been issued. A third relief of injunction was deleted when an amended plaint was filed in the suit.

Section 24 of the Regulation excludes from its operation cases falling within s. 23. Section 23 deals with succession when there is a male issue by birth or by adoption, and says further that the Istimrari estate shall devolve, as nearly as may be, according to the custom of the family of the deceased. To find out the rightful heir, it may be necessary to examine what the family custom is. That enquiry is taken out of s. 24 by the opening words of that section. No other forum is indicated for the solution of any dispute that might arise between rival claimants, or where there is a pretender seeking to succeed to the deceased Istimrardar as a male issue. Such a dispute, should one arise, would go before a Civil Court, the jurisdiction of which, as has been said on more than one occasion, is not taken away, unless so expressed by the law or clearly implied by it. There are no express words in s. 23 excluding the jurisdiction of the Civil Court, and the question to consider is whether there is anything which by its clear intendment reaches the same result.

According to the appellants, the third proviso to s. 23 requires that a widow making an adoption should obtain confirmation from the Central Government, and since the Central Government in considering the matter has to reach a decision on two points, namely, that the widow had the power to adopt and had, in fact, adopted a son to the deceased, they must be taken to have been decided by the Central Government when the confirmation of the adoption was made, and in view of the first clause of s. 119, this is something "done, ordered or decided by the Central Government", which must "be deemed to have been legally and rightly done, ordered or decided". Reference is also made to the fact that when the adoption deed was first brought to the notice of the Chief Commissioner and its confirmation was sought, the

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opposite parties had opposed the request. It is, therefore, argued by the appellants that the confirmation having been granted, there is no dispute remaining in the case and none for the Civil Court to decide.

In this connection, it is interesting to see ss. 33 and 34, which deal with succession to 'Bhum', which means land in respect of which a Bhum sanad may have been granted. Section 33 reads as follows:

"*Succession to Bhum where there is male issue.*— When a Bhumia dies leaving sons, or male issue descended from him through males only, whether by birth or adoption, or when after the death of a Bhumia his widow has power to adopt and adopts a son to him, the Bhum shall devolve according to the custom of the family."

Section 34, which corresponds to s. 24, is *ipsissima verba*, except that "Bhum" replaces an "Istimrari estate". If ss. 33 and 34 are read together, it cannot be questioned that a matter which falls within s. 33 is excepted from the operation of s. 34, and that a suit is not affected by reason of the opening words of the latter section. Now, s. 23 may be contrasted with s. 33.

The difference between s. 23 and s. 33 is only this that in the former section three conditions are mentioned. By the first condition, the law of primogeniture is made applicable, by the second condition, a deed in writing deposited with the Collector or the Registrar of the district is required, and by the third, confirmation of the adoption, in the case of an adoption by a widow, by the Central Government has to be obtained. In our opinion, matters within s. 23 can also go before a Civil Court in the same way as under s. 33. The last two provisos to s. 23 create two conditions which the widow must fulfil, before an adoption by her can ever be considered valid. An adoption to be valid must comply with the requirements of Hindu law, and the legislature has added two other conditions. These conditions merely say that no adoption "shall be deemed valid" unless they are also complied with. The first condition is that the

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adoption must be by a written document, which is deposited with the Collector or the Registrar of the district, and the second is that it must be confirmed by the Central Government. The deposit of the deed, as required, cannot validate an otherwise invalid adoption. The confirmation also does not, by itself, confer validity upon the adoption if it be otherwise invalid under the general law, but only fulfils a condition created by the legislature. If that lacuna remains, the adoption cannot be considered valid, even though it may be valid from every other point of view. It is important to notice that the proviso is expressed in the negative. It does not say that on confirmation by the Central Government, the adoption shall be deemed to be valid. While the adoption without confirmation cannot be deemed valid, an adoption confirmed by the Central Government is still open to attack on grounds other than those connected with the confirmation.

The appellants argue that the validity of the adoption cannot be questioned after its confirmation, because of s. 119 of the Regulation. Section 119 merely leaves out anything done, ordered or decided by the Central Government from judicial scrutiny. The heading of the section very clearly brings out the import of the first clause, and it is that proceedings under the Regulation are not to be impeached. The only thing done, ordered or decided is the confirmation, and though the confirmation cannot be impeached, anything that happens prior to the initiation of the proceedings for confirmation is not protected. When the confirmation proceedings start, the party seeking confirmation goes to the Central Government with a *fait accompli*, and though the Central Government may satisfy itself, the decision to grant confirmation does not imply an ouster of the jurisdiction of the Civil Courts to examine the facts and the acts of parties, which preceded the proceedings for confirmation. The legislature in s. 23 has not said this either expressly or by necessary implication. That the widow must have the power to adopt and must, in fact, adopt a son are matters which may enter into

consideration for purposes of confirmation; but the validity of the adoption is still a matter, which the Civil Court can consider, there being no words clear or implied by which the validity of the adoption is conclusively established. The force of the first clause of s. 119 is merely to sustain the confirmation as something done, ordered or decided by the Central Government, which must be deemed to have been legally and rightly done, ordered or decided. It has no bearing upon the adoption, because that was not something done, ordered or decided by the Central Government under the Regulation.

The second clause of s. 119 which limits the jurisdiction of the Civil Court in some respects is also not applicable. That clause has already been quoted earlier. The first issue in the suit does not involve the obtaining of any order or decision which the Central Government is, under the Regulation, empowered to make or pronounce. The Central Government has confirmed the adoption. The suit is not to obtain confirmation from a Civil Court but to get the adoption declared invalid. The plaintiff in the case is not seeking to obtain an order from the Civil Court, which the Regulation empowers the Central Government to make. The Central Government is empowered to make an order of confirmation, but such an order is not being sought in the suit. What is being sought is an examination of the validity of the adoption, and that, as we have already shown above, is not a matter on which the decision of the Central Government has been made conclusive.

In our opinion, therefore, the suit in respect of the first relief is within the jurisdiction of the Civil Court. The second relief attracts *prima facie* s. 24, and must comply with its conditions. The suit has thus to go on. The order of the Judicial Commissioner, in the circumstances of the case, was correct, and we see no reason to differ from it.

In the result, the appeal fails, and will be dismissed with costs.

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S. K. DAS J.—With very great regret I have come to a conclusion different from that of my learned brethren on the issue whether the suit is barred under the provisions of s. 119 of the Ajmer Land and Revenue Regulation, 1877 (Regulation no. II of 1877), hereinafter referred to as the Regulation. My conclusion is that the suit is barred and I proceed to state shortly the reasons for which I have arrived at that conclusion.

The relevant facts have been stated in the judgment just pronounced on behalf of my learned brethren, and it is not necessary to re-state them. I need only add that the plaintiff, now respondent no. 1 before us, had brought the suit for a declaration that defendant no. 1 (now appellant no. 1) was not adopted as a fact by defendant no. 2 (now appellant no. 2); that the adoption even if established as a fact was invalid and illegal; that respondent no. 1 was the nearest of kin and heir to Thakur Banspradip Sing and as such entitled to succeed to the estate of Sawar and all properties and assets left by the latter; that appellant no. 1 be restrained perpetually from interfering and intermeddling with the estate of Sawar; and that a receiver be appointed of the estate of Sawar and all its assets, moveable and immoveable. The plaint was subsequently amended and the reliefs for permanent injunction and declaration that respondent no. 1 was entitled to succeed to the estate of Sawar were given up, presumably because a suit for such reliefs would be clearly barred under s. 24 of the Regulation. What now falls for consideration is whether the suit, even on the amended plaint, is barred under the provisions of s. 119 read with s. 23 of the Regulation.

It is necessary to read now some of the relevant provisions of the Regulation. Section 20 defines an "istimrari estate" and it is not disputed that the estate of Sawar is such an estate. Section 21 defines the status of tenants in an "istimrari estate". Section 22 deals with alienation of such estate, and then comes s. 23 which must be read in full:

"S. 23. *Succession to estate where there is male issue*: When an Istimrardar dies leaving sons or male

issue descended from him through males only whether by birth or adoption or when after the death of an Istimrardar his widow has power to adopt and adopts a son to him, the istimrari estate shall devolve as nearly as may be according to the custom of the family of the deceased :

Provided—

1st, *Rule of primogeniture*—that the descent shall in all cases be to a single heir according to the rule of primogeniture;

2nd, *What adoptions valid*—that no adoption shall be deemed valid unless it is made by a written document deposited with the Collector or the Registrar of the district;

3rd, *Adoption by widow*—that no adoption made by a widow shall be deemed valid until confirmed by the Central Government."

Section 24 says:

"S. 24. *Succession of estate when there is no male issue*: Any question as to the right to succeed to an istimrari estate arising in a case not provided for by section 23 shall be decided by the Central Government, or by such officer as it may appoint in this behalf.

Provided that the Central Government, if it thinks fit, instead of deciding such question itself or appointing any officer to decide the same, may grant to any person claiming to succeed as aforesaid a certificate declaring that the matter is one proper to be determined by a Civil Court.

The person to whom such certificate is granted may institute a suit to establish his right in any Court otherwise competent under the law for the time being in force to try the same, and such Court may, upon the production of such certificate before it, entertain such suit."

Skipping over provisions which are not directly relevant for the consideration of the point before us, I come to s. 119 which is in these terms:

"S. 119. Except as hereinbefore expressly provided—

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(a) *Proceedings under Regulation not to be impeached*:—everything done, ordered, or decided by the Central Government, State Government or a Revenue officer under this Regulation, shall be deemed to have been legally and rightly done or ordered or decided;

(b) *Limitation of jurisdiction of Civil Courts*—no Civil Courts shall entertain any suit or application instituted or presented with a view to obtaining any order or decision which the Central Government, the State Government or a Revenue officer is under this Regulation empowered to make or pronounce".

The question for decision is whether the suit is barred under the provisions of s. 119 read with s. 23 of the Regulation. The Senior Subordinate Judge who tried this preliminary issue held that the suit was barred; the learned Judicial Commissioner on appeal came to a contrary conclusion. The answer to the question depends on the true scope and effect of the provisions of the two aforesaid sections. I proceed on the footing that the general rule of law is that when a legal right and an infringement thereof are alleged, a cause of action is disclosed and unless there is a bar to the entertainment of a suit, the ordinary civil courts are bound to entertain the claim. The bar may be express or by necessary implication. On a proper construction, do ss. 23 and 119 of the Regulation raise such a bar?

In my view, they do. The substantive part of s. 23, in so far as it is relevant to the point under consideration, refers to two facts: (1) the widow has power to adopt, and (2) she has in fact adopted a son to the late istimrardar. On these two facts being present, s. 23 in its substantive part says that the estate shall devolve as nearly as may be according to the custom of the family of the deceased. The substantive part is followed by three provisos; we are concerned only with the third proviso, which says that no adoption made by a widow shall be deemed valid until confirmed by the Central Government. Such an order of confirmation was made in the present case. The proviso is expressed in the form of a double negative, and put in the affirmative form, it means that an

adoption made by a widow shall be valid, for the purpose of s. 23, when it is confirmed by the Central Government. From one point of view, it is an additional condition and from another point of view, it embraces within itself a determination of the power to adopt and the factum of adoption; for obvious reasons, there cannot be an order of confirmation in vacuo. There must be an adoption before it can be confirmed. In my opinion, the third proviso must be read with and in the context of the substantive provision of s. 23 in order to appeciate the true meaning and content of the confirmation order. In confirming the adoption, the Central Government (previously the Governor-General) must consider the two preliminary facts, (1) whether the widow has power to adopt and (2) whether she has in fact adopted a son to the late istimrardar. The confirmation referred to in the third proviso necessarily involves a determination of these two facts. Divorced from these two facts the confirmation has no meaning and no intelligible content. The facts of this case also clearly show that on a notice under s. 24, several claimants put forward their claims: the widow then adopted appellant no. 1 and an application was made for confirmation. This application was opposed and after an enquiry made, the President was pleased to confirm the adoption. Respondent no. 1 moved the President for a reconsideration of the order confirming the adoption and was then informed that the President saw no reasons to revise the order of confirmation.

If I am right in my view that the order of confirmation takes in the two preliminary facts, then s. 119 makes it quite clear that no suit lies to obtain a decision contrary to the order of confirmation. Under cl. (a) of s. 119 the order of confirmation involving, as it does in my view, the determination of the two preliminary facts shall be deemed to have been *legally* and *rightly* done; and under cl. (b) no suit shall lie to challenge that determination. The words "legally" and "rightly" are important. The word 'legally' means that the order is made validly under law; 'rightly' means that it is factually correct and proper.

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Therefore, the critical question is—what does the order of confirmation referred to in the third proviso to s. 23 involve or embrace? Does it involve a determination of the two facts—(1) power to adopt and (2) the factum of adoption? If it does and I think it does, then s. 119 bars the present suit.

It seems to me, and I say this with great respect, that any other view will make the third proviso to s. 23 completely pointless. Sections 23 and 24 cover the entire field of succession to an istimrari estate. Under s. 24 ny question as to the right to succeed to an istimrari estate arising in a case not provided for by s. 23, shall be decided by the Central Government subject to the proviso thereto. The power of the Central Government under s. 24 is unfettered. If inspite of an order of confirmation of the adoption by a widow made under the third proviso to s. 23 a suit lies to challenge the adoption, what happens when the civil court holds the adoption to be invalid? It is conceded that the confirmation as such cannot be challenged—that order must remain. Does the case then come under s. 23 or s. 24? If it comes under s. 24, the Central Government again has to decide the question of succession. If the Central Government does not ignore its own order of confirmation, the result will be a stalemate. Reading ss. 23 and 24 together, I do not think that it was intended that inspite of the order of confirmation of an adoption by the widow a suit will lie to challenge the adoption the result of which may be to nullify the effect of the confirmation order.

Nor do I think that ss. 33 and 34 relating to Bhum lands are in point. Section 33 has no proviso like the third proviso to s. 23, which confirms the adoption by a widow. The whole matter is left at large under s. 33, and s. 119 creates no bar with reference to that section.

There was some argument before us as to whether the suit related to properties not part of the istimrari estate. No such point appears to have been agitated before the learned Subordinate Judge and so far as I can make out from the amended plaint, the suit

related to the istimrari estate and the properties thereof, moveable and immoveable.

There was also an application to urge a constitutional point to the effect that if s. 119 is so construed as to bar a suit like the one in the present case, then it is violative of Art. 14 of the Constitution. This point was not pressed before us; therefore, it is unnecessary to explain the nature and incidents of these istimrari estates and the reasons for the classification made. The argument before us proceeded on a pure question of construction, and I have addressed myself to that question only.

For the reasons already given, I hold that on a proper construction of ss. 23 and 119 of the Regulation, the present suit is barred. I would, accordingly, allow the appeal and dismiss the suit with costs.

BY COURT: In accordance with the majority Judgment of the Court, the appeal is dismissed with costs.

Appeal dismissed.

THE SAMARTH TRANSPORT CO. (P) LTD.

v.

THE REGIONAL TRANSPORT AUTHORITY, NAGPUR AND OTHERS.

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September 8.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Motor Vehicles—Application for renewal of stage carriage permits—Approval of scheme of nationalisation by Government—Application refused months after expiry of permits—Order, if without jurisdiction—Disposal, if must be made within reasonable time—Duty of Regional Transport Authority—Motor Vehicles Act, 1939 (IV of 1939), as amended by Act 100 of 1956, ss. 57, 58, 62, 68F.

As the petitioner's stage carriage permits were to expire on December 31, 1959, it made applications for a renewal of them