Raj Kumar Rajinder Singh

Vs

State of Himachal Pradesh and Others

Civil Appeal No. 2966 of 1979

(S. Ranganathan, A. M. Ahmadi JJ)

20.07.1990

JUDGMENT

A. M. AHMADI, J. -

1. This appeal by special leave is directed against the judgment of the Division Bench of the High Court of Himachal Pradesh in Regular First Appeal No. 7 of 1970 arising out of Suit No. 11 of 1967. The appellant - original plaintiff - is the second son of late Raja Padam Singh, the ex-ruler of Bushahr State. He filed a suit on November 18, 1964 principally against the Union of India and the Government of the Union Territory of Himachal Pradesh for a declaration of his proprietory rights in about 1720 acres of forest land situate in Khatas Nos. 1 and 2, khataunis Nos. 1 to 25 comprising 106 plots, both measured and unmeasured, bearing khasra Nos. 1, 2, 6, 23, 30, 34, 44, 108, 218, 222, 309, 341, 409, 479, 606, 433, 241, 732/280, 736/394 and 728/402 of Chak Addu, tehsil Rampur, in the present district of Mahasu in Himachal Pradesh. He traced his title to the said lands to a patta executed by his father on Manager 14, 1999, Bikrami, i.e. November 28, 1942 A.D., and to the Order No. 5158 of even date directing corresponding mutation changes. In the said filed on November 18, 1964 in the Court the Senior Sub-Judge, Mahasu, but on the upward revision of the suit valuation for the purposes of court fees and jurisdiction the plaint was presented to the High Court of Delhi, Himachal Bench, Shimla, and was re-numbered as Suit No. 11 of 1967. The said suit was tried on the original side of the High Court by Jagjit Singh, J. who by his judgment and order dated April 6, 1970 substantially decreed the suit, in that, he upheld the appellant-plaintiff's claim of ownership in respect of khata Nos. 1 and 2, khataunis Nos. 1 to 25 comprising 106 plots bearing khasra Nos. 1, 2, 6, 23, 30, 34, 44, 108, 218, 222, 309, 341, 409, 606, 4 and 33 situate in Chak Addu without prejudice to the application, if any, of Section 27 of the Himachal Abolition of Big Landed Estates and Land Reforms Act, 1953. The contesting defendants 1 and 2 preferred an appeal, being Regular First Appeal No. 7 of 1970, before the Division Bench of the High Court which came to be allowed on December 31, 1977. The Division Bench came to the conclusion that the grant made by the erstwhile ruler was in respect of revenue yielding lands only admeasuring about 263.4 bighas and not in respect of the forest lands. It, however, took the view that after the execution of the lease deed dated September 25, 1942, Ex. D-1, in favour of the Government of Punjab, the Raja had no subsisting right in the forest lands in question which he could transfer by way of a grant. In that view of the matter the appeal was allowed and the suit of the plaintiff was dismissed in toto with costs throughout. Feeling aggrieved by the said judgment and decree, the original plaintiff has preferred this appeal by special leave under Article 136 of the Constitution. For the sake of convenience we will refer to the parties by their original position and description in the suit. We now proceed to set out the relevant facts.

2. The Raja of Rampur - Bushahr had sought the aid of the British Government in the management

of his forests with a view to preserving, conserving and protecting the same from large scale illicit and indiscriminate cutting of trees. Pursuant to this request an agreement dated June 20, 1864 was executed between the said Raja and the British Government whereunder a fixed royalty was agreed to be paid too the former. By a subsequent agreement dated August 1, 1871, the Raja granted his rights in waif and windfall timber to the British Government in consideration of certain payments agreed upon under the said agreement. The terms of both these agreements were revised in 1877 whereby the British Government agreed to pay a fixed annual sum to the Raja on a fifty years' lease renewable at the will of the British Government. This arrangement was further revised in 1929 w.e.f. November 1, 1928 for a period of twenty-five years on agreed terms as to payments, etc. During the subsistence of the said agreement, the parties executed yet another agreement of lease dated September 25, 1942, Ex. D-1, for a term of fifty years w.e.f. April 1, 1941 superseding all previous agreements. Under clause (II) thereof, the term 'forest' was defined to mean and include (a) demarcated forests; (b) forests reserved for the use of the Raja; and (c) undemarcated forests. Demarcate forests were those which were defined and stated as demarcated forests in the forest settlements of Bushahr State whereas undemarcated forests included (a) all tracts of land bearing trees were felled and which paid no land revenue is cultivated land to the Bushahr State; and (b) such other tracts of land, cultivated or uncultivated, as with the previous sanction of the Raja were from time to time included in the existing undemarcated forests or were declared to be undemarcated forests. By clause (III) of the said document, the Raja granted to the Punjab Government 'the entire and sole control of the whole of the forests of Bushahr excepting those reserved for the use of the Raja'. The Raja was to receive an annual payment of Rs. 1 lakh to be paid in two equal half-yearly instalments of Rs. 50,000 on April 30 and October 31 of each year. In addition to the said amount of Rs. 1 lakh he was to receive payment of the whole net surplus on the working of the forests included in the lease. Thus, according to clause (III) of the lease agreement the Raja granted to the Punjab Government the entire and sole control of the forests of Bushahr, excepting those received for his use under clause (II) thereof.

3. Under Section 1 of the Indian Independence Act, 1947, as from August 15, 1947, two independent Dominions of India and Pakistan came to be set up. By virtue of Section 4 the province of the Punjab as constituted under the Government of India Act, 1935, ceased to exist and the same was reconstituted into two new Provinces of West Punjab and East Punjab. In Section 7(1) were set out the consequences of the setting up of the two Dominions, paragraph (b) whereof said that 'the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of passing of this Act between His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of passing of this Act between His Majesty and the rulers of Indian States'. The plaintiff's father Raja Padam Singh having died in April 1947, his elder son Tikka Vir Bhadra Singh born to his first wife Shanta Devi succeeded to the Gaddi under the rule of primogeniture but since he was a minor a council for the administration of Bushahr State was set up to mind the affairs of the State. On April 15, 1948 an agreement of merger was signed whereby the Raja of Bushahr ceded to the Dominion of India 'full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State'. A centrally administered unit of Himachal Pradesh came into being on that day. The agreement of lease dated September 25, 1942 was formally terminated by mutual agreement between the East Punjab Government and the Himachal Pradesh Administration on April 1, 1949.

4. While the forests of Bushahr were under the control and management of the Government of Punjab, Raja Padam Singh, the plaintiff's father, executed a document on Maghar 14, 1999, Bikrami (i.e. November 28, 1942) whereby he bestowed upon the plaintiff and his mother Rani Sahiba Katochi land admeasuring about 1720 acres. This original document called the patta was admittedly

lost during the minority of the plaintiff, vide statement of counsel for defendants 1 and 2 dated May 29, 1969. However, the factum of the grant cannot be disputed as it has been referred to in the subsequent two grants executed by the plaintiff's father on Phagun 29, 1999, Bikrami (i.e. March 11, 1943 - Ex. P-2) and Maghar 24, 2003, Bikrami (i.e. December 10, 1946 - Ex. P-1). These two subsequent grants Ex. P-1 and Ex. P-2 have been proved through the evidence of the scribe PW 1 Thakur Chet Ram. By the execution of the third grant dated Maghar 24, 2003, Bikrami, the half share granted to the Rani Sahiba Katochi under the first grant of Maghar 14, 1999, Bikrami, was transferred to the plaintiff with the Rani Sahiba' consent. Thus, the plaintiff became the sole grantee of the entire area of 1720 acres but as he was a minor his interest was looked after initially by his father who expired in April 1947 and thereafter by his mother Rani Sahiba Katochi as his natural guardian. After the execution of the first grant or patta the plaintiff's father made an Order No. 5158 of even date directing his revenue officers to effect consequential changes in the mutation. Ex P-6 is a copy of the mutation entry which contains the following endorsement :

> "According to Shri Sarkar's Order No. 5158 dated Maghar 14, 1999 (equivalent to November 28, 1942), the mutation, granting permanent ownership, without condition, of khata khatauni Nos. 1/1 to 20 and 2/21 to 25, plots 106, measuring 263. 4 (219. 7 plus 43.17) and part of uncultivated jagir the revenue and swai of which has been remitted is sanctioned in favour of Rani Sahiba Katochi and Rajkumar Rajinder Singh Sahib in equal shares in its present form".

The mutation entry Ex. P-6 does not mention the khasra numbers of the 106 plots. Khata Khatauni No. 1/1 to 20 comprise 82 plots showing an area admeasuring 219. 7 bighas as cultivated and 200.8 bighas as uncultivated whereas khata Khatauni No. 2/21 to 25 comprise 24 plots showing an areas admeasuring 5.6 bighas as cultivated and 38.11 bighas as uncultivated. The mutation entry, besides mentioning the area of 263.4 bighas, also speaks of 'part of uncultivated jagir the revenue and swai of which has been remitted'. Even according to the Division Bench of the High Court it is not in dispute that the measurement of 106 plots is much more than 263.4 bighas. This stands corroborated by the note of Mr. Raina, the then Conservator of Forests, Shimla Circle dated July 24, 1960 which discloses that the disputed plots over which the plaintiff has made a claim admeasure about 1819 acres. By the second grant of Phagun 29, 1999, Bikrami, the plaintiff's father granted certain additional land, namely, Basa Sharotkhala Pargana Bhatoligarh, jointly to the plaintiff and his mother Rani Sahiba Katochi. This grant refers to the first grant of Maghar 14, 1999, Bikrami. The third grant of Maghar 24, 2003, Bikrami, was executed by the plaintiff's father with a view to making the plaintiff the sole beneficiary under the first two grants by deleting the name of Rani Sahiba Katochi as a joint grantee with her consent. There is no dispute that under the aforesaid three grants taken together the properties mentioned therein were bestowed upon the plaintiff exclusively and the Rani Sahiba Katochi had no share therein, nor did she, at any time, make a claim thereto. After the execution of the third grant an Order No. 258 dated December 3, 1946, Ex. P-14, was made by the plaintiff's father directing that all the lands and 'basas' granted under the patta of Maghar 24, 2003, Bikrami, exclusively to the plaintiff should be shown in his sole name in the records by deleting the name of Rani Sahiba Katochi therefrom. On the death of the plaintiff's father in April 1947, the Political Agent, Punjab Hill States, Shimla, wrote a letter Ex. P-50 dated August 9, 1947 expressing dissatisfaction with the non-implementation of the patta and directed speedy implementation thereof. In paragraph 3 of the said letter it was stated as under:

> "There is only one point for decision and that is the validity of the patta dated December 10, 1946 granted by the late Raja Padam Singh. The Committee have to questioned this and I, therefore, take it to be the true will of the late ruler. The

> provisions of the patta are quite clear and reasonable, so I order the division of the private property, both movable and immovable, in accordance with its terms, that is to say the possession of the immovable property of the late Ruler specified in the patta shall at once be mutated in favour of Rajkumar Rajinder Singh and given in trust to Rani Sahiba Katochi on behalf of her minor son .....".

The grant was ultimately given effect to by the mutation Entry No. 2299 dated 17/18-12-2003, Bikrami, Ex. P-13. Unfortunately, the plaintiff's mother who acted as his guardian after the death of her husband in April 1947 also passed away shortly thereafter on July 22, 1949 necessitating the Court of Wards to step in since the plaintiff was still a minor. While the plaintiff's estate was under the Superintendence of the Court of Wards a list of his jagirs was prepared. This list Ex. P-18, which is in respect of tehsil Rampur, describes the disputed khasra nos. 341, 108, 222, 34, 479, 606 and 4 as unmeasured and forest lands. On the plaintiff attaining majority his estate was released w.e.f. April 1, 1956 from the Superintendence of the Court of Wards under the Financial Commissioner's notification dated March 24, 1956. Owing to the existence of certain pillars of the forest department within the areas belonging to the plaintiff made a representation Ex. P-25 for the removal of the said pillars from his lands. As a result of his representation, joint demarcation reports dated June 24, 1958, Ex. P-5, and December 9, 1958, Ex. P-8, were made which disclosed that the dispute related to the boundary in compartment 8-b only but no final decision could be taken as some difference of opinion persisted between the officers of the forest department in this behalf. The plaintiff thereafter made a further representation dated August 11, 1959, Ex. D-2, claiming compensation for the trees cut by the forest department during his minority when the estate was under the Superintendence of the Court of Wards. As a sequel to this representation Mr. Raina, the Conservator of Forests, wrote a letter dated May 27, 1960 marked secret, Ex. D-3/4, wherein he stated that the first class forest compartments 10-A (Part), 10-B (Part), 9-A, 9-B, 9-C and 8-C were the property of the forest department and the question of demarcation of these forests did not arise. He further pointed out that if the possession of these compartments is transferred to the plaintiff the department will have to undergo a loss of Rs. 18.75 lakhs. Lastly, he warned that if the plaintiff's claim is accepted numerous such claims will be made by the villagers because of similar entries in the revenue records. He though that this was a test case. He followed this up by his note dated July 24, 1960, Ex. D-3/6, wherein he reiterated that except for 263.4 bighas of revenue yielding land the claim of the plaintiff in respect of the remaining 1719 acres was fantastic. He strongly urged that the plaintiff's claim should be rejected outright and he and his contractor, defendant 3, should not be allowed to lift the timer of the trees which he was permitted to cut from khasra Nos. 341, 606, 222, and 34 under the Letter No. Ft/43-124/VI dated February 29, 1959. Thereafter the Divisional Forest Officer by his Letter No. C-II-37/810 dated May 25, 1960 informed the plaintiff and defendant 3 that the timber felled in compartment 9-C should not be removed and no further felling of trees should take place in compartments 8-C, 9-A, 9-B and 10-A (Part) and 10-B (Part) in Khasra No. 341. By a subsequent Letter No. CII-37/1181 dated August 2, 1960 the plaintiff was informed that the trees felled in compartments 9-B and 9-C were government property and could be removed on payment of Rs. 3,05,811.70. An amount of Rs. 3,36,000 was later deposited pending finalisation of the dispute.

5. Certain statutory developments which took place in the meantime may now be noticed. On February 25, 1952 the Government of Himachal Pradesh issued a notification under Section 29 of the Indian Forest Act, 1927 declaring that the provisions of Chapter IV of the said enactment shall apply to all forest lands and waste lands in Himachal Pradesh which are the property of the government or over which the government has proprietory rights or to the whole or any part of the produce of which the government is entitled. This enactment deals with (i) Reserved Forests, (ii)

Village Forests, and (iii) Protected Forests. Chapter II comprising Section 3 to 27 deals with Reserved Forests, Chapter III which consists of a single Section 28 refers to Village Forests and Chapter IV comprising Sections 29 to 34 concerns Protected Forests. Section 29(1) empowers the State Government to apply the provisions of Chapter IV to any forest land or waste land which is not included in the Reserved Forests but which is the property of the government, or over which the government has proprietory rights, or to the whole or any part of the forest produce of which the government is entitled. According to sub-section (2) such forest land and/or waste land comprise in any such notification shall be called a 'protected forest'. Section 32 empowers the State Government to make rules to regulate the matters catalogued in clauses (a) to (i) thereof in respect of protected forests, which, inter alia, include the cutting, sawing, conversion and removal of trees and timber and collection, manufacture and removal of forest produce from protected forests; the granting of licences to persons felling or removing trees or timber or other forest produce from such forest for the purposes of trade; the payments, if any, to be made by such licensees in respect of such tree, timber or forest produce, etc. Section 33 prescribes the penalty for the contravention of the rules. After the issuance of the notification Ex. D W-1/1 under Section 29, the State Government framed the rules 'First Class Protected Forests' mean and include those forests which are defined and stated as demarcated forests in the Forests Settlement of Bushahr State viz. Forest Settlement Report of Sutlej Valley and Forest Settlement Report of Sutlej Valley and Forest Settlement Report of Rupi, Pabar and Giri Valleys prepared in 1921 and 1911, respectively. 'Second Class Protected Forests' mean the undemarcated forests and include all tracts of land bearing tree growth or from which the trees have been felled which pay no land revenue as cultivated land.

6. The Himachal Pradesh Private Forests Act, 1954 (Act 6 of 1955) came into force from June 28, 1956. Section 2 thereof in terms states that the Act shall not apply to any land which is reserved or protected forest under the Indian Forest Act, 1927. Section 4 empowers the State Government to prohibit by notification the cutting, felling, girdling, lopping, burning, stripping off the bark or leaves or otherwise damaging any tree or counterfeiting or defacing marks on trees or timber in such private forests as may be specified. Under Section 5, after the Section 4 notification is issued, the Forest Officer is required within a period of one year from the date of publication of such notification to demarcate the limit of such forest in accordance with the revenue records and erect such number of boundary pillars at such points of the line of demarcation as may be necessary at government expense. Once the notification is issued under Section 4, Section 6 restrains the landlord and all other persons from cutting, collecting, or removing trees, timber or other produce in or from the notified forests in contravention of the provisions made in or under the Act. Section 11, however, authorises a Forest Officer on the application of the landlord or owner to grant a licence for the felling of trees for such purposes and with such conditions as he may deem proper. Sub-section (3) of that section permits the owner to exercise the option of selling the trees either through the Forest Department or direct to any contractor. In the latter event the owner must pay 15 per cent fees on the price of the trees calculated in accordance with the prescribed principles. Section 16 makes a contract entered into by the owner with any person conferring on such person the right to cut, collect or remove trees, timber or fuel from the private forests void unless the owner has first obtained a licence in this behalf under Section 11. By notification dated June 10, 1959, Ex. P-21 published in the Himachal Pradesh Government Gazette dated June 25, 1959, the plaintiff's forests in khasra Nos. 1, 2, 3, 218, 606, 149, 263, ad 166 situate in Village Addu were declared 'private forests' under Section 4 of the said statute. By a similar notification dated September 17, 1959, Ex. P-22, published in Himachal Pradesh Government Gazette dated September 26, 1959, khasra Nos. 34, 309, 108, 479, 307, 207 and 317 situate in Village Addu were also notified as private forests of the plaintiff under the same provision. The expression 'Private Forests' as defined by Section 3(13)

of the Act means a forest which is not the property of the government or over which the State has no proprietory rights or to the whole or any part of the forest produce of which the State is not entitled. Subsequently, by corrigendum Ex. P-29 dated July 28, 1960, the State Government deleted khasra Nos. 1, 2, 3, 218, 6, 44, 606, 149, 263 and 166 of Village Addu from the notification of June 10, 1959 and khasra Nos. 34, 309, 108, 479, 307, 207 and 370 of Village Addu from the notification dated September 17, 1959 on the ground that they were erroneously notified as they infact belonged to the Himachal Pradesh administration.

7. After the said enactment came into force w.e.f. June 28, 1956 and before the notifications under Section 4 thereof were issued, the plaintiff had by his application dated May 21, 1957 applied for permission, presumably under Section 11 of the Act, to fell trees from khasra nos. 1, 222 and 606 of Village Addu. The said permission was granted by Ex. P-20 and the plaintiff also paid the fee as demanded by Ex. P-23 dated August 23, 1957. By another application dated February 16, 1959 the plaintiff sought permission to sell trees from khasra Nos. 34, 222, 341, 606 of Khewat No. 1, Khatauni No. 2 which was granted by the Chief Conservator of Forests by his letter Ex. P-28 dated February 19, 1959. By the said letter the plaintiff was informed that the Divisional Forest Officer had been instructed to mark the trees in the said areas silviculturally and to allow him to sell and remove the same through his contractor (defendant 3). However, the attitude of the government underwent a change after Mr. Raina's secret letter of May 27, 1960 and his note dated July 24, 1960. The State Government issued a corrigendum dated July 28, 1960 amending the earlier notifications issued under Section 4; restrained the plaintiff and his agent defendant 3, from cutting and lifting the trees from the forest area and compelled deposit of Rs. 3,36,000 for removing the trees and was also required it execute a bond. The plaintiff, therefore, filed the suit which has given rise to this appeal to assert his rights.

8. The learned trial Judge on a close scrutiny of the oral and documentary evidence placed on record came to the conclusion that the plaintiff's father, who in internal matters had sovereign powers, had bestowed the lands in dispute as a perpetual and unconditional grant on the plaintiff and the mere fact that in the mutation entry the area was shown to be 263.4 bighas did not imply that the grant was limited to that much land only. He held that in the State of Bushahr only cultivated land was generally measured and forest lands remained unmeasured and, therefore, the area of only revenue yielding cultivated land was mentioned in the mutation entry but that did not mean that the grant was confined to that area only. He also held that the subsequent grant of 25-10-2003 Bikrami was executed by the plaintiff's father with the concurrence of Rani Saheba Katochi, with a view to conferring exclusive proprietory rights in the entire grant on the plaintiff. Further according to the learned trial Judge, the evidence, considered as a whole, fully established that the grant was not repudiated but was given effect to by the Political Agent, Shimla, as well as by the revenue authorities of Bushahr State and was recognised by the Dominion of India at the time of the State's merger. He found that in the statement of the Zamindars of Village Addu, Ex. P-26, it was specifically admitted that the forest comprised khasra Nos. 34, 141, 222 and 606 Khewat No. 1, Khatauni No. 2 and was 'owned' and was 'in possession' of the plaintiff. Assuming that the lands in dispute formed part of forests leased to the Government of Punjab, the learned Judge held that the Raja was not precluded from making the grant and the grants made in favour of the plaintiff were perfectly legal and valid. After the lease was terminated by mutual consent of the Governments of Himachal Pradesh and East Punjab, the Himachal Pradesh administration treated the plaintiff as the owner and permitted him various acts as owner and person in possession. Notifications were issued under Section 4 of the Himachal Pradesh Private Forest Act, 1954 declaring the disputed lands as private forests. He held that the notification issued under Section 29 of the Indian Forest Act had on application. According to him, except for an area of 11 biswas occupied by roads of the Forest

Department, the plaintiff was in possession of the remaining forest lands. The learned trial Judge, therefore, held that the suit was neither barred by limitation nor on account of Section 34 of Specific Relief Act, 1963. The other technical objections to the maintainability of the suit were spurned and the learned trial Judge decreed the suit as stated earlier.

9. On appeal the Division Bench of the High Court came to the conclusion that when the plaintiffs father executed the first grant in favour of the plaintiff he was aware that he had renewed the lease in respect of the forest lands for a period of of fifty years and therefore he could not have intended to make an absolute grant in respect of the forest lands covered under the lease to the plaintiff. According to the Division Bench after the execution of the agreement of lease dated September 25, 1942 the plaintiffs fathers had no surviving or subsisting right in the lands covered under the lease and therefore the grant in respect of the forest land was no consequence and did not confer any right title or interest in the plaintiff. At the most the grant could take effect in respect of revenue yielding cultivated land admeasuring 263.4 bighas. In support of this finding the Division Bench point out (1) that the grant Ex. P-1 dated December 10, 1946 refer to the lands by Basa and not Khasra which reveals that reference is only to revenue yielding area in the occupation of tenants (2) that clause (2) of Ex.P. 2 shown that the intention of the grantor was to secure an annual income of Rs. 9000 for his son which could only be from the revenue yielding lands as the forest were already placed at the disposal of other Government of Punjab and (3) that the recital in Ex.P. 2 regarding handing over of the Basajat could be in respect of revenue yielding area only as the forest were already in the possession of the Punjab Government. The Division Bnch also held that the notification under Section 29 of the Indian Forest Act was validly issued and so long as it held the field no notification could be issued under Section 4 of the Himachal Pradesh Private Forest Act, 1954 and the same were therefore rightly corrected by deleting the Khasra numbers claimed by the plaintiff from the notified forest area. It therefore held that the said two notification issued under Section 4 had no efficacy in law and the permission granted under Section 11 of the said law can be of no avail to the plaintiff. As regard the plaintiffs contention based on the surrender of the leas in 1949 the Division Bench concluded that the exchange of letters Ex. DW-1/3A dated April 25 1949 by Himachal Pradesh Government and Ex. DW 1/3B dated May 5/9/1949 by the East Punjab Government revealed that an arrangement was worked out whereunder the East Punjab Government transferred the management and administration of the disputed forest to the Himachal Pradesh Government on certain terms and conditions and there was no completed surrender of the lease. Adopting this learned trial Judge and dismissed the plaintiffs suit in toto with costs through. It is against the said judgment and decree that the plaintiff has moved this Court.

10. From the above resume of facts and findings recorded by the courts below, the questions which arise for our determination and on which counsel for the rival sides addressed us may be formulated as under :

> (1) Whether by the execution of the agreements of lease from time to time beginning with the agreement of June 20, 1864 and ending with the agreement of September 25, 1942 the erstwhile Rulers of Bushahr State including the plaintiffs father had been divested of all their rights title and interests in the forest lands leased there under ?
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> (2) If no whether the plaintiffs father was competent to make grants in respect of such forest lands under the pattas of (i) Maghar 14, 1999 Bikrami (i.e., November 28, 1942) (ii) Phagun 29, 1999 Bikrami (i. March 11, 1943) and (iii) Maghar 24 2003 Bikrami (i.e., December 10, 1946) ?

(3) If yes was the grant confined to the revenue yielding lands admeasuring about 263.4 bighas only or extended to the other unmeasured forest lands also as claimed by the plaintiff ?

(4) Was the State Government competent to issue the Notification under Section 29 of the Indian Forest Act 1927 ? If yes what is its effect on the plaintiffs claim in the suit ? and

(5) Was the State Government competent to issue Notification under Section 4 of the Himachal Pradesh Private Forest Act 1954 ? If yes was the State Government justified in issuing the subsequent corrigendum of July 28, 1960 ? what is the effect of these statutory developments on the plaintiffs claim ?

11. In order to appreciate the circumstances in which the erstwhile Ruler of Bushahr State entered into an agreement with the British Government in 1864 it would be advantageous to notice a few facts mentioned in H. M. Glover's Forest Settlement Report of February 11, 1921. In Vol. 1 Chapter II of this Report which concerns Bushahr State the history of Bushahr forest prior to 1850 is set out. It reveals that at that time large matured trees were plentiful. However there was large scale destruction of these trees due to frequents fires shifting of cultivation and felling of trees by traders. The Report mentions :

"Every forest cleared by traders was subject to frequent fires either caused by carelessness or by villagers who fired the debris and what was left of the standing crops in order to clear the ground for cultivation three can be no question that if the government had not assumed control the forest would have practically disappeared from all the more accessible slopes."

It further reveals that the Raja found it difficult to deal with the traders who indulged in destroying the forest by indiscriminate felling of trees and was anxious to protect them. With this in view he eventually concluded an agreement of leas in 1864 with the British Government whereunder the latter agreed to protect and conserve the forest and pay a fixed royalty for each trees felled. In 1877 the lease was revised the British Government agreeing to pay a fixed annual lump sum. The lease was renewed in 1928 on revised terms as to payment for a further period of 25 years but before the expiry of that period another agreement of lease Ex. D-1 was concluded between the Raja and the Government of Punjab on September 25, 1942. Clause III of the document recites as under :

"III. In consideration of the following payments the Raja hereby grants to the Punjab Government the entire and sole control of the whole of the forest of Bushahr excepting those reserved for the use of the Raja as defined in Clause II and subject to the definitions and rules prescribed in the Schedule and Appendices attached to this agreement."

It becomes clear from the aforesaid clause in the lease deed that the Raja granted the entire and sole control of the whole forest of Bushahr to the Punjab Government excepting the rights specifically reserved unto him. This entire and sole control was granted to enable the Punjab Government to make more definite provision for the conservancy of the forest. Clause IX of the agreement makes this clear when it says that the whole cost of conserving the forest included in the lease together with all costs of felling and transporting timber for us of the Punjab Government and of maintaining the necessary establishment in such forests shall be borne by the Punjab Government unless

otherwise provided for in the lease. From this clause also it can be seen that the emphasis was on the need to conserve the forest. The Rules framed in the Schedule to the lease reinforce this view. Under paragraph 1 of the Schedule (a) breaking up land for cultivation; (b) setting fire to grass tracts in the vicinity of forest or negligently permitting the fire to extend to forests; (c) setting fire to grass trees bushwood or stumps;(d) cutting out slabs torches etc. from the stems of standing trees, barking and tapping for resin, or otherwise injuring trees;(d) felling or lopping trees; (f) selling timber; and (g) removing dead leaves and surface soil is prohibited unless expressly permitted by the Divisional Forest Officer. Even the Raja is not permitted to fell trees and /or remove converted timber from the leased area excepting the specified quantity required for State purposes vide paragraph 5 of the scheduled It therefore seems clear to us that the paramount object of the lease was to conserve the forests of Bushahr State. But by concluding the lease agreement with the Punjab Government, the erstwhile Ruler did not convey all his rights title and interest in the leased forest lands to that government. All that he did was to transfer the control and management of the forests to the Punjab Government with a view to preserving and conserving the forests. He retained his proprietary interest in the forest lands subject of course to the limitations concerning the management of the leased area and the right to the usufruct therefrom. Had it been the intention of the Raja to divest himself of all his interest in the forest lands there was no need to provide the duration of the lease on the expiry whereof (unless the renewal clause was invoked) the Raja would have a right of re-entry. The lease also provided that in addition to the two half-yearly instalments of Rs. 50,000 each the Raja was to receive payment of the whole net surplus on the working of the forest included in the lease. This is consistent only with the position that the Raja retained his proprietary interest in the forest lands. We therefore find it difficult to agree with the Division Bench that by Bushahr State including the plaintiffs father had divested themselves of all their rights in the leased forests. We are of the opinion that the plaintiffs father had a surviving and subsisting right in the forest lands which were the subject matter of the lease dated September 25, 1942 and was competent to grant the same to the plaintiff or anyone else, albeit subject to the terms of the lease.

12. The first patta was executed by the plaintiff's father on Maghar 14, 1999 Bikrami whereby he bestowed certain lands jointly on the plaintiff and his mother. The original patta is admittedly not traced. The plaintiff's fathers had by his Order No. 5158 of even date directed corresponding mutation entires to be made in the relevant records. The endorsement found in the copy of the mutation entry Ex. P-6 extracted earlier bears testimony to this fact. This entry shows that the Raja had granted permanent ownership without condition of Khata Khatauni Nos. 1/1 to 20 and 2/21 to 25 comprising 106 plots admeasuring 263.4 bighas and part of uncultivated jagir the revenue and swai of which was remitted. Therefore the doubt regarding the making of the grant of Maghar 14, 1999 Bikrami stands repelled. The existence of this grant is further fortified by the mention thereof in the subsequent two grants dated Phagun 29, 1999 Bikrami and Maghar 24, 2003 Bikrami. There can therefore be not doubt regarding the execution of the patta of Maghar 14, 1999 Bikrami.

13. The next question is regarding the identity of land granted to the plaintiff under the said grants. The entry Ex. P-6 mentions the Khata Khatauni numbers and the total number of the plots but does not mention the Khasra numbers. Secondly, its area is stated to be 263.4 bighas and part of uncultivated jagir'. The fact that these lands are situate in Chak Addu is not disputed. Says Glovers Report : "For administrative purposes the village and its outlying hamlets have been formed into a 'Chak' which forms the unit of the land revenue assessment".

14. Since the patta in respect of the first grant is admittedly not available we have to look to evidence aliunde the grant to identify the property settled on the plaintiff. We have already referred to the Rajas Order No. 5158 on the basis whereof the entry Ex. P-6 was made. The plaintiffs witness

PW 7 Thakur Sen Negi has deposed that in Khewat No. 2 Khatauni No. 21 Khasra Nos. 6, 34, 101, 222, 341, 479 and 4 are unmeasured Exs.P. 15, P. 18, P-33 P, 38 and D-4 which are entries from the Jamabandi also show that Khasra Nos. 6, 34, 108, 222, 341, 479, 606 and 4 of Khatauni No. 21 are unmeasured Banjar Kadeem. This expression according to Glovers report means land recorded as the property of the zamindar that has lain waste since the 1889 settlement and pays no land revenue until recultivated. When included in Chaks in demarcated forest it has almost invariably been acquired or exchanged. The Division Bench has after an elaborate examination of the oral as well the documentary evidence particularly Exs. P-15, P-17, P-18, P-33, P-34, P-36 and P-38 and the notification Ex. P-22 declaring certain area as private forests come to the conclusion that land described as Banjar Kadeem could include forest lands thereby repelling the submission made by the plaintiffs counsel to the contrary. We cannot therefore countenance the submission made by the learned counsel for the contesting defendants that the expression Banjar Kadeem does not include forest. If it were so the whole controversy based on the submission that the Raja was divested of his rights in respect of the forest lands covered by the agreement of lease and was not competent to make a grant there of would have ended in favour of the plaintiff. We however do not consider it necessary to examine the correctness or otherwise of this finding of the Division Bench since we propose to proceed on the assumption that the disputed lands form part of the leased area.

15. But the question still survives whether in addition to the cultivated lands measuring about 263.4 bighas the plaintiffs father had made a grant in favour of the plaintiff in respect of the disputed forest lands. We may now examine if the subsequent two grants throw any light on this point. The second grant Ex. P-2 was executed on Phagun 29, 1999 Bikrami. In this document the Jagir granted to the plaintiff under the first patta has been described as comprising several 'basas'. By the second grant one more basa Sharotkhola pargana Bhatoligarh was granted in perpetuity. The land revenue and other cases in respect of these bass were remitted for ever. The annual income of the Jagir thus granted was Rs. 9000 and in addition thereto the State agreed to pay Rs. 9000 in cash as Jagir money besides agreeing to bear the expenses of the plaintiffs education and marriage. The third document Ex. P-1 was executed on Maghar 24, 2003 Bikrami. This document also describes the grant made under the first patta by different basas. It further recites that the possession of basa granted to you has already been given and entries have already been made in your favour and you will realise the income from the Jagir .... 'The argument that as the actual possession of the forests was with the Punjab Government the same could not have been transferred to the plaintiff overlooks the facts in such cases symbolic and de jure possession is transferred to make the grant complete. Therefore the above recital in the document is consistent with the grant. It is, therefore clear that certain basas situate in Basajats were given to the plaintiff as his jagir. The dispute in the present case mainly concerns a few khasra number of Bass Kotadhar Ghori Samat Pargana Baghi Mastgarh comprising 106 plots.

16. What then is a basa ? In paragraph 41 of the Assessment Report of Rohru Tehsil of Bushahr State Ex. D-7 prepared by Mr. Emerson Manager of Bushahr State it is stated as under :

> The State lands in which the Raja enjoys both superior and inferior rights of ownership are of several descriptions :
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> Firstly there are the Crown estate or basas comprising of some of the most fertile area which former Rulers reserved for their own enjoyment or for the support of their relatives and dependent. These were formerly cultivated by bethus under the supervision of a number of official who were supposed either to remit the produce to the headquarters or to arrange for its loan on extravagant rates of interest to

> Zamindars. At present they are leased to contractors for fixed periods on cash or grain rents, the former predominating.

According to PW 11 S. R. Jhingta the power of attorney of the plaintiff basa land included cultivated forest and grazing lands P.W. 3 Roop Singh Negi described basa lands as Banjar lands, arable lands, cultivated lands and forest lands. PW 10 Sagar Singh produced pattas to show that two basas contained forest were granted by the Raja to his father. The Division Bench refused to place reliance on the oral testimony of the aforesaid witness in view of the aforequoted authoritative definition. But this definition is not exhaustive and does not specifically rule out the inclusion of forest lands. If by the grant the Raja intended to grant only the revenue yielding area of 263.4 bighas there was no need to mention 'and part of the uncultivated Jagir' in Ex. P-6. It is an admitted fact that the total area of the basa comprising 106 plots is much more than 263.4 bighas. That means that it includes besides the cultivated area of 263.4 bighas certain unmeasured area also. The revenue of the cultivated area of 263.4 bighas is a paltry Rs. 58.8.3. It is not shown that the total revenue of cultivated lands in all the basas constituting the grant works out to Rs. 9000 per year. Besides if the grant is confined to 263.4 bighas only the words and part of the uncultivated jagir are rendered redundant. Next the concerned khasra numbers have been described as Banzar Kadeem which includes forests as held by the Division Bench. All the entries namely Exs. P-15, P-33, P-36 and P-38 describe the concerned khasra number as unmeasured. If the 106 plots in Ex. P-6 admeasure more than 263.4 bighas it follows that they also include unmeasured lands referred to as part of the uncultivated Jagir. Reference to uncultivated jagir implies existence of land other than cultivated revenue yielding land which may include forests. According to Punjab Settlement Manual (4th edn) uncultivated land is classified as Banzar Jagir, Banzar Kadeem and Gair Mumkeen. The Division Bench points out that the definition in the Manual is not to be rigidly construed and would include forest lands which may not be cultivated but may not have the potential for cultivation, if forests are removed. In other words lands covered by forests may be highly fertile and may be reserved by the Ruler for his own use or for the use of his relatives and dependents. This support the statement of PW 11 S. R. Jhingta that in Tehsil Rampur forest and grasslands were entered as Banzar Kadeem. This discussion leads us to the conclusion that a chak comprises basas a basa comprises both cultivated and uncultivated lands uncultivated lands includes Banzar Kadeem which in turn includes unmeasured forest. The recent Revenue Settlement of 1979-80 shows that the disputed khasra Numbers 34, 222, 341 and 606 comprise of 422 plots admeasuring 789-84-85 hectares out of which 711-27-50 hectares from part of the forest. It is pertinent to not that the same is shown in the ownership of the plaintiff.

17. The relevant revenue records of the Bushahr State right from 1915-16 show the disputed khasra number as unmeasured. The list of the plaintiffs jagir prepared by the revenue authorities after death of his mother also describes the said Khasra number as unmeasured forests. It is also necessary to remember that the plaintiff was denied the ownership of Khasra No. 241, 732/280, 736/394 and 728/402 admeasuring about 11 biswas as they formed part of the forest road. These four plots though measured did not yield revenue. If the Raja desired to grant only revenue yielding lands to the plaintiff he would not have included these four numbers in the grant. There is, therefore, intrinsic evidence to show that the grant was not limited to only the revenue yielding area of 263. 4 bighas. The subsequent conduct of the parties as we shall presently show also lends support to this view.

18. On the plaintiff attaining majority his estate was released from the superintendence of the Court of Wards w.e.f. April 1, 1956. The list in respect of his movable and immovable properties was prepared before the properties were handed over to the plaintiff. This list dated January 31, 1956

shows the total landed estate comprised of 1864 acres. In 1958-59 the plaintiff had planted 3000 deodhar and Kail trees which was highly appreciated by the Deputy Commissioner vide Ex. P-11 Some land was acquired by the State Government for its PWD and the plaintiff was paid Rs. 11,000 as compensation. The plaintiff had also made application for permission to fell trees from the disputed khasras which were granted vide Exs. P-20, P-23 and P-28 Indisputably trees had been felled pursuant to the permission so granted. Next Exs. P-41 and P-42 show that the plaintiff sold some part of Khasra No. 341 on April 16, 1960 and June 25, 1960 to third parties and corresponding changes in mutuation were made. He had also donated some land from the same Khasra for school. These are acts of ownership which have not been repudiated. The disputed khasra number were also the subject matter of two notification issued under Section 4 of the Himachal Pradesh Private Forest Act, 1954 whereby they were notified as private forest. All this conduct on the part of the defendants 1 and 2 goes to show that they treated the disputed khasra numbers as the jagir of the plaintiff. It was only in 1960 after Mr. Raina's secret letter and his subsequent note that the defendants disputed the plaintiffs ownership in the said khasra number and issued the corrigendum Ex. P-29 withdrawing the aforesaid two notifications as it was realised that it would result in a substantial loss of 18.75 lakhs. Till the doubt was raised by Mr. Raina the State Government throughout treated the disputed khasra numbers as forming part of the plaintiffs jagir. This conduct evidence lends support to the view that the disputed khasra numbers were bestowed on the plaintiff under the first jagir of Maghar 14, 1999 Bikrami.

19. Counsel for the defendant, however, contended that it was not open to the court in view of the prohibition contained in Section 92 of the evidence act to take into account the subsequent fact and circumstances to determine the extent of the grant under the patta of Maghar 14, 1999 Bikrami. He submitted that where a claim is based on a written document the terms of the document must be interpreted without the aid of extrinsic evidence. It is true that ordinary the intention of the parties to a document must be gathered from the language in which the relevant a term and conditions are couched and no oral evidence can be permitted with a view to varying or contradicting the terms of the document. To put it differently if the terms of the document are clear and unambiguous extrinsic evidence to ascertain the true intention of the parties is inadmissible because section 92 mandates that in such a case the intention must be gathered from the language employed in the document. But if the language employed is ambiguous and admits of a variety of meanings it is settled law that the 6th proviso to the section can be invoked which permits tendering of extrinsic evidence as to acts conduct and surrounding circumstances to enable the court to ascertain the real intention of the parties. In such a case such oral evidence may guide the court unravelling the true intention of the parties. The object of admissibility of such evidence in such circumstances under the 6th proviso is to assist the court to get to the real intention of the parties and thereby overcome the difficulty caused by the ambiguity. In such a case the subsequent conduct of the parties furnishes evidence to clear the blurred area and to ascertain the true intention of the author of the document. If any authority is needed in support of this proposition reference may be made to the case to Abdulla Ahmed v. Animedra Kissen Mitter (1950) SCR 30 : AIR 1950 SC 15). At Page 46 we find the following passage :

> "The evidence of conduct of the parties in this situation as to how they understood the words to mean can be considered in determining the true effect of the contract made between the parties. Extrinsic evidence to determine the effect of an instrument is permissible where there remains a doubt as to its true meaning. Evidence of the acts done under it is a guide to the intention of the parties in such a case and particularly when acts are done shortly after the date of the instrument (Vide para 343 of Hailsham edn of Halsbury Vol. 10, p. 274)."

In the present case the patta of Maghar 14, 1999 Bikrami is admittedly lost. Reliance was therefore placed on Ex. P-6 which incorporates the Order No. 5158 of even date. The entry in Ex. P-6 mentioned the Khata Khatauni of the 106 plots granted to the plaintiff and the area thereof is shown to be 263.4 bighas and part of the uncultivated jagir. Since a doubt arose whether the disputed khasra numbers formed part of the uncultivated jagir referred to in Ex. P-6, the parties led oral as well as documentary evidence with a view to enabling the court to ascertain the extent of the Jagir granted to the plaintiff. Since the words 'part of the uncultivated jagir' were ambiguous extrinsic evidence aliunde the grant became necessary to explain the coverage of those words. We therefore do not see any merit in the objection.

20. We may now consider the effect of the notification issued under Section 29 of the Indian Forest Act 1927 Sub section (1) of Section 29 permits the State Government to issue a notification declaring the application of the provision of Chapter IV to any forest land which is not included in a reserved but which is the property of government or over which the government has proprietary rights or to the whole or any part of the forest produce of which the government is entitled. The forest land comprised in any such notification is called a protected forest sub section (3) of Section 29 reads as under.

> "29. (3) No such notification shall be made unless the nature and extent of the rights of government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at survey or settlement or in such manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved."

The proviso to that sub section however permits the State Government to issue a notification before completion of such inquiry and record in the event of urgency. The Division Bench was therefore not right in presuming that an inquiry of the type contemplated by sub section (3) of Section 29 must have preceded the notification. The possibility of the application of the urgency clause cannot be ruled out. The Inquiry is contemplated to determine the nature and extent of the rights of the government and of private persons in or over the forest land. Based on the findings of the inquiry the record is to be prepared. The learned trial Judge has observed that after the grant no right of the government in the land in suit was recorded in the Forest Settlement or land revenue settlement or the land revenue records. Under sub section (3) such a record shall be presumed to be correct until the contrary is proved. The presumption therefore attaches to the record prepared in pursuance of the inquiry. In the present case no such record evidencing the right of the government in the forest land or forest produce is shown to have been made. Therefore the question or presumption of correctness of record never arose and the plaintiff was not obliged to dislodge the same. The evidence on the contrary shows that the disputed land were entered in the revenue records as the private property of the plaintiff. That should be so because where the land in question forms part of a permanently settled grant it is ordinarily the private property of the grants. That is why by the subsequent notification issued under Section 4 of the Himachal Pradesh Private Forest Act 1954, the disputed forest were notified as private forest of the plaintiff. The plaintiff therefore sought permission presumably under Section 11 of the said Act for cutting and felling trees situate in his private forests. If the notification issued under Section 29 held the field the State Government could not have issued the subsequent notifications under Section 4 of the State Act, in view of Section 2(b) thereof which terms state that this Act shall not apply to any land which is a reserved or protected forest under the Indian Forest Act, 1927. But before the State Government can invoke Section 29(1) it must be shown that the requirements of that provision are satisfied. From the various document placed on record it is quite clear that the disputed forest did not belong to the

government nor did the government have any proprietary rights thereon. But the Division Bench has held that the government was entitled to the whole or part of the forest produce under the agreement of lease dated September 25, 1942. The agreement of lease merely permitted the government to manage the forests as the Raja found it difficult to prevent the indiscriminate cutting and felling of trees. To preserve and conserve his forest the Raja sought the aid of the British Government from time to time. Under the last agreement of lease the Raja granted the sole control of the forests to the Punjab Government without transferring or conveying his proprietary interest therein. The Punjab Government was liable to account for the usufruct as the Raja was entitled to the whole net surplus determined triennially after deducting from the total revenue from the forest the total expenditure incurred by the Punjab Government over the same period. Therefore the Government was not 'entitled' to the whole or any part of the produce in its own right de hors the lease. The word entitled in the context must take colour from the preceding words and must be understood to mean that the government must have an independent claim or right to the forest produce and not merely a right to collect and deal with the same subject to an obligation to account for the same to the owner. The words 'entitled' is used in the sense of the government having a right or claim to the usufruct in its own right and not as the agent of another.

21. After we attained independence the erstwhile ruler of Bushahr State ceded to the Dominion of India whereupon the properties belonging to the State as distinguished from private property devolved on the Himachal Pradesh Administration. As discussed earlier the record shows the disputed khasra numbers as the private property of the plaintiff. The plaintiff exercised proprietory right thereon till 1960 when doubts were raised by Raina, who feared that if the plaintiffs claim is conceded the State will have to suffer a loss of Rs. 18.75 lakhs approximately. Since the Raja exercised supreme rights in internal matters he was entitled to make a grant in respect of property over which he exercised ownership rights as ruler. Therefore once the disputed property was granted to the plaintiff the latter became the owner thereof. The suzerainty of the British Crown over the Indian States lapsed as from the appointed day i.e. August 15, 1947 by virtue of Section 7(1)(b) of Indian Independence Act 1947, and with it lapsed (i) all agreements in force between His majesty and the rules of Indian States and (ii) all obligation of his Majesty towards the Indian States. After the merger of the Bushahr state a separate administrative unit was constituted by the Central Government for Himachal Pradesh. It appears from the letter Ex. DW 1/3A dated April 25, 1949 that the lease agreement was mutually terminated and the management of the forest was taken over by the Himachal Pradesh Administration from the East Punjab Government w.e.f. April 1, 1949 on the stated terms. The said terms were accepted by the East Punjab Government by the Chief Secretary letter dated May 5/9, 1949 Ex. D-1/3B. At the date of merger the forest belonging to the State of Bushahr developed on the Himachal Pradesh Administration except the private forests. The need to continue the lease for a few private forest was perhaps not felt. On the termination of the lease the private property reverted to the owners. However so far as the plaintiff's forest were concerned they continued under the States management since he was a minor. But on that account the State was not 'entitled' to the forest produce from such private forest. Therefore, the notification issued under Section 29 could have no application to such private forests. The State Government was therefore, competent to issue the two notification under Section 4 of the Himachal Pradesh Private Forest Act 1954 and it was not justified in annulling them on the erroneous premise that the said lands belonged to the State Government. The Division Bench therefore, ought not to have reversed the trial court on this point.

22. In the result this appeal must succeed. We allow the appeal and set aside the judgment and decree of the Division Bench of the High Court. We would have been inclined to restore the decree of the trial court but counsel for the appellant-plaintiff made a statement at the bar that in view of

the provisions of the Himachal Pradesh Ceiling of Land Holding Act 1972, the question of granting such a declaration does not survive.

23. He, however, submitted that the State Government should be directed to refund the amount of Rs. 3.36 lakhs with interest which was deposited by defendant 3 in the Treasury under an agreement dated August 19, 1961 entered into with the President of India through the Secretary Forest Department Clause (VI) thereof provides that in the event the appellant-plaintiff succeeds in establishing his title to the trees in question the said amount would be refunded subject to a deduction of 15 percent towards royalty. However defendant 3 filed a suit against the appellant for the recovery of the said amount which suit ended in a compromise decree whereunder the appellant plaintiff paid defendant 3 Rs. 2.51 lakhs in full and final satisfaction of his claim reserving unto him the right to recover the deposited amount from the State Bank. We, therefore hold that the plaintiff appellant is entitled to the refund of Rs. 3.36 lakhs with interest at 9 per cent per annum subject to deduction of royalty calculated at 15 per cent.

24. The appellant-plaintiff has also claimed refund of Rs. 4.60 lakhs with interest lying in fixed deposits with the State Bank of India, Shimla in the name of the Registrar of the High Court. The Division Bench of the High Court by its order dated December 14, 1970 directed that the trees included in the Local Commissioners report dated December 7, 1980 be sold by public auction and the sale proceeds be deposited in the State Bank of India, Shimla till the disposal of the appeal. Accordingly, the sale proceeds were deposited out of which the appellant-plaintiff was permitted to withdraw a sum of Rs. 2.60 lakhs after furnishing surely. The balance of Rs. 4.60 lakhs is lying in fixed deposits and the appellant plaintiff is entitled to the refund thereof. We, therefore, direct that the said amount together with interest accrued thereon shall be refunded to the appellant-plaintiff.

25. The appellant-plaintiff also made a claim in respect of the value of the trees cut and sold by the Forest Department during the year 1951-52 when the appellant was a minor. The estimated value of these trees is stated Rs. 1.50 lakhs. However no claim was made in respect thereof in the suit filed by the appellant plaintiff which has given rise to this appeal. If the appellant plaintiff was entitled to the said amount he ought to have claimed the same in the suit filed in 1964. We, therefore, do not entertain this claim.

26. The appellant-plaintiff has also claimed a refund with interest of the market value of trees totalling 10,505 cut and sold by the Forest Department during the period from 1980 to 1985 notwithstanding the order of this Court dated October 17, 1979. However in view of the fact that Himachal Pradesh Ceiling on Land Holding Act 1972 has since intervened we do not entertain this claim in the present proceeding. The refusal to entertain this claim will not debar the plaintiff from seeking any relief that is available to him under the 1972 Act.

27. In the ultimate, we direct the State Government to refund Rs. 3.36 lakhs with interest at 9 per cent per annum thereon to the appellant plaintiff after deducting royalty at 15 per cent. We also direct refund of the amount of Rs. 4.60 lakhs with interest accrued thereon lying in fixed deposits in the State Bank of India Shimla under the High Courts order dated December 14, 1972. We grant three months time to comply with above directions. The appeal is allowed accordingly but we make no order as to costs.

28. In view of the above the CMP will also stand disposed of accordingly.

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