IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

OSA No. 18 of 2002
Reserved on: 21st May, 2013.
Date of Decision: 31.07.2013

Sh. Rajeshwar Singh & others. ..... **Appellants/Plaintiffs**

Versus

State of H.P. & Another .....**Respondents/Defendants**

Coram
The Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice.
The Hon'ble Mr. Justice R.B. Misra, Judge.

Whether approved for reporting?[1]Yes

For the appellants : Mr.Sumit Raj Sharma, Advocate.

For the respondent No. 1 : Mr.B.K. Malhotra, Advocate.

For the respondent No. 2 : Mr. Neel Kamal Sood, Advocate.

Justice R.B. Misra, Judge

The present Original Side Appeal (OSA No. 18 of 2002 has been preferred under Section 96 of the Code of Civil Procedure against the judgment dated 7.8.2002 passed by learned Single Judge of this High Court in Civil Suit No. 83 of 1991, dismissing the suit of the plaintiffs/appellants herein.

2. Late Sh. Raj Kumar Rajinder son of late Raja Sir Padam Singh, the ex-ruler of Bushahar State filed Civil Suit No. 11 of 1967 before Delhi High Court (Circuit Bench at Shimla) for declaration of his proprietary right in about 1720 acres of forest

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Whether the reporters of the local papers maybe allowed to see the judgment?

land situated on Khata No. 1 and 2, Khatauni No. 1 to 25 comprising 106 plots, bearing Khasra Nos. 1, 2, 6, 23, 30, 34, 44, 108, 218, 222, 309, 341, 409, 479, 406, 433, 241, 732/280, 736/394 and 728/402 of Chak Addu, Tehsil Rampur as detailed in jamabandi for the year 1960-61 of the then district Mahasu (now district Shimla). The suit was partly decreed by the learned Single Judge on 6.4.1970, declaring him to be owner of land comprised in Khasra No. 1, 2, 6, 23, 30, 34, 44, 108, 218, 222, 309, 341, 409, 479, 606, 4 and 33 out of land in dispute. However, the claim of the plaintiffs with regard to remaining land comprising of Khasra Nos. 241, 732/280, 736, 394 and 728/402 was declined with observation that declaration granted in favour of the appellants "shall in no way affect the application of Section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, if that may otherwise be applicable to the plaintiff's land."

3. The State/contesting/defendants No. 1 and 2 herein being aggrieved by the above judgment and decree preferred Regular First Appeal No. 7 of 1970 before this High Court (DB), which was allowed on 13.12.1977, with an observation that consequent upon execution of lease deed dated 25.9.1942 in favour of the Government of Punjab, Raja Padam Singh had no subsisting right in the forest lands in question, as such, the same could not have been transferred by him by way of grant. Meaning thereby, the suit of the

plaintiff(s) was dismissed in toto by this High Court (DB). Being aggrieved against the order dated 31.12.1979, plaintiff(s) preferred Special Leave Petition (SLP) (which on admission became Civil Suit No. 2966/1979) before Hon'ble Supreme Court, which was allowed on 20.7.1990 by setting aside the judgment and decree dated 31.12.1997 of this High Court (DB) with the following observations.

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

4. It appears that despite interim order dated 17.10.1979 by Hon'ble Supreme Court, the Forest Department of State of Himachal Pradesh felled and sold 10,505 trees from the land in question during the period 1980 to 1985. The plaintiff(s), during the hearing of the appeal, raised a claim for refund of value with interest in respect of such trees, however, such claim was declined by the Hon'ble Supreme Court vide its judgment and order dated 20.7.1990 (reported as Rajkumar Rajinder Singh Vs. State of Himachal Pradesh and others (1990) 4 SCC 320 with observations as below:-

> "The appellant-plaintiff has also claimed a refund with interest of the market value of trees totaling 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 Holdings Act, 1972 has since intervened we do not entertain this claim in the present proceedings. The refusal to entertain this claim will not debar the plaintiff from seeking any relief that is available to him under the 1972 Act."

5. In the light of observations made above, the appellants/plaintiffs have filed Civil Suit No. 83 of 1991 on 20.7.1991 before this High Court mainly for following reliefs:-

> "(a) a decree for rendition of accounts in respect of the trees relied and sold by the defendants from the land belonging to the plaintiffs;
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> (b) a decree for such amount as may be found due to the plaintiffs after rendition of the accounts towards the value of the trees along with interest at the rate of 12% per annum from the date of realization of the amount by the defendants till the payment is made to the plaintiffs: and
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> (c) In the alternative, a decree for a sum of Rs.2,20,50,243/- with costs and interest at the rate of 12% per annum from the date of suit, that is, 20.7.1991 till the date of payment.

During the pendency of the suit Sh. Rajkumar Rajinder Singh died, as such, his son, daughter and widow had joined as plaintiffs.

6. The defendants/(respondents herein) resisted the maintainability of the above suit on the ground of limitation, inter alia submitting that the plaintiff(s) himself in his return furnished under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (for short the 'Ceiling Act') had included the land in dispute for being declared as surplus, as such, the same came to be vested in the State/defendants with effect from 24.1.1971,

that is on the appointed day under the 'Ceiling Act'. It was further pleaded that "private forests" are included within the definition of "land" under the 'Ceiling Act', therefore, the plaintiff(s) would be entitled to such compensation as may be determined under the provisions of the said Act. Civil Court has no jurisdiction to go into such question by virtue of Section 18 of the 'Ceiling Act'. The land in dispute has come to be declared as surplus by the Sub Divisional Collector vide his order dated 10.11.1993. It was also pleaded that no tree was felled by the defendants. In fact only salvaged trees were removed from the land in question in order to preserve the forests. The defendants denied having felled and sold 10,500 trees as claimed by the plaintiff(s). Liability to render accounts was denied by the defendants. It was also pleaded that the defendants were not under any legal obligation to render the accounts nor there existed any relationship between the parties by virtue of which the defendants could be called upon and/or directed to render the accounts. The defendants also denied their liability to the extent of Rs.2,20,50,243/- as claimed by the plaintiffs.

7. Taking into consideration the pleadings, averments made in the Civil Suit and rival contentions advanced on behalf of the opposite parties, the following issues were framed for consideration:

"1. Whether the suit, as framed, is not maintainable? OPD

2. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
3. Whether this court has no jurisdiction to try the suit in view of the provisions of H.P. Ceiling on Land Holdings Act, 1972, as alleged? OPD
4. Whether the suit is barred by limitation? OPD
5. Whether the land in dispute has vested in the State of Himachal Pradesh, as alleged? OPD
6. Whether the plaint lacks material particulars as alleged in preliminary objection No.47. If so, its effect? OPD
7. Whether the plaintiff is entitled to recover the value of 10,500 trees alleged to have been felled by the defendants? …OPP
8. If issue No.7 is proved, whether the plaintiff is entitled to recover interest on the value of 10,500 trees alleged to have been felled by the defendants? …OPP.

8A. Whether the plaintiff is entitled to a decree for rendition of accounts, if so, who is the accounting party? ..OPP.

9. Relief.

8. The above issues were dealt with by leaned Single Judge of this High Court and Civil Suit No. 83 of 91 was dismissed vide judgment and decree dated 7th August, 2002 against which the present OSA No. 18 of 202 has been preferred.

9. While dismissing the Civil Suit No. 83 of 1991, learned Single Judge had decided issues No. 1 and 8A pertaining to maintainability of suit and decree for rendition of accounts against the plaintiffs. Issues No. 2 and 6 pertaining to valuation of suit and lacking of material particulars have been held in favour of the plaintiffs. Issue No. 3 pertaining to jurisdiction being barred under the provisions of 'Ceiling Act' has been held against the plaintiffs. Issue No. 4 pertaining to the suit barred by limitation has been held against the plaintiffs. Issue No. 5

pertaining to the vestment of land in the State of Himachal Pradesh under 'Ceiling Act' has been held against the plaintiffs and issues No. 7 & 8 for the reasons given for dealing the issues No. 3, 4 and 5 have been decided against the plaintiffs. There appears to be no controversy in respect of findings of learned Single Judge in respect of issues No. 2 and 6 dealing with valuation of suit and arising of cause of action in the plaint.

10. Now we are analyzing the legalities of finding(s) and verdict of learned Single Judge in respect of issues in question.

11(a). In paragraph 3 of the plaint, the plaintiffs has averred as under:-

> "……..that Forest Department had felled certain trees from the period 1980 to 1985 notwithstanding the orders of the Hon'ble Supreme Court dated 17th October, 1979 and the Hon'ble Supreme Court had ordered that the plaintiff could seek any relief in separate proceedings, if available to him under the 1972 Act."

While adjudicating such issue learned Single Judge, has observed that the suit would be governed by Article 113 of the Limitation Act, 1963, which provides for a period of limitation of three years beginning from the date "when right to sue accrues" to the plaintiff(s). The right to sue in the present suit accrued to the plaintiff(s) immediately on the alleged felling of trees by the defendants in the years 1980 to 1984. Learned Single Judge has further rejected the contention of the plaintiffs that right to sue only accrued to the plaintiffs on 20.7.1990 when the previous litigation as to the title of the plaintiffs was finally decided by the Hon'ble Supreme Court and that before the

decision of Hon'ble Supreme Court, plaintiff(s) had no locus standi to maintain the suit. It was only after the decision of Hon'ble Supreme Court, the plaintiff(s) could maintain the suit against which the present appeal is pending. While rejecting the contention of the plaintiffs/appellants herein, learned Single Judge has observed that Section 9 of the Limitation Act, 1963, provides that once time has begun to run, no subsequent disability or inability to institute a suit stops it and since the trees as per plaintiff's own case were felled and sold during the years 1980 to 1984 and each of such fell furnished a separate cause of action to the plaintiff(s), as such, the present suit having been filed on 20.7.,1991, that is, long after expiry of the period of three years in respect of each cause of action, is on the face of it, hopelessly barred by time.

(b). It has been argued on behalf of the plaintiffs that High Court (DB) by virtue of order dated 31.12.1997 in RFA No. 7 of 1970 has stayed the judgment of learned Single Judge dated 6.4.1970, as such, the plaintiff(s) have no title over the suit property and in absence of any title, no suit for rendition of accounts or otherwise could be maintained by the plaintiff till the matter was finally decided by the Hon'ble Supreme Court on 20.7.1990, as the matter was subjudice from 1987 to 1990 in Hon'ble Supreme Court and by virtue of doctrine of merger, the period of limitation would begun to run from the date of passing of the order i.e. 20.7.1990, as such appeal is in continuation of

suit and decree becomes executable only when the suit is finally disposed of and rights of the parties are finally decided by the Court of Appeal. According to appellants herein, under Article 113, schedule dealing with periods of limitation of Limitation Act, the limitation has to be calculated depending upon the last day when the cause of action arose, which in the present case arose by virtue of judgment of Hon'ble Supreme Court on 20.7.1990. Moreso, there was interim stay from 17.10.1979 qua possession. In support of submissions, appellants herein referred and relied upon the decision of Supreme Court in **2004 (2) SCC 747** (Union of India Vs. West Coast Paper Mills Ltd. & Anr.). Relevant paragraphs 11, 14, 15, 16, 18, 19, 20, 41 and 42 are quoted herein below:-

> "11. Mr. Harish N. Salve, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the fact situation obtaining in this case Article 113 of the Limitation Act shall apply and not Article 58 thereof. The learned counsel would urge that as admittedly this Court granted Special Leave to Appeal in favour of the appellants and passed a limited interim order, the judgment of the Tribunal was in jeopardy and, thus, cannot be said to have attained finality. Furthermore, the learned counsel would submit that when the doctrine of merger applies, the period of limitation would begin to run from the date of passing the appellate decree ad not from the date of passing of the original decree. In support of the said contention, reliance has been placed on a decision of this Court in Kunhayammed v. State of Kerala (2000) 6 SCC 359.
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> 14. Article 136 of the Constitution of India confers a special power upon this Court in terms where of an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the Court is entitled to go into

both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

15. Even in relation to a civil disputes, a appeal is considered to be a continuation of the suit a decree becomes executable only when the same is finally disposed of by the Court of Appeal.

16. The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by this Court. It is also not in dispute that the respondent herein filed a writ petition which was not entertained on the ground stated hereinbefore. The respondents were, thus, also entitled to get the period during which the writ petition pending, excluded for computing the period of limitation. In that view of the matter, the civil suit was filed within the prescribed period of limitation.

18. It is beyond any cavil that in the event, the respondent was held to have been prosecuting its remedy bona fide before a appropriate forum, it would be entitled to get the period in question excluded from computation of the period of limitation.

19. Articles 58 and 113 of the Limitation Act read thus:

Description of Suit	Period of Limitation	Time from which period begins to run
58. To obtain any other declaration.	Three years	When the right to sue first accrues.
*	*	*
113. Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regard unreasonableness in the levy of freight was granted by the Tribunal.

41. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court of the Tribunal is in jeopardy. The subject-matter of the lis unless determined by the last court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.

42. It has not been and could not be contended that even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, we are of the opinion that the decision of the Constitution Bench in S.S. Rathore was to be followed in the instant case".

(c) In reference to judgment of **2000(6) SCC 359** Kunhayammed & Ors. Vs. State of Kerala, the relevant paragraphs 12, 41 and 42 are quoted herein below:-

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When decree or order passed by inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

Stage of SLP and post-leave stage

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the

order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court".

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-1068)".

(d) In reference to judgment **1996 (6) SCC 100** (Rameshwar Lal Vs.Municipal Council Tonk and others), **1989 (4) SCC 582** (S.S. Rathore Vs. State of M.P.) and in **2007 (11) SCC 285** (Bhag Mal alias Ram Bux & Ors. Vs. Munshi (dead) by LRs & Ors.), following earlier judgment of West Coast Paper Mills Ltd. (supra) it was observed in paragraph 23 of Bhag Mal (Supra) as below:-

"23. Yet again in Union of India and Others Vs. West Coast Paper Mills Ltd. And Anr. [(2004) 2 SCC 747], this Court had occasion to consider the provisions of limitation contained in Section 46-A of the Railways Act, 1890. Therein this Court was considering the applicability of Article 113 vis-a-vis Article 58 of the Limitation Act, 1963. In that case the plaintiff had filed a suit for refund. A claim was also preferred by the defendant before the Railway Tribunal. The Tribunal was only entitled to make a declaration that freight charges are unreasonable or excessive. It did not have the jurisdiction to execute its own order. Although the power of the tribunal in terms of Section 46-A of the Railways Act was final, this Court held that the jurisdiction of the Court under Article 136 thereby was not taken away. In relation to the subsequent suit filed by the plaintiff for recovery of the amount after disposal of the appeal preferred by the plaintiff therefrom, it was held that the period of limitation would start running from the date on which this Court had delivered its judgment inter alia stating:

" 21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues." The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of the Article 58 the period of limitation would be reckoned from the date on which the

> cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefore arose."

The learned counsel for the respondents has referred and relied upon decision of High Court in **AIR 1937 Allahabad 481** (Kunwar Muhammad Ubaid Ullah Khan Vs. Kunwar Muhammad Abdul Jalil Khan) that limitation under old Limitation Act, 1908 once begun cannot be suspended unless provided by Limitation Act. Moreso, decree for possession in 1929, suit for mesne profits for claim in 1932 in respect of years, 1916 to 1929 was declined as the same was made not within the three years of the suit. Relying on judgment in **AIR 1939 Privy Council 178** (Mian Feroz Shah Vs. Mohammad Akbar Khan), in reference to Limitation Act (1908), it was submitted that in the facts and circumstances, suit was governed by Article 109 and not by Article 120 of the Limitation Act and the plaintiff was entitled to claim profit only for three years prior to the institution of the suit.

(e) In our considered view the verdict of the above referred judgments on doctrine of merger of Hon'ble Supreme Court are not helpful to the plaintiffs, as such verdict may be applicable for preferring subsequent appeal when the issues and points of subject matter are same and in continuity. Whereas, the claims in the present case in respect of felling and selling of trees were different aspects having arisen in the years 1980-1984, as such, filing a suit for the said claims are not to be

effected by doctrine of merger. Therefore, in our considered view the issue No. 4 has rightly been decided by learned Single Judge in favour of defendants.

12. The learned Single Judge in the impugned judgment has tested that as to whether there existed fiduciary relationships between the parties, so as to enable the plaintiffs to call for rendition of accounts. The learned Single Judge has quoted that in para 1 of the plaint, plaintiff(s) has/have averred that the State-defendant No. 1 disputing the title of the plaintiff(s) qua the land in question had illegally taken the possession thereof. Plaintiff's case was/were that during the pendency of earlier litigation between the parties, the State-defendants had illegally felled and sold 10,500 trees from such land. Thus, as per the plaintiff(s) own case, the defendant No. 1/State is an encroacher/trespasser over the land in dispute. Learned Single Judge has however rightly observed that the State Government was an encroacher/trespasser and as such, encroacher/trespasser cannot be called upon to render the accounts.

13. On the other hand appellants have endavoured to controvert such findings and observations of the learned Single Judge by referring the earlier judgment of 1990 (4) SCC 320 by submitting that in view of paragraph 18 of the said judgment, the State Government was in permissive possession under agreement of lease, which permitted the State Government to

manage the forest and as such, there exist a fiduciary relationship between the defendants/respondents and appellants/plaintiffs, as the State was only entitled to manage the private forests and not entitled to forest produce. According to the appellants since earlier the private forest was under lease with the State Government and thereafter since late Raj Kumar Rajinder Singh was minor, the State Government was to maintain the forest till he attained majority. According to the appellants, suit land during the pendency of the earlier litigation before the Hon'ble Supreme Court was in possession of the defendants No. 1 and 2 (respondents No. 1 and 2 herein) and the details of trees/forest produce extracted from the suit land was with the respondent No. 2, which details were not provided to the plaintiffs despite several requests, as such, the plaintiffs had no option but to seek rendition of accounts. In support of submissions reliance has been placed on **AIR 1967 SC 333** Narandas Morardas Gajiwala & Ors. Vs. S.P.A.M. Papammal & Anr. whereby, as per para 5, even the agent can seek account from his principle in special circumstances. It was observed in decision of Hon'ble Supreme Court in **2006(2) SCC 285** (K.C. Skaria Vs. Government of State of Kerala & Another) that even there was no provision for rendition of accounts, the Courts have recognized an equitable rights to claim rendition of accounts.

14. In our considered view we are not impressed with the submissions of appellants in view of clear stand of plaintiffs made in plaint regarding the possession of land which remained with State/defendant. The learned Single Judge, therefore, has correctly held that suit for rendition of account is not maintainable. Issue No. 1 is rightly decided in favour of defendants while issue No. 8A has correctly been decided against the plaintiff(s)/appellants.

15. Learned Single Judge while adjudicating issue No. 3 has observed that the suit is barred in view of provisions of Section 18 of the 'Ceiling Act'. For convenience Section 18 of the Ceiling Act is extracted as below:-

> "18. Bar of jurisdiction:- (1) No Civil Court shall have jurisdiction to
> (a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the rights of the State Government to the surplus area under this Act; or
> (b) settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector.
> (2) No order of the Financial Commissioner, the Commissioner, the Collector and under or in pursuance of this Act, shall be called in question in any Court".

16. It has been contended on behalf of the defendants/respondents that the present case falls under Clause (b) of Sub-section (1) of Section 18, Ceiling Act, Civil Courts jurisdiction is barred. On the other hand, it has been submitted on behalf of the plaintiffs/appellants that the present suit being for recovery of damages/compensation simpliciter in

respect of the value of the trees illegally felled and sold by the defendants, as such, the case does not fall within the ambit of Section 18(1)(b) of the 'Ceiling Act', as such, the jurisdiction of Civil Court is not barred. In support of the submissions, reliance has been placed on the decision of Supreme Court in **AIR 1969 SC 78**, Dhulabhai etc. Vs. State of Madhya Pradesh. Relevant paragraph 32 is reproduced herein below:

> "It has been held that jurisdiction of Civil Court is not readily inferred. However, if there is no adequate remedy in the statute to do what the Civil Court would normally do in a suit, if answer is yes, jurisdiction of Civil Court is inferred and if the remedy is available in the statute, the jurisdiction of the Civil Court is barred".

It has also been submitted on behalf of the plaintiffs/appellants that the Collector under the 'Ceiling Act' has no power to give compensation of trees removed when no proceeding under 'Ceiling Act' pertaining to the land was pending before it, as such, the jurisdiction of Civil Court is not ousted. In support of this contention, reliance has been placed on **2006 (5) SCC 720** (Devinder Singh & Ors. Vs. State of Haryana & Another), wherein it has been held that the Civil Court jurisdiction can be regarded as having been excluded if there is adequate remedy in statute to do what Civil Court would normally do in a suit.

17. For convenience, relevant Sections of 'Ceiling Act' are quoted as below:-

> "Permissible area 4. (1) The permissible area of a landowner or a tenant or a mortgagee with possession or partly in one capacity or partly in another of a person or a family consisting of husband, wife and upto three minor children shall be in respect of-

(a) land under assured irrigation capable of growing two crops in a year—10 acres;

(b) land under assured irrigation capable of growing one crop in a year---15 acres;

(c) land of classes other than described in clauses (a) and (b) above including land under orchards----30 acres.

(2) The permissible area for the purposes of clause (c) of sub-section (1) for the districts of Kinnaur and Labaul and Spiti, Tehsil Pangi and Sub-Tehsil Bhannour of Chamba district, areas of Chhota Bhangal and Bara Bhangal of Baijnath. Kanungo Circle of Tehsil Palampur of Kangra district and area of Dodra Kuwar Patwar Circle of Rohru Tehsil and Pandri-bis Pargana of Rampur tehsil of Shimla district shall be 70 acres.

(3) The permissible area of a family under sub-section (1) shall be increased by one-fifth of the permissible area under sub-sections (1) and (2) for each additional minor, member of a family · subject to the condition that the aggregate permissible area shall not exceed twice the permissible area of a family under sub-sections (1) and (2).

(4) Every adult son [of a person] shall be treated as a separate unit and he shall be entitled to the land upto the extent permissible to a family under sub-sections (1) and (2) subject to the condition that the aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible under the said sub-sections:

Provided that where the separate unit owns any land, the same shall be taken into account for calculating the permissible area for that unit.

8 Selection of permissible area----(1) Every person, who on the appointed day or at any time thereafter holds the land exceeding the permissible area shall furnish to the Collector particulars of all his lands and that of the separate unit within a prescribed period and in the prescribed form and manner and stating therein the selection of land not exceeding in the aggregate the permissible area which he desires to retain:

Provided that such person shall state in the return any transfer or other disposition of land made by him after the appointed day.

(2) If the whole or a part of the land selected under sub-section (1) is under tenants, the landowner shall not be entitled to eject the tenants there from except on the grounds given in the tenancy laws for the time being in force in the State of Himachal Pradesh.

10. Submission of statement to Collector----(1) On the basis of the information given in the return under section 8 or the declaration furnished under sub-section (1) of section 9 which shall be duly verified through such agency as may be prescribed or the information

obtained by the Collector under sub-section (2) of section 9, the Collector shall prepare a draft statement in the manner prescribed showing among other particulars the total area of land owned or held by such a person the specific parcels of land which a person may retain by way of permissible area or exemption from ceiling and also the surplus area.

(2) The draft statement shall be published in the office of the Collector and a copy thereof shall be served upon the person or persons concerned in the form and manner prescribed. Any objection received within 30 days of the service shall be duly considered by the Collector and after affording the objectors an opportunity of being heard, the Collector shall pass such order as he may deem fit.

(3) A draft statement shall be made final in terms of the order of the Collector or the order, if any, passed in appeal, revision or review, as the case may be.

11. Vesting of surplus area in the State Government.--The surplus area of a person shall, on the date on which possession thereof is taken by or on behalf of the State Government be deemed to have been acquired by the State Government for a public purpose on payment of amount hereafter provided and all rights, title interests (including the contingent interest, if any), recognized by any law, custom or usage for the time being in farce, of all persons in such area shall stand extinguished and such rights, title and interests shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.

14. Principle for determination and payment of amount.--

(1) Where any surplus area has vested in the State Government under section 11, the Collector shall determine the amount payable therefore in accordance with the principles hereinafter set out, that is to say-

(i) for the land upto ten acres, ninety-five times the land revenue (including rates and cases);

(ii) for the land in excess of 10 acres and below 30 acres, seventy five times the land revenue (including rates and cusses); and

(iii) for the remaining land, forty-five times the land revenue (including rates and cusses);

payable for such land:'

Provided that if the holding or part thereof comprising surplus area is not assessed to land revenue the land revenue on such land shall be

construed to be assessed as on similar land in the estate audit not available in the estate then the adjoining estate or estates as the case may be:

Provided further that the waste land shall be treated as banjar land for the purpose of assessment of land revenue and determination of an amount.

(2) For the purpose of sub-section (1), the collector shall prepare a statement of the amount in such form and manner as may be prescribed and shall after following the prescribed procedure apportion the amount amongst the persons having interests in the land.

(3) Where in the surplus area of any person mortgagee rights have vested in the State Government, the amount payable to the mortgagee shall be mortgage money due to the mortgagee, or the amount payable under this section. whichever is less.

(4) where on the land there is any building. structure or tube-well or crop, the owner thereof shall in addition to the amount payable in respect of the land be entitled to be paid by the State Government an amount therefore which shall be 50% of the market price of such building, structure, tube-well. The landowner shall be entitled to harvest the crop standing on the surplus area.

(5) The amount shall be payable either in lump sum or in six monthly installments not exceeding ten in the manner prescribed.

20. Appeal, review and revision.---(1) Any person aggrieved by any decision or order of the Collector may within sixty days from the date of the decision or order prefer an appeal to the Commissioner:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may. Within ninety days form the date of the order file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit The order of the Financial Commissioner shall be final.

(3) Notwithstanding anything contained in the foregoing sub-sections. the Financial Commissioner may at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order and may pass such order in relation thereto as he may deem fit".

18. The 'Ceiling Act' was enacted in order to consolidate and amend the laws relating to ceiling on land holdings in the State of Himachal Pradesh and for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution of India.

The word "land" has been defined under clause (f) of Section 2 as meaning land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural or pasture and includes:

(i) The sites of building and other structure on such land;

(ii) Orchards;

(iii) Ghasnies;

(iv) Banjar land; and

(v) Private forests.

Section 4 of the 'Ceiling Act' prescribes the permissible area which a land owner of a tenant or a mortgagee with possession can hold. Section 9 provides that every person who on the appointed day that is, 24.1.1971 or at any time thereafter holds land exceeding the permissible area, shall furnish to the Collector particulars of all his lands within the prescribed period and in the prescribed form and the manner and stating therein the selection of land not exceeding in aggregate the permissible area. Section 9 further provides that every person required to furnish a return under Section 8 whose

land is situated in more than one Patwar circle shall furnish to the Collector within a prescribed period a declaration supported by affidavit in respect of the land owned or held by him in such form and manner as may be prescribed.

Under Section 10 of the 'Ceiling Act' the Collector on the basis of the information given in the return under Section 8 or the declaration furnished under Section 9 after due verification is to prepare a draft statement in the prescribed manner showing among other particulars the total area of land owned or held by such a person, the specific parcel(s) of land which a person may retain by way of permissible area of exemption from ceiling as also the surplus area. Such draft statement is then to be published in the office of the Collector and a copy thereof to be served upon the person(s) concerned in the prescribed manner. Any objection received within 30 days of the service are to be considered by the Collector and after affording an opportunity of being heard, the Collector is to pass such order as he may deem fit. Such draft statement is to become final in terms of the orders of the Collector or the orders, if any passed in appeal, revision or review as the case may be.

Section 11 provides for vesting of the surplus area in the State on and from the date on which possession thereof is taken by or on behalf of the State Government as having been acquired by the State Government for a public purpose on

payment of amount to be determining under Section 14 of the 'Ceiling Act'. Section 12 empowers the Collector to take possession of the surplus area in the manner provided therein.

Section 20 of the 'Ceiling Act' provides for an appeal against every decision or order of the Collector. Such appeal lies to the Commissioner. Against the order passed in appeal by the Commissioner, a revision lies before the Financial Commissioner. The order of the Financial Commissioner is final. Section 21 provides that any officer or authority holding an enquiry or hearing an appeal or a revision shall have the powers of a Civil court under the Code of Civil Procedure relating to the matters detailed therein.

According to the scheme of the 'Ceiling Act' all matters pertaining to declaration of surplus area, amount of compensation payable in respect thereof, taking of possession of such land and all other matters connected and ancillary thereto are to be dealt with by the officers/authorities specified therein and the jurisdiction of civil Court in respect of such matters is barred.

There is no denying that the plaintiff(s) had furnished the return under Section 8 of the 'Ceiling Act'. The land in question was never selected by him to be retained by him as permissible area. The requisite inquiry by the Collector as contemplated by Section 10 of the 'Ceiling Act' was pending at the time of the filing of the present suit. Such proceedings

terminated on 10.11.1993 vide order of the Collector, Rampur Bushhar, Copy of which is Ex. PW2/B.

It appears from the said order shows that initially the proceedings before the Collector terminated on 12.5.1976. However, in revision carried before the Financial Commissioner the matter was remanded on 5.9.1985 to the Collector for decision afresh. On remand the matter came to be decided by the Collector vide order Ex. PW-2/B. Such order further shows that a sum of Rs.57,456.25 paisa as compensation determined under Section 14, 'Ceiling Act', was paid to and received by the plaintiff(s) on various dates as under:-

S. No.	Amount	Date of payment
1.	Rs.18,620.60	3.11.1980
2.	Rs.10,900.00	5.11.1980
3.	Rs. 15,000.00	29.1.1981
4.	Rs. 3,935.00	20.3.1981
5.	Rs. 9,600.00	31.3.1981

Such amount of compensation was received by the plaintiff(s) without any objection and protest. The claim with regard to the compensation in respect of the trees on the land in question which was declared surplus was also raised before the Collector on behalf of the plaintiff(s) as is evident from para 5 of the order Ex. P 2/B. Such claim was laid under Sub-section (4) of Section 14 of the 'Ceiling Act'. The claim was rejected by the Collector. The remedy available to the plaintiff(s) was under Section 20 of

the 'Ceiling Act' by way of an appeal and cannot be agitated by way of a Civil Suit in view of Section 18 of the said Act.

In our considered view it has rightly been held by learned Single Judge that Civil Court has no jurisdiction in the matter. The issue has accordingly been decided against the plaintiff(s) and in favour of the defendants.

Even otherwise, the Hon'ble Supreme Court in its judgment dated 20.7.1990 Rajkumar Rajinder Singh Vs. State of Himachal Pradesh and others (1990) 4 SCC 320 in para 26 (quoted above) while declining the claim of the plaintiff(s) for the refund with interest of the market value of the trees totalling 10,505 cut and sold by the Forest Department, as claimed by the plaintiff(s) in the present suit, had observed that in view of the fact that the 'Ceiling Act' has since intervened the claim in the proceedings were not dealt with. The refusal to entertain the claim was not to debar the plaintiff(s) from seeking any relief that was available to him under the 'Ceiling Act'.

In our considered view, therefore, in the light of above observations, the appellants could have raised the claim in respect of the trees only under the provisions of the 'Ceiling Act' and not by way of a Civil Suit like the present one, whereas in fact in reference to the judgment dated 20.7.1990 a claim was in fact raised by the plaintiff(s) before the Collector under the provisions of the Ceiling Act, which was rejected.

19. Regarding issue No. 5, since the possession of the land had been taken in the year, 1993, admittedly, as per para 1 of the plaint, the State/defendant had illegally taken over the possession of the land in dispute before the filing of the earlier suit, being Civil Suit No. 11 of 1967 by plaintiff(s), however, nothing has been brought on the record to show that the State/defendants were ever dispossessed thereafter at any stage and the plaintiff(s) came into possession thereof. In the absence of any evidence to the contrary the only inference is that the defendants continued to be in possession of the land in dispute. Once the defendants/respondents were in possession, there was no question of taking physical possession of such land again under the provisions of the 'Ceiling Act'. Whereas, plaintiff(s) have submitted in his return submitted under Section 8 of the 'Ceiling Act', indicated the intention for the land in question to be declared surplus, the possession of which was with the defendants/respondents. Surprisingly, the compensation for the land, as stated above, was received by the appellants without any objection/protest in the year 1980-81, therefore, it is not open to the appellants to say that the land in question had not vested in the State/defendants. In our considered view the issues 7 & 8 have correctly been decided by the learned Single Judge.

20. In view of the submissions made by learned counsel for defendants/respondents in reference to the decision in **AIR**

1999 SC 941 (Ram Swarup and others Vs. S.N. Maira and others, the writ petition challenging the judgment of surplus land cannot be dealt with under Article 226 of the Constitution in reference to the land ceiling proceedings, when the allotment of such surplus lands has already been made to different landless persons and consequent upon, the possession thereof has already been given to them and right was confirmed on such persons by allotment and delivery of possession. As such, subsequent writ petition challenging determination of surplus land cannot be gone into. According to the learned counsel for the respondents/defenants, even in view of the observations made by Hon'ble Supreme Court in AIR 2001 SC 2607 (Vishwambhar and others Vs. Laxminarayana (dead) through LRs. and another), the amendment to the original suit for recovery of possession from purchasers made after a period of three years was not maintainable.

We find force in the submissions of learned counsel for the defendants/respondents that in the light of observations of Hon'ble Supreme Court in AIR 2000 SC 2723 (D. Ramakrishna Reddy and others Vs. The Addl. Revenue Divisional Officers and others), in reference to Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, no permit can be granted to holders of land for removal of forest produce, once the surplus land vests in the State Government along with forest produce standing on land. In D. Ramakrishna Reddy (supra), it was held

by Hon'ble Supreme Court that standing trees are forest produce on the land, once vested in the Government, as such, no provision in Act extends for making payment of such sum. For reference paragraphs 19 and 21 are extracted as below:-

> "19. From the conspectus of the relevant provisions in the Act and the Rules noted in the preceding paragraph it is clear that the surplus land which is surrendered or deemed to have been surrendered shall vest in the State on communication of the order passed by the Revenue Divisional Officer to take over possession of such land to the owner/holder/occupier of the said land. The word 'thereupon' in Section 11 refers to such order of the Revenue Divisional Officer. The order in Form 'IX' and the manner in which the said order will be served on the owner are prescribed in sub-rules (1) and (2) of Rule 8. The provisions incorporated in sub-rules (3) to (7) of the said rule are steps to be taken after the surplus land has vested in the State. Vesting of the surplus land in the State is not dependent on taking over physical possession of the land which may be immediately after the vesting or sometimes subsequent thereto. It is our considered view that this conclusion emanates from a harmonious construction of the provisions in Section 11 and Rule 8 and it is in accord with the object and purpose of the Act.
>
> 21. The question that remains to be considered is regarding grant of permit to the respondents for removal of the forest produce. In this regard, it is sufficient to state that even before vesting of the property in the State Government the holders of the land had no right for felling and removing the standing trees or other forest produce from the forest area. They could do so only on getting a permit from the competent officer of the Forest department of the State Government authorizing them to fell and remove the trees or other forest produce. Grant of such permit was at the discretion of the competent officer and the power was to be exercised in accordance with the provisions of the statute applicable in the matter and the rules framed in that regard. Therefore, no direction could be justifiably issued in the present proceedings which is relating to vesting of surplus land under the Act, for felling and/or removal of any forest produce from forest area".

21. In view of the express findings recorded by the learned Single Judge in respect of issues No. 3, 4 and 5 that the appellants are neither entitled to recover the value of trees alleged to have been felled and sold by the defendants/respondents nor to any interest, as such, the issues have rightly been decided by the learned Single Judge.

22. In view of the analysis and reasoning elaborated above, we do not find any illegality in the impugned judgment,

as such, there is no scope of interference in the judgment dated 7.8.2002 passed in present OSA No. 18 of 2002, therefore, we find no merits in the appeal and the same is accordingly dismissed.

(A.M. Khanwilkar)
Chief Justice

(R.B. Misra)
Judge

July 31st 2013.
(KRS)