(1973) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Suit No. 14 of 1968

Her Higiiness Maharani Sarojini Devi etc.	APPELLANT
Vs	
The Save The Children Fund etc.	RESPONDENT

Date of Decision : 15-10-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 1
Constitution of India, 1950 — Article 363, 366(22), 372
Criminal Procedure Code, 1898 (CrPC) — Section 86, 87B

Citation : (1973) 2 ILR HP 1244

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : F.C. Bedi, Puran Chand and Romesh Chand, for the Appellant; Kailash Chand, Bakshi Sita Ram and S. Malhotra, for the Respondent

Judgement

D.B. Lal, J.—This is a suit for partition and in the alternative for joint possession and also for recovery of mesne profits. The suit relates to an Estate known as "Sterling Castle" situate in Simla which formerly belonged to His Highness Maharaja Ripudaman Singh of Nabha. The ruler died in the year 1942, and a dispute of succession has arisen between the Plaintiffs, who are his widow Her Highness Maharani Sarojini Devi, his son Maharajkumar Kharag Singh and heirs of another deceased son Maharajkumar Gurbaksh Singh and the transferees of the Estate from His Highness Partap Singh who had succeeded as ruler.

2. The Plaintiffs have come up with the allegations, that H.H. Ripudaman Singh, who died in December, 1942, left behind his widow and three sons, namely H.H. Sarojini Devi, H.H. Maharaja Partap Singh, M.K. Karag Singh and M.K. Gurbaksh Singh. The late Maharaja also left two daughters who are not parties to the suit. According to the Plaintiffs, H.H. Ripudaman Singh was forced to sever his connections with the administration of the State of Nabha in about the year 1923. The British Government formally deposed him in the year 1928 and exiled him to Kodaikanal (Madras) where he resided until he died in 1942. The late ruler being enlightened, kept distinction between State and private properties. He

used to draw privy purse (Sarfa Khas) of Rs. 3 lakhs per annum for his personal needs. From this amount he had created a large personal fund of his own. Besides this, he had also inherited some personal fund of his father. As a ruler, he used to receive several personal gifts. All the accumulations formed his private property. He kept this property separate from State property. As there was restriction imposed upon the Rulers of Indian States to purchase properties outside the limits of their States, so H.H. Ripudaman Singh got several properties purchased outside the State of Nabha in the name of his friends or relatives. He also invested some money abroad including London.

3. One Col. S. Appaji Rao Sctolc, C.E. of Gwalior, owned and possessed the property known as "Sterling Castle" at Simla. H.H. Ripudaman Singh purchased this property out of his personal funds and paid Rs. 3 lakhs as its price. The deed of coveyancc was executed on 21-12-1921 in the name of one Dr. Tehl Singh, M.B., C.H.B. (Edinburgh) who was a personal friend of the late Maharaja. The property was purchased "Benami" as H.H. Ripudaman Singh did not intend to merge it with the State property and wanted to keep it separate in view of his fomenting unhappy relations with the British Government. It will be recalled that soon after in 1923 his ruling powers were withdrawn, although he was formally deposed in 1928. In this manner ''Sterling Castle'' became the self-acquired property of H.H. Ripudaman Singh.

4. During his life-time H.H. Ripudaman Singh maintained the distinction in respect of Streling Castle and kept it as his private property. In 1928, after deposition, the British Government proclaimed his eldest son H.H. Maharaja Pratap Singh as the Ruler of Nabha Stale. According to Plaintiffs, the property ''Sterling Castle'' was either managed by the personal staff of the late ruler or by the P.W.D. staff of Nabha State during the period of deposition of H.H. Ripudaman Singh or during the regime of H.H. Pratap Singh. That was an act of courtesy on the part of the British Government.

5. In the month of April, 1952, H.H. Pratap Singh the ruler came to his mother H.H. Sarojini Devi and proposed that a deed of relinquishment should be obtained from Dr. Tehl Singh in respect of this property. The intention was obviously to safeguard the interests of the family. The Dowager Rani consented and H.H. Pratap Singh obtained a. deed of relinquishment from Dr. Tehl Singh on 30-4-1952. By this demise, Dr. Tehl Singh repudiated his title and conferred it upon the three sous and the widow of late Maharaja Ripudaman Singh.

6. The dispute in the family started in 1957. H.H. Pratap Singh started denying the title of the Plaintiffs. He claimed absolute right in his favour. M.K. Gurbaksh Singh as well as M.K. Kharag Singh had to write to the Municipal Committee, Simla, for mutation of their names against this property. H.H. Pratap Singh raised objections and so the mutation was not effected in their favour. Thereafter both the Maharajkumars sent notices to the Municipal Committee, Simla and also to the Sub-Registrar, Simla, lest H.H. Pratap Singh might execute some deed of transfer in respect of the property. A notice was also given to H.H. Pratap Singh

who had started representing himself to be the sole owner of the property. The Sub-Registrar, Simla, was, of course, asked not to record any alienation of the property which H.H. Pratap Singh might execute in favour of any person. The two Maharajkumars also issued a notice which was published in the newspapers on various dates in the months of September and October, 1957, to the very same effect.

7. After doing all this, the two Maharaj kumar applied for permission of the Central Government to file a suit against H.H. Pratap Singh with regard to the property Sterling Castle. They made their application on 31-3-1961 u/s 86 read with Section 87B of the Code of Criminal Procedure. In July, 1961, the Central Government refused to give permission to file a suit against H.H. Pratap Singh. On 30-1-1962 H.H. Pratap Singh executed a sale deed of the property in favour of the Save the Children Fund, a Society incorporated in U.K., having the address of principal office in India, through its administrator Lt. Col. L.C. Young (Defendants 1 and 2) for a sum of Rs. 50,000. In this manner, a property that was initially purchased at Rs. 3 lakhs and was probably of a much higher value in 1962 was disposed of for a sum of Rs. 50,000. Thereafter the Plaintiffs served a notice upon Brig. T.W. Boyce, O.B.E., Director General, The Save the Children Fund, and disowned absolute title of H.H. Pratap Singh which could not be transferred by that sale deed in favour of the Defendants 1 and 2. According to Plaintiffs, their title as well as the title of Defendant No. 3 who is the widow of M.K. Gurbaksh Singh could not be transferred by H.H. Pratap Singh, and the Defendants 1 and 2 or their subsequent transferees did not acquire any right and title to the extent of their share in the property.

8. The Plaintiffs claim a share in the property either as tenants-in-common or as joint-owners. In the alternative, they also contend that H.H. Pratap Singh formed with them a joint Hindu family and, being eldest, was the "karta" of the family. The sale deed was executed without family necessity or benefit of the estate. The alienation is thus not binding on the Plaintiffs and Defendant No. 3. In any view on the matter, according to Plaintiffs, Dr. Tehl Singh had executed the deed of relinquishment in favour of the Plaintiffs and their predecessor-in-title M.K. Gurbaksh Singh. That deed of relinquishment further conferred title upon them in respect of the property. The Plaintiffs also claimed Rs. 5,000 for three years commencing from 1-2-1962 as token mesne profits although, according to them, the property is fetching minimum at the rate of Rs. 500 per mensum. The Plaintiffs claim mesne profits from the date of the suit until the possession is restored to them after partition.

9. The Defendants 1 and 2 have sold the property during the pendency of the suit to Defendants 4 to 8 by a sale deed dated 1-5-1970 and as such the subsequent transferees have also been made parties. These Defendants according to Plaintiffs, are bound by the written statement filed by the Defendants 1 and 2.

10. The Plaintiffs pray for a decree of possession after partition by metes and

bounds, and in the alternative for a decree of joint possession, may be after cancelling the sale of the property in favour of the Defendants 1 and 2. They claim a decree for Rs. 5,000 for mesne profits and thereafter for further mesne profits to be assessed by the Court from the date of the suit until restoration of possession of the shares of the Plaintiffs and Defendant No. 3. For this, the Plaintiffs pray that a commissioner be appointed for the assessment of the mesne profits and thereafter a final decree for the amount of mesne profits be awarded against the Defendants. The Plaintiffs are prepared to pay the balance of required court-fee thereon.

11. The suit is contested by all ''the Defendants except Defendant No. 3 in whose favour it is obviously filed. The Defendants have raised several preliminary grounds. It is stated by them that H.H. Pratap Singh is a necessary party and there is a defect of non-joinder in the suit. According to Defendants, the Central Government had refused permission to file a civil suit u/s 86 read with Section 87-B of the Code of Criminal Procedure and as such no suit could be filed even against the assignees from H.H. Pratap Singh. It is then stated that the suit is one for partition and the entire property left by the deceased ruler is not brought into the "hotchpotch", meaning thereby that a suit for partial partition is not maintainable. According to Defendants, H.H. Ripudaman Singh died in 1942 and H.H. Pratap Singh remained in possession as full owner for a period of 20 years and thereafter he sold the disputed property to Defendants 1 and 2. As such the Plaintiffs or their predecessor-in-interest lost their title by lapse of time and the claim has become time-barred. According to Defendants, the suit is not maintainable because Defendant No. 3 has not joined in the array of Plaintiffs. It is contended that ownership and possession over the disputed property have all along been of Nabha State and the same entries were made in the Municipal records. In the year 1949 when H.H. Pratap Singh executed the merger agreement in favour of the Central Government, "Sterling Castle" was cleared as private property of the ruler. This made him the exclusive owner and the Plaintiffs cannot claim any title in the property due to the specific covenant in the merger agreement. According to Defendants, Dr. Tehl Singh was neither the owner nor was he ever in possession over the property. In fact, Nabha State was all along in possession and H.H. Pratap Singh being the ruler was the absolute owner of all the properties pertaining to State including State properties as well as private properties left by the deceased Maharaja. The Defendants denied the inception or continuance of joint Hindu family with H.H. Pratap Singh as one of the members. The rule of primogeniture applied to all the properties of the deceased ruler and H.H. Pratap Singh being the eldest son became absolute owner of all the properties, impartible or partible, left by the deceased ruler. Finally the Defendants submitted that H.H. Pratap Singh sold the property for the benefit of the State as no income was forthcoming from the property.

12. The Defendants 4 to 8 who are the subsequent transferees, pleaded that they were bona fide purchasers from ostensible owner and without notice and as such their title could not be disturbed. They, of course, reiterated all the grounds

which have been taken by the Defendants 1 and 2. In their rejoinder, the Plaintiffs have submitted that H.H. Pratap Singh could not be sued by them without the permission of the Central Government. This permission has been refused. As such, no adverse possession could be pleaded in favour of H.H. Pratap Singh whose claim for title could not be questioned in a court of law. According to Plaintiffs, the mere entries found in Municipal records or even management of the property by State officials or its clearance as private property in merger agreement would not make it absolute property of H.H. Pratap Singh. The rights of third parties were not affected and H.H. Pratap Singh being a member of the joint Hindu family could not confer a title, which he did not himself own, by making the alienation. It was denied that H.H. Pratap Singh by virtue of being a ruler became entitled to the private properties of the late ruler. The rule of primogeniture applied only to impartible properties or State properties, and not to partible or private properties. They have further averred that no legal necessity existed for the sale of 1962.

13. The case has rather a chequered history. The suit was formerly filed before a Senior Sub-Judge of Punjab State. Thereafter the area merged in Himachal Pradesh and the original jurisdiction was conferred upon the Delhi High Court. The suit was accordingly taken up on the original side by the Delhi High Court. After the jurisdiction came to Himachal Pradesh High Court, the suit was entrusted to this Court and it is being decided on the original side of the High Court.

14. The pleadings of the parties gave rise to several issues which were framed from one stage to the other, right from the Court of Senior Sub-Judge. One of the learned Judges of the Delhi High Court framed an issue on 17-12-1970 which deals with the plea of bona fide purchaser for value of Defendants 4 to 8 and which he preferred to number as (1). This issue should really be numbered as (13) and is being incorporated against this number in the issues framed on merit.

15. The learned Senior Sub-Judge had framed three issues on preliminary grounds, which are as follows:

Preliminary Issues:

(1) Whether His Highness Maharaja Sir Pratap Singh of Nabha is a necessary party to the suit?

(2) As per allegations in plaint paras 12 and 13, the Central Government refused permission to the Plaintiffs to bring a suit against His Highness Maharaja Sir Partap Singh with regard to the property in dispute. What is the effect of this refusal on the maintainability of the suit?

(3) Whether any additional court-fee is payable on the share of Defendant No. 3? If so, what?

These issues have already been decided by the Court and it has been held that the suit cannot be dismissed on any such preliminary ground.

16. The following additional issues have been framed on merit by this Court:

Issues:

(1) Whether the property in dispute was purchased by Maharaja Ripudaman Singh ''benami'' in the name of Dr. Tehl Singh on December 21, 1921?

(2) Whether Dr. Tehl Singh executed a deed of relinquishment dated April 30, 1952, in respect of the property in dispute in favour of Maharaja Pratap Singh, Maharajkumar Kharag Singh, Maharajkumar Gurbaksh Singh and Maharani Sarojini Devi? If so, what is the effect of that?

(3) Whether the property in dispute was joint Hindu family property of Maharaja Pratap Singh, Maharajkumar Kharagh Singh and Maharajkumar Gurbaksh Singh?

(4) In case issue No. 3 is found in favour of the Plaintiffs, whether the sale of the property in dispute by Maharaja Pratap Singh in favour of Defendants 1 and 2 is valid?

(5) Whether the Plaintiffs and Defendant No. 3 have a share in the property in dispute? It so, how much?

(6) Whether the Plaintiffs can claim partition of the property in dispute without bringing into hotchpotch other joint property?

(7) Whether the rule of primogeniture shall not be applicable in respect of the property in dispute which, according to the Plaintiffs, is the joint Hindu family property of Maharaja Sir Partap Singh?

(8) If the property in dispute is proved to be the joint property of Maharaja Pratap Singh, Maharaj Kumar Kharag Singh, Maharaj Kumar Gurbaksh Singh and Maharani Sarojini Devi, is the suit barred by time?

(9) To what mesne profits, if any, are the Plaintiffs entitled?

(10)) To what relief, if any, are the Plaintiffs entitled?

(11) Whether the rule of primogeniture as applicable to the succession in the ruling family of Nabha made His Highness Maharaja Sir Pratap Singh, by virtue of his having become the Maharaja of Nabha State, absolute owner of properties of every description that came in his possession, including the property in dispute?

(12) Whether the title, if any, of His Highness Maharaja Ripudaman Singh in the property in dispute became extinct after the lapse of 12 years during which period His Highness Maharaja Sir Pratap Singh, as Head of State, was openly and continuously in possession of the said property as owner thereof, as alleged by the Defendants?

(13) In case it is held that Defendant No. 1 was the bona fide purchaser of the property in suit what would be the effect of the sale in favour of Defendants Nos. 4 to 8 effected through the sale-deed dated the 1st of May, 1970 and to what

extent arc Defendants Nos. 4 to 8 bound by the everments contained in the written statement filed on behalf of Defendants Nos. 1 and 2? (Onus on the parties).

FINDINGS

Issues (1), (3)(7) and(11):

17. The central questions which arise in this case are comprised in these four issues. The case of the Plaintiffs is that the disputed property was purchased by H.H. Ripudaman Singh from his personal funds. It was his private property as distinguished from State property. The rule of primogeniture, according to Plaintiffs, applies to State property. It can never apply to the private properties of a ruler. It is fairly well settled proposition that rule of primogeniture applies only to State properties or impartible estate. It docs not apply to private properties which devolve in succession in accordance with the personal law of the person owning such property. M.K. Kharag Singh Plaintiff in his statement under Order 10, Rule 1, Code of Civil Procedure, made before this Courts on 19-6-1969, stated that the rule of primogeniture applied only to "Gaddi" of Nabha, meaning thereby that the said rule applied to the State properties and not to the personal properties. The contention of the Defendants that the rule of primogeniture applied to private properties is neither based on custom nor any law applicable to the State. There is no iota of evidence on behalf of the Defendants to prove such a custom. M.K. Kharag Singh (PW 6) stated on oath that the rule of primogeniture applied to the ''Gaddi'' of Nabha and similarly in other States the said rule applied to ''Gaddi'' properties. The learned Counsel for the Defendants suggested a question, in answer to which the witness replied:

I cannot tell if in other such States including Nabha, properties other than ''Gaddi'' or its properties, have gone to heirs other than the eldest in the family.

The learned Counsel for the Defendants wanted to make much out of this answer. In my opinion, this answer goes against the Defendants. The question suggested, as evident from the answer, was that in other States including Nabha, properties other than ''Gaddi'' properties have also gone to heirs other than the eldest in the family, that is to say against the rule of primogeniture. To this question the above-noted answer was given. It seems, therefore, the question put to the Plaintiff was to the effect that the rule of primogeniture does not apply to private properties and the witness said that he could not tell about it. Such a question could not be put by the Defendants because it is not their case in the pleadings. The least that can be stated is that either the Defendants were not sure of their case when they had put that question or they created a confusion in the mind of the Plaintiff and the answer was elicited which does not help any party. H.H. Partap Singh (DCW 2) was examined before a Commissioner. He stated that the rule of succession in his family was that of primogeniture when he ascended to the ''Gaddi''. He got all the property of the State being the ruler. According to him, there was no difference between him and the State of Nabha.

After the merger of the State with the Union of India, he got the disputed property as personal property by virtue of his being the Ruler of Nabha. Essentially, therefore, his defence was that the property was in his absolute ownership because of his being Ruler of the State. In fact, the Defendants have essentially relied upon this aspect of the plea. It is only casually that they have stated that the rule of primogeniture applied to all sorts of properties including private property of a ruler. As I have stated above, this could be either under some law or under some recognised custom. The Defendants have failed to adduce any evidence in this respect. Therefore, it can be stated to be an incontrovertible proposition that the rule of primogeniture in Nabha applied only to State properties. A joint Hindu family may also possess an impartible estate which is devolved by applying the principle of survivorship to the eldest member of the senior-most branch. Properties other than impartible in such family are treated as self-acquired properties of the members to whom they belong. Such properties always devolve in accordance with the personal law of inheritance. If it is a joint Hindu family, the private properties partake the character of coparcener property. The law of inheritance applicable to Mitakshra School applies to Sikh community and admittedly the Rulers of Nabha State belonged to that community. If Sterling Castle was the private property of H.H. Ripudaman Singh, it became joint Hindu family property in the hands of H.H. Pratap Singh and his brothers, and the Plaintiffs can claim a partition of such property.

18. I shall then advert to the contention of the Defendants that H.H. Pratap Singh by virtue of his being the ruler became absolute owner of private properties left by the late Ruler of Nabha. It is submitted by the Defendants that no distinction was maintained by the rulers between the State and private properties. In fact, such a distinction has been maintained all along. The Defendants in this connection also set up an alternative case that the disputed property having been acquired as private property under Article XII of the Covenant entered into by the Ruler with the Central Government for the formation of Patiala and Esat Punjab States Union (PEPSU), also made H.H. Pratap Singh its absolute owner. I shall take up the first case in the beginning. Article XII of the covenant (Ex. DCW. 2/1) runs as below:

Article XII:

(1) The ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as private property.

(3) If any dispute arises as to whether any item of property is the private property of the ruler or State property, it shall be referred to such person as the

Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned:

Provided that no such dispute shall be so referable after the 31st day of December, 1948.

The language used in the Article definitely indicates that private properties as distinct from State properties were in the use and enjoyment of the ruler from before. It is such user and enjoyment that decided about the classification. The ruler was required to furnish a list of such private properties. If a dispute arose, the same was to be referred to such person as the Government of India may nominate in this connection. It is significant that a third party is not specified in the Article who could intervene either in submitting the list or laying a claim for any property opposed to the list submitted by the ruler. It is, therefore, manifest that private properties were recognised even from before and only such properties were to be left out and list was to be submitted for their recognition as such. It can as well be that the ruler has only a share in such private property which otherwise belongs to his joint family, as is the case with the Sterling Castle. H.H. Sarojini Devi (CPW 1) whose statement was also recorded on commission, stated that her husband did maintain distinction between State and private properties. Nevertheless his properties even though private were looked after by the P.W.D. officials. According to Plaintiffs, that was an act of courtesy performed by the British Government so long as H.H. Ripudaman Singh was alive. Subsequently as it was customary, every property of the ruler even if private was looked after by the P.W.D. officials of the State. Similar management was in vogue during the regime of H.H. Pratap Singh. H.H. Sarojini Devi also stated that her father-in-law late Maharaja Hira Singh also possessed private properties which he owned as distinguished from State properties. In fact, she named one of such properties as Nabha Estate Simla. Narinder Singh, Assistant in the Ministry of Home Affairs, (DW. 1) came to state about the clearance of properties as private of the rulers. According to him, meetings used to be held and the rulers were required to submit lists. In the meetings the lists were discussed and decisions were made, presumably after considering the use and enjoyment of the respective property by the ruler. According to the witness, third parties were not informed of the proceedings, nor were they required to attend the meetings for such discussion. H.H. Pratap Singh (DCW. 2) of course stated that there was no distinction between State and private properties. The other alternative case of the Defendants that the clearance of the disputed property as private by itself created a title in favour of H.H. Pratap Singh is also devoid of any merit. It is settled proposition that third parties'' interests were not affected by any such transaction between the ruler and the Central Government. As I have stated before, the ruler was not made the absolute owner, but the property was taken outside the dominion of the Central Government. Other persons did retain their individual interest in the private properties. In fact the rulers themselves specified as to which were the properties which according to their prior user, treatment and source were to be held private. It is not correct to say that the conception of private property took its birth for the first time in 1949 with the merger agreement.

19. In the State of Nabha itself and during the regime of H.H. Pratap Singh, a distinction was maintained between State and private properties. There is documentary evidence in proof of this fact. On 3rd December, 1943, Gurdial Singh, Home Minister of Nabha, submitted a note (Ex. B) to the Chief Minister and in this note he mentioned about some ornaments and other articles which were the personal properties of the widows of the previous Rules of Nabha, known as "Mai Sahibas". It was mentioned that according to the practice in the past, all kinds of ornaments belonging to Mai Sahibas were entered into the books of ''toshkhana'' as there was no distinction between the ornaments belonging to the State and those belonging to the rulers and Mai Sahibas, as every thing was supposed to vest in the rulers. At the same time, the Home Minister pointed out that the ornaments belonging to rulers and Mai Sahibas were private and personal properties of the rulers and Mai Sahibas and those properties were to devolve upon the legal heirs of the owners. The legal heirs were naturally to be decided in accordance with the personal law applicable to the rulers and Mai Sahibas. Therefore, in 1943 when H.H. Partap Singh was the ruler, a distinction was made between the State property and private property of the ruler.

20. on 8th May, 1944 an indemnity bond (Ex.F) was given by H.H. Pratap Singh to the Imperial Bank of India to indemnify the said Bank of any possible damage or loss that might arise in the event of claim by the legal representatives to the estate of late Gurcharan Singh ex-Maharaja of Nabha. It is admitted case that H.H. Ripudaman Singh had also assumed another name of Gurcharan Singh sometimes after 1923 when he was deprived of his ruling powers. In this Indemnity Bond, H.H. Pratap Singh mentioned about the security belonging to the late Maharaja and held by them against which over-drafts were granted to the said deceased ex-Maharaja it is abundantly clear from this document that H.H. Ripudaman Singh possessed private and personal funds and was raising securities against them. The properties purchased from these private and personal funds were his own properties as distinguished from State properties. H.H. Pratap Singh recognised this distinction which was retained by the ex-Ruler. There is a letter dated 12th May, 1944 written by Gurdial Singh, Home Minister, to H.H. Sarojini Devi while she was in England. In this letter, the Home Minister wrote that the properties left by late His Highness were being wound up for the benefit of the heirs, i.e. H.H. Pratap Singh and other members of the ruling family and therefore two Government promissory notes which stood in the name of late His Highness were to be accounted for and the dowager Maharani had to give her consent. This letter again indicates that the properties left by H.H. Ripudaman Singh were being treated as private properties by H.H. Pratap Singh himself and other members of the Family. In fact, H.H. Pratap Singh found some difficulty and had to take legal advice from an Advocate of Madras Shri K.V. Srivasan and the legal opinion is dated 25th November, 1944 (Ex-F). He was

advised that they were governed in the matter of succession by the Mitakshra School of Hindu law. The legal opinion related to the properties left by the deceased Maharaja. This document again points out the conduct of H.H. Pratap Singh who was himself aware that he had to deal with the private properties of his father and that these properties belonged to all members of the family.

21. On 13th March, 1956 which is a date after merger, Shri Ranbir Singh, Chief Secretary of the Pepsu Government, wrote a letter to H.H. Pratap Singh and the subject matter was adjustment of old out standings of H.H. Ripudaman Singh. It was pointed out by Ranbir Singh that an amount of Rs. 4 lacs and odd was advanced against the estate of the late Maharaja and since the said amount was advanced against his personal property, which was subsequently declared to be the private property of H.H. Pratap Singh, the amount was to be debited in his account. The indication is clear that H.H. Ripudaman Singh possessed private properties and that the Defendants predecessor-in-interest H.H. Pratap Singh also treated them as private properties.

22. There is a letter Ex. P.W. 3/B dated 30th October, 1956 which was written by Shri Ranbir Singh, Chief Secretary, Papsu, to Shri Narayan Swamy, Deputy Secretary to the Government of India, Ministry of Home Affairs, and in this letter Shri Ranbir Singh mentioned about the objection raised by H.H. Pratap Singh for the expenditure of Rs. 4 lacs and odd out of the Nabha State treasury, as this amount was spent on litigation by him for realizing the assets including properties left by his deceased father ex-Maharaja Ripudaman Singh. Obviously H.H. Pratap Singh wanted that this expenditure should not be debited to the State but should be shared by all the members of the family who possessed specific shares in the properties left by his deceased father. According to H.H. Pratap Singh, the expenditure was incurred for the benefit of the entire family and not merely for the benefit of H.H. Pratap Singh or his personal family or the State of Nabha. He wanted that the expenditure be written off because the same could be levied upon the other co-sharers and not merely upon H.H. Pratap Singh who only owned a fraction of shares in the properties in respect of which this expenditure was incurred. The letter sent by H.H. Pratap Singh is dated 6th July, 1956 and is referred to in this correspondence. Since the letter contained an important admission of H.H. Pratap Singh, every effort was made by the Plaintiffs to produce it. Avtar Singh, Assistant Section Officer of the Punjab Civil Secretariat (P.W. 3) was asked to produce the original letter but he stated on 25th September, 1969 that the Chief Secretary to the Government of Punjab was claiming privilege in respect of that letter. The Court directed the Chief Secretary to produce the letter in original and only thereafter the question regarding privilege was to be decided. Subsequently Avtar Singh was again examined on 18th May, 1971 when he was expected to bring the original letter. To the surprise of everybody, he stated that the original letter was already destroyed on 30th May, 1969. It is incomprehensible how could Shri A.N. Kashyap, Chief Secretary of Punjab Government claim privilege for a document which did not exist on the record of the Secretariat? Thus the original letter having been destroyed was not

forthcoming. At any rate, there is ample proof to hold that H.H. Pratap Singh at one stage in 1956 claimed that the Plaintiffs and other members of the family were as much liable for the expenditure incurred in litigation for recovery of properties belonging to the late Ruler. This could only be when such properties were private and the Plaintiffs had a share in them.

23. When H.H. Pratap Singh started claiming the disputed property as his own, M.K. Kharag Singh wrote a letter dated 28th November, 1957 (Ex. P.W. 7/A) to Shri A.V. Pal, I.C.S. Secretary, Ministry of Home Affairs, and in this letter he wanted clarification as to whether his own interest as co-sharer in the property was lost by the mere declaration of the Government that Sterling Castle was in the private property list. The reply was received on 22nd December, 1957 (Ex. P.W. 7/B) from Shri V. Visvanathan, Secretary to the Home Ministry, that the interests of third parties were not prejudiced in any manner by the settlement of the property being declared as private property of the Ruler and they could seek redress in a Court of law against the Maharaja. All these documents decidedly prove that H.H. Ripudaman Singh was maintaining a distinction between State and private properties. H.H. Pratap Singh also maintained that distinction and even acknowledged certain properties to be the private properties of his father. He even admitted joint ownership over such properties with his brothers who are the Plaintiffs.

24. H.H. Ripudaman Singh was getting a privy purse of Rs. 3 lacs per annum. It was known as "Sarfa Khas". He was possessed of other personal funds. It is manifest, his relations with the British Government were not good and there must have been a cloud of mistrust between him and the paramount power of the British before 1923 when his ruling powers were withdrawn. It was therefore natural on his part to have safeguarded his private properties. He had to make arrangements for his wife and children. There is every indication that he jealously guarded his private properties including Sterling Castle. He would have been the last person to merge Sterling Castle with the State property so that it would devolve upon the eldest member of the family under the rule of primogeniture. It is settled law that property acquired from the income of impartible estate is self-acquired property and does not partake the character of impartible estate. Such property devolves in succession in accordance with the personal law applicable to the family. At this stage, I would take notice of a few authorities in support of this proposition. The earliest case referred to me in this connection is Janki Pershad Singh v. Dwarka Pershad Singh (40 IA 170). The Privy Council was dealing with succession to an impartible ''Taluq'' in Oudh where rule of primogeniture applied. It was found that certain villages were subsequently purchased from the income of the taluqdari estate and it was held that these villages formed partible property of the joint Hindu family. The following observation of the learned Judges in Hargovind Singh Vs. Collector of Etah and Another may significantly be noted:

Unless the power is excluded by statute or custom, the holder of a customary inpartible estate, can by a declaration of his intention, incorporate with the estate self-acquired Immovable property, and thereupon the property so acquired accretes to the estate and is impressed with all its incidents, including a custom of descent by primogeniture. The absence of any indication of intention to treat the acquired property as separate can lead to no inference of an intention on his part to incorporate them in the impartible raj. The mere fact of a joint account and joint employees being kept for the two estates is not sufficient to establish any intention to incorporate the self-acquired property with the parent estate.

The Defendants have emphasised that joint accounts were kept or joint employees looked after the disputed property and that by itself would indicate intention to merge the disputed property into the State. As evident from this authority, these incidents will be of no avail to the Defendants. Apart from this, specific intention to accrete the property to the impartible estate was required to be proved which has not been done. Unless such an intention is proved, the property acquired from the income of impartible estate would be treated as private property.

25. There is no presumption that when properties are acquired by the holder of an impartible estate, he acquires them with a view to incorporate them with the estate. When the holder of an impartible estate purchases a property, if the acquisition is made out of the income of the impartible estate it would, prima facie, be a separate property of the owner of the impartible estate unless by express declaration or by acts and circumstances and by necessary implication the intention to incorporate the said property with the impartible estate is made manifest see: Chaduragiri Kattari Nagayya Kamarajendra Ramaswami Kamaya Nayakkar v. Viralakshmi Ammal AIR 1940 Mad 814.

26. It was pointed out by the Defendants that the junior members of the family including the Plaintiffs were entitled to maintenance and separate living and thereby there was disruption in the joint family and they ceased to have any interest in the property of the Ruler. This argument has been negatived in Jitendra Pratap Bahadur Sahi Vs. Bhagwati Prasad Singh, . In fact, such a separation docs not imply even indirectly an intention on their part to severe their connections with the ruling branch. Unless there was a clear proof of an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate, there is no severance of the joint status. Mere separation in food, worship and residence is inconclusive to prove such a renunciation. It is, therefore, clear that the Plaintiffs merely by their separate residence, food or worship or even maintenance allowance paid to them by the State, never severed their connection with the ruling family. This would be qua State property and the right of survivorship was there had the occasion arisen. In respect of the property acquired out of the income of impartible estate, the previous Ruler was its absolute owner and owned it as his self-acquired property. No sooner he died, the family being joint the property partook the

character of joint Hindu family property. In the aforesaid Patna case, it was further held that the income of an impartible estate and the accumulations of such income are the absolute property of the holder of the estate. Self-acquisitions made with the savings of the estate do not become part of the impartible estate but remain the separate property of the holder. They arc not accretions to the estate as in the case of an ordinary joint family. It is further held in this very case that the onus to prove the special custom by which a self-acquired property of the last holder automatically becomes an accretion to the parent estate is on the person who asserts it. Therefore, it was for the Defendants to prove that by virtue of H.H. Pratap Singh being the Ruler, the disputed property became his State property, although it was acquired from the income of the impartible estate. The Defendants have miserably failed to discharge this burden placed upon them. In Sri Rajah Velugoli kumara Krishna Yachendra Varu v. Sri Rajah Velugoli Sarvagna Kumara Krishna Yachendra Varu AIR 1970 S.C. 1785 their Lordships of the Supreme Court have also held that the income of the impartible estate is the individual income of the holder of the estate and is not the income of the joint family. An impartible estate, though it may be an ancestral joint family estate, is clothed with the incidents of self-acquired and separate property to that extent. The only vestige of the incidents of joint family property, which still attaches to the joint family impartible estate is the right of survivorship which of course, is not inconsistent with the custom of impartibility. This would, of course, not be the case when the property is partible which is, of course, acquired from the income of the impartible estate. Such a property is always devolved upon successors according to personal law of the owner. The last case of this series is again of the Allahabad High Court reported in Raja Jogindra Singh Bahadur v. Balbhaddar Narain Mall 1971 A.L. J. 614. This case dealt with an impartible estate and property was acquired out of the income of such an estate. The Division Bench held that such a property would only be partible estate descendable by the rule of primogeniture if the holder of the estate has incorporated the property so acquired with that of the estate. The intention to incorporate could be express or implied. There is no evidence of such an intention in the present case and, therefore, the disputed property could not be considered to be an accretion to the State property.

27. The argument of the Defendants with reference-to the covenant in the merger agreement is answered to a great extent by several authorities including those of the Supreme Court which need be noticed at this stage. Ahmadunnisa Begum Vs. Union of India, is a case which directly arose out of a merger agreement. The Government of India had recognised H.E.H. Nawab Mir Barkat Ali Khan Bahadur as the sole successor to all the private properties, movable and immovable, held by the late Nizam of Hyderabad. A dispute arose between him and the other successors of the Nizam. A plea was raised by the successor that the private properties were recognised to be his own by the Government of India and a clearance certificate was given under a definite covenant of merger agreement. The learned Judges held that the scheme of the agreement between

the Ruler and the Government of India was to separate the State property and the private property, the State property being merged in the territory of India in lieu of which a privy purse was granted to the Ruler who was to enjoy it during his lifetime and which he may use for the maintenance of himself and the members of his family for performance of marriages and maintenance of palaces etc. This amount was under no circumstances to be increased or decreased. This amount was paid to the Ruler in recognition of the merger of the territory over which he ruled. Recognition referred to in any Article of the merger agreement has nothing to do with private property which must devolve in accordance with the personal law governing the Ruler. The Government of India was not concerned with the rights in any private property particularly the rights of third party therein. Even tenancy rights of ryots were preserved and the Nizam''s rights were made subject to the tenancy law. Thus the rights in respect of private property would be governed by the ordinary law of the land including the law of inheritance. Similarly it could not be said that a dispute arose out of the covenant or in respect of any term thereof so as to oust the jurisdiction of the Court by virtue of Article 363. In Ahmadunnisa Begum (supra), the following observation of their Lordships may also be noted in this connection:

It may be stated that prior to the integration in most of the States, there was no distinction between expenditure on the administration and the Ruler''s privy purse. Even where the Ruler''s privy purse had been fixed no effective steps had been taken to ensure that the expenditure expected to cover by the privy purse was not directly or indirectly charged on the revenues of the State, which amounts, therefore, were spent on the Rulers and on the members of the ruling families. Accordingly at the time of negotiations between the Rulers and the Government of India, the revenues of each State was taken as a criterion for fixing the privy purse. Only in the case of some of the viable States like Hyderabad, Mysore etc. a sum above Rs. 10,00,000 was fixed. Apart from this, the Nizam of Hyderabad had a jagir, known as Sarf-e-khas, whose revenues furnished the privy purse. This Sarf-e-khas was surrendered by him to the State in lieu of which the privy purse of Rs. 50,00,000 was fixed. In order to keep distinct the property which the late Nizam had given up and merged in the Hyderabad State, and his private properties including jewels, jewellery, ornaments, securities etc., Article II of the agreement declared the full ownership of such properties belonging to him, lists of which properties were furnished to the Government of India.

The Supreme Court has held in Kunwar Shri Vir Rajendra Singh Vs. The Union of India (UOI) and Others, that the act of recognition of Rulership is not, as far as the President is concerned, associated with any act of recognition of right to private properties. The necessary inference is that the covenant regarding private property in the merger agreement might be an Act of State in exercise of the executive power of the President, yet it; would not prove exclusive title of the Ruler qua private property against a third party''s interest. In that case their Lordships were considering a dispute regarding recognition of a Ruler under

Article 366(22) of the Constitution. Counsel on behalf of the Petitioner contended that the recognition of a Ruler itself instantaneously invested the Ruler with property and to Ruler-ship and property were blended together. It was held that it cannot be stated that recognition of Rulership is bound up with the recognition of private properties of the Ruler because the former is within the political power of the President and the latter is governed by the personal law of succession. Similarly, recognition of private property in a merger agreement would not mean recognition of absolute title in that property of the Ruler and a third party''s interest will not be affected. There are two other cases of the Supreme Court which need be noticed: H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, and The The State of Madhya Pradesh Vs. Smt. Shiv Kunwarbai, etc., In the first case which is popularly known as ''Privy Purse'' case, their Lordships held that by the merger agreements the Princes ceased to retain any vestige of sovereign rights or authority qua their former States. They acquired the status of citizen of India. As such the Rulers were governed by ordinary law. The observations made in this case help the Plaintiffs inasmuch as H.H. Pratap Singh would be treated an ordinary citizen and whatever private property was recognised in his favour under the merger agreement would be the property belonging to his family and shall partake the character of a joint family property if it was so during his Rulership, which is obviously the case as it was acquired from his father late H.H. Ripudaman Singh. Merely by being a Ruler and the property having been recognised as private property under the merger agreement, he would not be held to be the absolute owner and he would not deprive the interests of the Plaintiffs who were third parties. In the second case of The State of Madhya Pradesh v. Shrimati Shiv Kunwarbai etc., a valuable observation was made which I cannot do better than quating in the own words of their Lordships:

The fact that some only of the properties set forth in the declaration of 1st April, 1948 and claimed by the Ruler as private property ''were accepted as such'' by the Government of Madhya Bharat does not lead to the inference that all the other items of property in the said declaration were taken over by an Act of State. There must be some positive evidence of such Act. It is also possible that the list had wrongly included properties belonging to citizens of the State of Jhabua about which there was no adjudication. The records only show that out of the list of properties submitted by the Ruler, a certain number of them was treated by the Government of India as being his private properties. There was no finding with regard to the others that they appertained to the Ruler as distinct from his private property.

It could even be stated therefore, that properties which were not recognised as private could be claimed by third parties if they established such a claim in a Court of law.

28. As against these authorities, Shri Bakshi Sita Ram learned Counsel for the transferee-Defendants relied on The Hon. Mountsluart Elphinstone and Henry

Dundas Robertson v. Heerachund Bedreechund and Jelmel Anoopchund (I K.N.A.P.P., 316) and Ganpatray. Trimbak Palwardhan v. Ganesh Bajibhat (10 Bom 112). In fact, these two cases are clearly distinguishable. The observations made thereon would not at all be relevant to the facts and circumstances of this case. In I Knapp. 316, their Lordships of the Privy Council were considering a question of confiscation of alien properties, i.e. properties belonging to an enemy, and in that connection they observed that there was no distinction between State and private properties and hence the act of confiscation was justified which was necessary to put down a state of mutiny which existed at Poona. In the instant case we are not dealing with the properties of an alien, nor can it be stated that the Plaintiffs are not citizens of India. They are equally entitled to share the properties belonging to them in which they have a joint share with another co-sharer. The other case 10 Bom 112 was dealing with the property of a chief of Kagwad whose successor had questioned the tenancy rights granted to the Defendants. According to their Lordships the tenancy rights were not defeated even if the property had devolved upon the British Government because resumption of tenancy rights could not take place at any stage. One of the arguments was that the land was private property of the chief of Kagwad and in that connection their Lordships observed that no distinction could be drawn between the public and private property of an absolute chief. As I have stated before, the crux of the matter was that tenancy rights were not supposed to extinguish even if the property was public or private, so long as it was resumed by the British Government and the tenancy rights were recognised as such. Therefore, the observation of their Lordships was made in entirely a different situation which is hardly pertinent to the enquiry set out in this case.

29. It is not difficult to infer certain broad propositions which arise in this case. It has been recognised by authorities that Rulers did possess private properties which they kept distinct from State properties. There is definite proof in the instant case that the Ruler of Nabha possessed private properties of which he was the private owner as distinguished from his ownership for State properties. The rule of succession governing private properties is governed by the personal law of the owner. It would be entirely wrong to suggest that the conception of private property of a Ruler took its birth for the first time due to merger agreement. The declaration of a private property under a covenant of merger agreement was the result of prior consultation with the Ruler depending upon the user and enjoyment of the property. The payment of privy purse was referable to the State property of which the Ruler deprived himself. In the private property thus cleared in the merger agreement, the other members of family being third parties, had their own interest. The rule of succession regarding private property recognised as such under merger agreement is governed by personal law of the Ruler. Similarly if such a private property was in occupation of the Ruler as joint Hindu family property which he got from his father, the rule of succession to such property would be governed by the personal law with which the father of the Ruler was governed. Article 363 of the Constitution will not debar a third party

from filing a suit for recovery of his share in a property cleared as private property of a Ruler.

30. I would now refer to the statements of witnesses including that of H.H. Pratap Singh in order to know as to what do they state regarding this recognition of private property of a Ruler. The Plaintiffs were, of course, aware that the disputed property was cleared as private property of H.H. Pratap Sing H.H. Pratap Singh (D.C.W. 2) stated significantly in this connection that he had not become the owner of the disputed property by virtue of the covenant. Rather he was the owner from before. In this manner he disowned the case of the transferee-Defendants that any title was conferred upon the Ruler solely on the basis of the merger agreement. M.K. Kharag Singh (P.W. 6) stated that upto 1923 the disputed property used to be managed by the P.W.D. officials of the State and thereafter it was managed until 1928 by the personal staff of his father. Subsequently it was again managed by the P.W.D. officials of the State. In fact that was the practice prevalent in Nabha and all the private properties of the Ruler used to be managed by the P.W.D. officials of the State. Between 1923 and 1928 this management was also done as an act of courtesy by the British Government. This is so stated by M.K. Kharag Singh (P.W. 6). This witness very much affirmed that H.H. Pratap Singh applied for letters of administration in respect of the properties left by his father. This act on the part of H.H. Pratap Singh also indicates that he treated properties inherited from his father as private properties even during his Rulership. M.K. Kharag Singh further stated that a civil suit was filed by his mother at Dehra Dun which related to the private properties of his father. H.H. Pratap Singh was a party to that suit and a judgment deciding that suit is also filed in this Court. According to M.K. Kharag Singh (P.W. 6), the ex-Ruler was not showing proper accounts and that is why in 1957 the dispute started about ownership. Thereafter they wrote to the Municipal Committee for making the entries. H.H. Sarojini Devi (C.P.W. 1) stated that H.H. Pratap Singh had taken loan before merger against security of the private properties of H.H. Ripudaman Singh. At that time he had consulted the witness and the loan was taken with her consent. H.H. Pratap Singh, according to dowager Maharani, had taken a loan of Rs. 50,000 from her brother Ranbir Singh. This H.H. Pratap Singh could only do when he was treating the properties as belonging to his father in which he had a defined share along with other members of the family. Otherwise he would not have consulted the dowager Maharani and there was no occasion for giving the properties under security for such debts. Similarly H.H. Sarojini Devi stated that her son the ex-Ruler had filed applications for letters of administration or succession certificates which related to the assets received from his father H.H. Ripudaman Singh. The ex-Ruler had again consulted her before he filed those applications. According to the witness, he had given his application as ''Karta'' of the family. H.H. Pratap Singh (D.C.W. 2) admitted that he did submit some application for letters of administration or succession certificate in respect of the assets of his late lather H.H. Ripudaman Singh. Why should he do so if he was the absolute owner of the properties by

virtue of his being the Ruler of the State? All this evidence indicates that the Rulers of Nabha used to possess private properties which devolved upon their family members according to the rule of succession recognised by their personal law.

31. I shall then pointedly refer to Sterling Castle in order to find out as to whether it was acquired as a private property by H.H. Ripudaman Singh. There is dependable evidence both factual and circumstantial to prove that Sterling Castle was purchased out of the Sarfa Khas of H.H. Ripudaman Singh and was always treated by him as his private property. For this, the Defendants have no case to plead as they are totally unaware as to how the property was acquired and who acquired it and what was the consideration paid for it. With this state of pleadings, it is almost one-sided case in favour of the Plaintiffs and they have succeeded in establishing that the property was acquired by H.H. Ripudaman Singh for a consideration of Rs. 3 lacs which he paid out of his personal funds. As I have stated before, the main contention of the Defendants has been that whatever might be the source of consideration, once the property was acquired by the Ruler, it became his absolute property because of his being a Ruler, as the conception of private property would be a misnomer in a sovereign State. This plea of the Defendants is thrown over-board not only by judicial decisions enumerated above but by other evidence, both documentary and oral, which does go to show that the Rulers possessed private properties which devolved upon their heirs as distinguished from State property which devolved according to the rule of primogeniture.

32. M.K. Kharag Singh (P.W. 6) stated that H.H. Ripudaman Singh purchased the disputed property from Sardar Setole at a cost of Rs. 3 lacs. The sale-deed was executed in the name of Dr. Tehl Singh because the British Government did not approve, as a policy, that the Rulers should purchase properties outside their respective States. According to M.K. Kharag Singh, the sale-deed has all along remained in the possession of his mother. He filed the original sale-deed (Ex. 6. A) and also the envelope (Ex. 6. B) which contained the sale-deed. The address on this envelope is in the handwriting of Dr. Tehl Singh which was proved by H.H. Sarojini Devi and this envelope all along remained with the Maharani. All this proves that the property was purchased out of personal fund and H.H. Ripudaman Singh wanted to retain it as his private property. According to M.K. Kharag Singh, the possession never remained with Dr. Tehl Singh who was only a ''Benamidar''. A suggestion was made to M.K. Kharag Singh while he was in the witness-box by the learned Counsel of the Defendants that the disputed property was given to H.H. Pratap Singh as part of privy purse. This was an entirely new plea which was set up for the first time during the course of suggestion made to the witness. It appears, therefore, that the Defendants were groping in the dark and were setting up pleas without any foundation. H.H. Sarojini Devi (C.P.W.1) stated that her husband''s four mothers were very rich, meaning thereby that sufficient personal fund was under the control of H.H. Ripudaman Singh. According to her, H.H. Ripudaman Singh used to purchase properties outside the

State and the sale-deeds were obtained in the names of different persons. Dr. Tehl Singh was a friend of the family. The disputed property was purchased in his name. The British Government did not favour the Rajas purchasing properties outside the State limits. The consideration was Rs. 3 lacs and the amount was brought by Her Highness who handed it over to H.H. Ripudaman Singh who paid it to Sardar Setole. This amount was paid in cash and was out of the Sarfa Khas or pocket money of H.H. Ripudaman Singh. The Maharani further stated that Dr. Tehl Singh sent the sale-deed to her husband by post. She had retained the envelope containing the sale-deed since then. The consideration, according to her, was paid out of his personal funds unconnected with the State property. This statement of the dowager Maharani is worthy of credence and cannot be dislodged by H.H. Pratap Singh who gave not only halting and hesitating statements but also suppressed patent truths which go a long way to discredit his testimony. The dowager Maharani further stated that in 1950 H.H. Pratap Singh approached her for advice and stated that a deed of relinquishment should be obtained from Dr. Tehl Singh so that the title is safe-guarded. She had consented and H.H. Pratap Singh himself obtained the deed of relinquishment from Dr. Tehl Singh which he kept with him. That is the reason why the original deed of relinquishment is not forthcoming. The document was summoned from H.H. Pratap Singh, but he refused to produce it. In this deed of relinquishment the shares of the Plaintiffs were recognised and accepted by Dr. Tehl Singh and through him by H.H. Pratap Singh, who got that document executed. The dowager Maharani significantly stated that the States were being disintegrated and she had naturally to safe-guard her interest and the interests of her sons. That is why she claimed accounts from His Highness Pratap Singh and the dispute started in 1957. When asked about the accounts maintained by His Highness Ripudaman Singh for Sarfa Khas, she admitted that no such accounts were maintained, nor any entry of Rs. 3 lacs was made anywhere which were spent in the purchase of the property. Why did not the Defendants themselves produce some entry from the State accounts so that the Court would have known as to who had really purchased the property? It was not difficult for the Defendants to have procured such an entry if really the disputed property was purchased from State funds.

33. Now I shall refer to the statement of H.H. Pratap Singh which, to my mind, is not a straight forward one so that explicit reliance cannot be placed on it. H.H. Pratap Singh stated that he did not even know Dr. Tehl Singh, which fact is ruled out as the latter was a close friend of his father. When asked about the details of his own sale which he made in favour of the Defendants 1 and 2, he gave fantastic answers. According to him, the sale consideration must be mentioned in the deed and that he does not remember the price. He does not remember the year when the property was sold. He cannot tell if the sale-deed was executed prior to or after his filing of the objections before the Municipal Committee regarding mutation in favour of the Plaintiffs. At the same time, he admitted that he received the entire sale consideration. Perhaps he concealed these facts

because he sold the entire property at a meagre price of Rs. 50,000. This property was purchased at Rs. 3 lacs in 1921 and one can imagine that in 1962 the price must have been a number of times more than Rs. 3 lacs at which it was originally purchased. This is again a circumstance to prove that H.H. Pratap Singh had only a limited share in the property and he obtained Rs. 50,000 which he considered sufficient for himself, little caring for the shares of others and of course he delivered possession of the entire property to the Defendants. H.H. Pratap Singh showed utter ignorance as to who purchased Sterling Castle and in whose name it was purchased and from where the consideration was paid. He docs not know from whom and at what price this property was purchased. He has not seen the original deed. At the same time he stated that the Nabha State purchased it, which is neither here nor there. He did not examine any record to know as to who purchased the property and what payments were made by way of sale consideration. He was shown the sale-deed and he pretended ignorance by saying that he could not tell if it related to Sterling Castle. He could not deny that the property was purchased in 1921 at a cost of Rs. 3 lacs, nor could he deny that the property was purchased in the name of Dr. Tehl Singh. The witness again pretended ignorance by saying that he could not tell the amount of Sarfa Khas drawn by his father up to 1923 when he was made to leave the Nabha State. In other words, he admitted that Sarfa Khas was drawn by H.H. Ripudaman Singh and according to the Maharani it was at the rate of Rs. 3 lacs per annum. H.H. Pratap Singh also denied that he obtained any legal opinion from Mr. Srivasan an Advocate of Madras. It is again a false statement because Such an opinion is produced by the Plaintiffs and is one of the documents filed in the case.

34. With this state of evidence, it is not difficult to hold that Sterling Castle was purchased for a consideration of Rs. 3 lacs. The sale-deed was written in the name of Dr. Tehl Singh who was ''Benamidar''. The consideration was paid out of the personal fund of H.H. Ripudaman Singh. The property was thus his private property as distinguished from State property.

35. The family history is almost admitted. H.H. Ripudaman Singh was deprived of his ruling powers in 1923 and thereafter he went to Dehra Dun where he stayed with his family. In 1928 he was formally deposed from the Gaddi and was exiled to Kodaikanal where he resided uptill 1942 when he died. Between the years 1934 and 1944, the Plaintiffs and their mother resided in England. In 1940 the Maharani came to India along with her eldest son, who was being made the Ruler, for his administrative training. In 1945 the entire family returned to India. The disputed property was all along managed by State officials either by way of courtesy of British Government or in accordance with the usual practice, as State officials managed both private and State properties of a Ruler. The Defendants have filed several documents to indicate that the entries in Municipal record always existed either in the name of Nabha State or in the name of H.H. Pratap Singh. At one time the State officials had also leased this property, in 1924. There was objection from the side of the Plaintiffs for correction of entries in the

Municipal records. There was a counter-objection from H.H. Pratap Singh. All these documents which shall be referred to presently, do not prove that H.H. Pratap Singh became absolute owner or that any ouster of the Plaintiffs took place being joint owners of the property.

36. Exhibits D. 1 and D. 2 are the documents which prove that the disputed property was cleared as private property under the merger agreement. To these documents, none can dispute, as it is admitted case that the property was cleared as private property of the Ruler in 1949. Ex. D. 3 is an assessment list for purpose of payment of taxes of the Municipal Committee for the years 1926 to 1965. The entries do not exist in the name of the Plaintiffs. On 16-5-1924 (Ex. D. 4) one F. Cook Major who was a State Engineer to Nabha, wrote to Secretary, Municipal Board, that the State property Sterling Castle '' fetched lesser rent and so the tax assessment be reduced. Similarly on 20-11-1924 (Ex. D. 5) F. Cook Major wrote to the Secretary, Municipal Committee, Simla that he was enclosing a copy of the lease to facilitate reduction of assessment for payment of taxes. Ex. D. 6 is a lease dated 12-10-1924 executed by Major Frank Cook on behalf of State for Rs. 3,500 per annum as rent. On 28-6-1950 (Ex. D. 7) the Pepsu Government wrote to the Secretary, Municipal Committee, that H.H. Nabha be entered as owner of the property as the same was cleared in the private property list. To a similar effect is another letter dated 21-5-1950 (Ex. D. 8). The letter Ex. D. 9, dated 18-5-1957 indicates when the dispute first started between the parties. H.H. Pratap Singh wrote to Secretary, Municipal Committee, that the property belongs exclusively to him and the names of the Plaintiffs should not be mutated. On 6-11-1957 (Ex. D. 10), the Secretary, Municipal Committee, wrote to the counsel of the Plaintiffs that the deed of relinquishment would not help them and that an order of a competent Court should be obtained for correction of entries. As I have stated before, these documents would not help the Defendants in any manner. His Highness Pratap Singh being the eldest male member was the "Karta" of the family. Even if the names of other members of the family were not entered in the Municipal papers that would not by itself deprive them of their share in the property. Her Highness Sarojini Devi (C.P.W. 1) stated that they had lived in the property in 1922 when her husband was alive, and so it could not be stated that the property was never in the personal possession of H.H. Ripudaman Singh. The witness H.H. Pratap Singh seems to be in a state of utter forgetfulness as his statement indicates. He does not remember when his brothers returned from United Kingdom if in the year 1945 of if in any other year. Of course, he remembered that in 1934 or 1935, all of them went to England and he himself returned back in 1940.

37. It was, therefore, proved that Sterling Castle was purchased out of the personal fund and was the private property of H.H. Ripudaman Singh. After his death, it became joint Hindu family property in possession of the dowager Maharani and her sons. Dr. Tehl Singh was never in possession and was not the owner. By way of abundant precaution, a deed of relinquishment was also obtained from him which was executed in favour of all the heirs of the deceased

Maharaja. If the property was State property, such a step would not have been taken. It was H.H. Pratap Singh who obtained the deed of relinquishment and he should have obtained it in his own name. H.H. Sarojini Devi admitted that Dr. Tehl Singh never paid any taxes for the property and had no concern with it. There is, however, some evidence to indicate that the name of Dr. Tehl Singh was used, with reference to this property, while dealing with the Municipal Committee. In this connection, refrence may be made to the statement of Kesari Chand, Superintendent (Tax), Municipal Corporation (D.W. 2). He stated that there was a letter in his file to indicate that in February, 1923, Dr. Tehl Singh wrote to the Municipal Committee that he had appointed one Miss Ida William as his agent for Sterling Castle. Similarly there was another letter dated 30th March, 1922, written by Miss Ida William saying that she had been asked by the Prime Minister of the Maharaja to look after the property. On 24th February, 1923, Dr. Tehl Singh again sent a letter to the Committee over which there was an endorsement in the handwriting of Miss Ida William that she had received the said letter of Dr. Tehl Singh in original for future guidance. It means, H.H. Ripudaman Singh had taken the precaution of making a pretence that Dr. Tehl Singh was the owner, presumably because he was afraid of the British Government. Nonetheless the ownership always remained with H.H. Ripudaman Singh.

38. It could not be stated that H.H. Pratap Singh was even a sovereign Ruler in 1942. He was given a Council of Ministers and one Englishman used to be his Chief Minister. He could not pass any independent order which had to be endorsed by all the members of the Council. Exhibit ''C'' dated 9-12-1942 is one of such resolutions of the meetings of the Executive Council and, besides the signatures of H.H. Pratap Singh, the signatures of one C.W. Smoth Chief Minister and other Ministers are also to be found. Therefore, whatever law Shri Bakshi Sita Ram quoted for a sovereign Ruler may not be relevant in the case of H.H. Pratap Singh in this context. M.K. Kharag Singh (P.W. 6) has also stated in this connection that his brother H.H. Pratap Singh was not given full ruling powers. H.H. Sarojini Devi (C.P.W. 1) stated that H.H. Ripudaman Singh was the sovereign Ruler. Unlike H.H. Pratap Singh, he had no Council of Ministers.

39. An interesting argument was put forward by Shri Bakshi Sita Ram that H.H. Ripudaman Singh or H.H. Pratap Singh could be deemed to have made a law within the meaning of Article 372 of the Constitution to declare this property as State property. The argument is neither here nor there, as it is totally unsupported by any evidence. Where is such a law made by the Ruler, which could only be under some recognised procedure of making law, the least being a gazette notification? It cannot be stated that H.H. Ripudaman Singh or H.H. Pratap Singh made any such law in respect of the disputed property. The argument culminates in a desperate attempt to safeguard the title of H.H. Pratap Singh so that the transferee-Defendant could be saved.

40. M.K. Kharag Singh (P.W. 6) could not tell if the taxes for this property were

paid by the State. Similarly H.H. Sarojini Devi (C.P.W. 1) could not deny that the taxes were paid by the Nabha State. At any rate, she did not pay any tax for the property. She admitted that the management was in the hands of the P.W.D. of the Nabha State. According to H.H. Pratap Singh, the property was never let out. If his statement is correct, no income was derived from the property. As I have already stated, mere management by the Nabha State officials which included payment of taxes by them, would not deprive the Plaintiffs of their share as that was not an act of ouster by H.H. Pratap Singh. The plea regarding adverse possession would, of course, be dealt with under Issues 8 and 12.

41. Shri Bakshi Sita Ram adumbrated upon a plea based on Article 363 of the Constitution. According to him, the covenant declaring the disputed property as private property could not be disputed in a Court of law as that was a matter arising out of the merger agreement. This contention was raised in a Supreme Court case Kunwar Shri Vir Rajendra Singh v. Union of India (supra) and it was held that such a dispute does not arise out of the covenant and Article 363 would be no bar. It is because the clearance of private property does not go to prove absolute title of the Ruler and third party''s interests arc not affected in any manner. The separation of private property from State property is done for the sake of convenience so that settlement is made with regard to State property with the Central Government and a privy purse is paid in lieu thereof. Some arrangement had to be made when once the sovereignty was surrendered in favour of the Central Government. A convenient arrangement was made between the Ruler and the Central Government. Even if a property was not cleared as private property, third parties could lay a claim upon such property. Therefore, any dispute raised by a third party that he owns a share in a property cleared as private property of the ruler could not be considered to be a dispute arising out of the merger agreement and as such there would be no bar of Article 363. In Ahmadunnisa Begum (supra), the Andhra Pradesh High Court took a similar view and the bar of Article 363 was not sustained for a civil proceeding questioning the right of a ruler to claim a private property to the negation of the claim over such property by third parties. Two more cases may be noted in this connection: The State of Rajas than v. Sawai Tejsinghji Maharaja of Alwar AIR 1969 Raj 52 , and Joginder Sen Vs. The Union of India (UOI), In the Rajas than case, there was a dispute between the State Government and the ruler in respect of a particular property as to whether it belonged to the ruler or the State and the dispute related to the merger agreement. It was held that such a dispute was no hit by Article 363. Article 363 is to be construed strictly so that a citizen of India is not denied the opportunity, except when the case strictly falls under this Article to get his right adjudicated and decided by a civil Court and obtain any relief which he may be found entitled to. In the Himachal Pradesh case, a similar view was taken. The Raja of Mandi had entered into an agreement of merger and the dispute arose with the Government as to whether a certain item of property was the private property of the Raja. The decision of the dispute inevitably referred to merger agreement. It was held that Article 363 was not applicable as the dispute

was beyond its ambit and scope. Therefore, the argument of Shri Bakshi Sita Ram is devoid of any merit. It is also evident that the plea regarding Article 363 was not even raised in the pleadings. However, the learned Counsel insisted that such a plea could be raised at any stage of the suit and hence I permitted it to be raised and apparently decide it against him.

42. M.K. Kharag Singh (PW 6) stated that the family is governed by the Mitakshra law of Hindu succession. The witness was managing the other private properties situate at Dehra Dun and Mussoorie for which the civil litigation had started at Dehra Dun. He admitted that they were separately messing and that maintenance used to be granted to the other members of the family. He also accepted, as did H.H. Pratap Singh, that property was never let out and so there was no occasion of accrual of income from the property. H.H. Sarojini Devi also stated that other private properties existed at Dehra Dun and Mussoorie and also at Nabha which is known as Hira Mahal Palace, in which she claimed a share. H.H. Pratap Singh being the ''Karta'' of the family would be deemed to be in possession on behalf of the members of the family. The property in dispute being joint Hindu family property, the succession would be governed by the Mitakshra law and not by the rule of primogeniture. This is so because the property was a separate property of H.H. Ripudaman Singh.

43. The Defendants have also contended, although in a lukewarm manner, that the property was sold for the benefit of the State. There is hardly any evidence to substantiate this plea and the proposition has only to be stated to be rejected. H.H. Sarojini Devi (CPW 1) stated that the family was never in need of funds, nor there was any necessity to dispose of any property.

44. The Plaintiffs have set up alternate cases as they claim tenancy-in-common with H.H. Pratap Singh or joint ownership as members of joint: Hindu family. They have also another alternative plea that if Dr. Tehl Singh is held to be the owner, he has relinquished the property in favour of all the family members. They have succeeded in proving that the property became a joint Hindu family property after the death of H.H. Ripudaman Sing H.H. Pratap Singh was the ''Karta'' of the family. The Plaintiffs have a share and can claim partition to settle their dispute once for all.

45. It is, therefore, proved that the dispute property was purchased by Maharaja Ripudaman Singh ''Benami'' in the name of Dr. Tehl Singh on December 21, 1921 and that the property in dispute became joint Hindu family property in the hands of the Plaintiffs as well as Maharaja Pratap Singh. The rule of primogeniture never applied to the property in dispute. That rule in fact applied only to the State property. H.H. Pratap Singh never became absolute owner merely because he was declared Ruler of Nabha State. As Such all these issues are decided in favour of the Plaintiffs, Issues (8) and (12):

46. The contention of the Defendants has been that H.H. Ripudaman Singh lost his title because he was out of possession from 1928 to 1942 and that H.H.

Pratap Singh acquired adverse title against the Plaintiffs as he was in possession all along over the property. As already held by me, H.H. Pratap Singh was ''Karta'' of the family. His possession was on behalf of all the co-sharers. There is absolutely no evidence of ouster so that the title of the Plaintiffs could be stated to have been lost. During the year 1957 there was correspondence (Exs. PW 6/c to PW 6/g) between the Plaintiffs and the Municipal Committee and they were contesting the claim of H.H. Pratap Singh. Similarly notices were served upon Municipal Committee, the Sub-Registrar, Simla and H.H. Pratap Singh himself. On 31-3-1961 (Ex. PW 1/1) an application was given for permission to sue H.H. Pratap Singh. This was, of course, refused on 2-5-1961 (Ex. PW 2/1). The dispute started in 1957 when H.H. Pratap Singh did not give proper accounts and the dowager Maharani as well as the Plaintiffs wanted to safeguard their private properties. As there is no evidence regarding ouster of other co-sharers, H.H. Pratap Singh never became full owner, nor did the other co-sharers lose their title. H.H. Ripudaman Singh was in possession over the property either through his personal staff or through the P.W.D. officials of Nabha under courtesy of the British Government. He never lost his title as alleged by the Defendants.

47. Narinder Singh Manocha, Assistant in the Ministry of Home Affairs (PW 2) came to state about the permission to sue that was refused to the Plaintiffs. Shri F.C. Bedi learned Counsel for the Plaintiffs gave out under Order 10, Rule 1, CPC that the dispute started for the first time in the year 1957. M.K. Kharag Singh (PW 6) stated that they were living in the property as and when the family shifted to Simla. He further stated that H.H. Pratap Singh started claiming exclusive title from 1957. He stated that H.H. Pratap Singh was in possession as ''Karta'' of the family. He was not showing proper accounts and that is why the dispute started in 1957. H.H. Sarojini Devi (CPW 1) stated that the property was maintained by the P.W.D. staff as a matter of courtesy shown to them by the British Government. She also affirmed that the Plaintiffs resided several times in the property as owners and not as licensees. She stated that from 1957 H.H. Pratap Singh started claiming the property as his own. H.H. Pratap Singh (CDW 2), of course, stated that the Plaintiffs were never in occupation of the property. At the same time he said that he could not tell since when the Plaintiffs were living separate from him. When asked as to whether the Plaintiffs had served upon him a notice in 1957 asking for partition of the property, he answered that he did not remember about it. He was further probed to tell as to what prompted him to ask the Central Government to refuse permission for filing the suit against him. He replied that he cannot say regarding that. When further asked about his mother, he started saying that he could not deny as she must have resided with him in the suit property, and so his brothers and sisters and other children. In this manner, he admitted joint possession over the property at least for some period of time. He was again asked significantly that his relations with the Plaintiffs started turning bad from 1957. Out came the reply that he would not discuss family affairs in the present suit and therefore he would not answer the question. When the Court is dealing with such type of a witness, what inference

can be drawn except this that he was concealing the truth and did not want to state that he never claimed exclusive title for the property and rather acknowledged the claim of others and even treated it as joint Hindu family property.

48. The law as to ouster by one co-sharer of the rest is sufficiently laid down by authorities. In P. Lakshmi Reddy Vs. L. Lakshmi Reddy, their Lordships held that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heirs title. The burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession. Applying these tests to the present dispute, it is easy to hold that H.H. Pratap Singh never ousted the Plaintiffs so that they lost their title in regard to this property.

49. There is another facet of the argument concerning the ouster plea. Admittedly H.H. Pratap Singh was not liable to be sued by the Plaintiffs as the permission to sue was refused by the Central Government. How could the title be acquired by adverse possession, when the Plaintiffs were incapable of filing a suit against him? This incapability of a rightful owner to sue was noticed in Dwijendra Narain Roy Vs. Joges Chandra De and Others, The statute does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when the Plaintiff could first have maintained his action to a successful result. Therefore, H.H. Pratap Singh could not be stated to have acquired adverse title against the Plaintiffs. The suit is not barred by time, nor can it be stated that H.H. Ripudaman Singh had lost his title as against H.H. Pratap Singh on the ground that he was out of possession as alleged by the Defendants. Both the issues are, therefore, decided against the Defendants and in favour of the Plaintiffs. Issue No. (2):

50. It has been established that Dr. Tehl Singh had no right or title over the property in dispute. The deed of relinquishment written by him is nonetheless an important piece of evidence to set at naught the case of the Defendants. If the property belonged absolutely to H.H. Pratap Singh, no such deed of relinquishment would have been obtained. There is dependable evidence to prove that the deed of relinquishment was obtained by H.H. Pratap Singh himself for which he also consulted his mother. Thus there was no material effect with reference to title by the execution of the deed of relinquishment. Nonetheless it

is a document to establish that the property was private property of H.H. Ripudaman Singh and the Plaintiffs had a share in it which was also acknowledged by H.H. Pratap Singh who obtained the deed of relinquishment.

The issue is decided in favour of the Plaintiffs.

Issues Nos. (5) and (6):

51. It is manifest the Plaintiffs and the Defendant No. 3 have a share in the property in dispute. These shares are easy to find by the application of Mitakshra law of succession. The widowed Maharani and the three sons had one-fourth share each. The share of M.K. Gurbaksh Singh devolved upon his own heirs who are his mother (Plaintiff No. 1), sons and daughters (Plaintiffs 3 to 5) and the widow (Defendant No. 3). They shall all share equally out of one-fourth share of M.K. Gurbaksh Singh. In this manner, the property is to be divided amongst the heirs in the following shares:

(1) H.H. Sarojini Devi .... One-fourth plus one- twentieth share.

(2) H.H. Pratap Singh .... One-fourth share.

(3) M.K. Kharag Singh .... One-fourth share.

(4) Plaintiffs 3, 4, 5 and Defendant No. 3 .... One-twentieth share each.

52. It was submitted on behalf of the Defendants that the other private properties should have been brought into hotch-potch before the relief of partition could be claimed. For this, a reply can be found in, Mst. Hateshar Kuar v. Sakaldeo Singh 1969 Supreme Court Short Notes, Vol. II, Item 548, p. 349. The rule requiring inclusion of the entire joint estate in a suit for partition is not a rigid and inelastic rule which can admit of no exception. Normally speaking, it is more convenient to institute one suit for partition of all the joint properties and implead all the interested co-sharers so that multiplicity of suits is avoided. But this is a rule dictated by considerations of practical convenience and equity and may justified be ignored when, in a given case, there are cogent grounds for departing from it. There was already a dispute in 1963 for the Dehradun property. Sterling Castle has been purchased by strangers and it is not necessary to bring in the hotch-potch all other properties in which these strangers have no right or claim which need be divided by metes and bounds. Therefore, it would rather be against practical convenience if other properties are brought in and Sterling Castle is partitioned along with them. That may not be even necessary in the circumstances. Apart from this, the Defendants have not succeeded in pointing out as to which private property has remained, so that it could be conveniently brought within the folds of this suit. This is a plea taken by hit rather than wit on behalf of the Defendants. It would not go to defeat the suit.

53. Issue No. (6) is, therefore, decided against the Defendants while the Plaintiffs and Defendant No. 3 have defined shares which have been enumerated above in the property in dispute.

Issue No. (4) and (13):

54. The Defendants 4 to 8 have set up a plea of bona fide purchaser for value and without notice, and as such claim protection of their title. It is significant that no such plea has been raised by the Defendants 1 and 2 and the subsequent transferees cannot set up a plea which has been given up by Defendants 1 and 2. Apart from this, the plea itself is not sustainable. While giving his statement under Order 10, Rule 1, Civil Procedure Code, the learned Counsel for the Defendants 4 to 8 very much stated that it was not within the knowledge of Defendants 1 and 2 at the time of purchase that a sale-deed of 1921 existed in the name of Dr. Tehl Singh or that a deed of relinquishment was given by Dr. Tehl Singh in favour of other co-sharers in the property. Mr. justice Prithvi Raj of the Delhi High Court, the then counsel for Defendants 1 and 2 gave his statement in support of this plea. However, he admitted that he did not care to examine any other document, except the entries in the Municipal record and the certificate of clearance of this property as private property of the ruler. He does not recollect if he asked the purchasers to produce the original sale deed before him. He has no recollection if such a sale-deed was at all shown to him. Neither the sale deed nor the relinquishment-deed was brought to his notice. Ordinarily when a transaction of so much value is made, the record of Sub-Registrar is consulted in order to find out if any alienation is recorded therein. This was not done and it is surprising that no query was made as to what was the source from where the properly came in the possession of Nabha State. Even by a slight effort, the sale deed of Sardar Setole and the subsequent relinquishment-deed by Dr. Tehl Singh would have been disclosed to the learned Counsel or to his clients. Therefore, in my opinion, no attempt whatsoever was made to ascertain the title, and the Defendants 1 and 2 could not be considered to be bona fide purchasers.

55. On 2nd June, 1962 (Ex. PW 6/1), the Plaintiffs'' counsel sent a notice to Defendants 1 and 2 that they have not acquired any title from H.H. Pratap Singh and so the Plaintiffs were prompt in setting up their claim against the transferee-Defendants. The reply came on 15-6-1962 (Ex. PW 6/H). The only plea taken was that the purchase was made in good faith and with legal advice. The ingredients hardly made out a plea of bona fide purchaser for value and without notice. In the sale-deed itself (Ex. PW 1/3) the only title of the vendor disclosed was the clearance of the property as private property by the Raj Pramukh of Papsu and a letter was shown to the sellers wherein it was acknowledged that the property was declared private property of the Ruler. That was hardly a document of title and the purchasers should not have relied upon it. When H.H. Pratap Singh was asked as to what documents of title he had passed on to the purchasers, he gave the usual reply that he does not know what were those documents of title for which a mention was made in the sale-deed.

56. The Defendants 4 to 8 were, of course, purchasers lis pendens and their title is subject to the decision of the suit. Hem Raj Defendant No. 4 (DW 6) very much admitted that he had come to know from Lala Shankar Nath Advocate of

Defendants 1 and 2 that the suit was pending and of course about the pleas taken by the Plaintiffs. The Defendants 4 to 8 again saw the Municipal entries and also the letter clearing the property as personal property of the Ruler and decided to purchase it. The witness spoke lie when he said that he was unaware of the original sale-deed of 1921 or of the deed of relinquishment by Dr. Tehl Singh. Those documents must have been brought to his notice because the suit was already pending and these documents were mentioned in the pleadings. Similarly the witness had seen the letters which the Plaintiffs had written to the Municipal Committee in 1957 and in these letters all the details regarding title were mentioned. Therefore, Hem Raj Defendant does not improve the case at all in favour of the transferees.

57. It is not difficult to hold, in the circumstances, that the Defendants 1 and 2 were not bona fide purchasers for value without notice and their title was not protected. Similarly Defendants 4 to 8 do not derive any title against the Plaintiffs. As such issue No. (4) is decided in favour of the Plaintiffs and the sale-deed in favour of Defendants 1 and 2 is held to be invalid to the extent of the share belonging to the Plaintiffs and Defendant No. 3.

58. Similarly issue No. (13) is decided against the Defendants and they are not entitled to any protection on the plea of bona fide purchasers for value without notice.

Issue No. (9):

59. The Plaintiffs and Defendant No. 3 arc entitled to mesne profits from 30-1-1962 when H.H. Pratap Singh executed the sale deed in favour of the Defendants 1 and 2. They have claimed Rs. 5,000 as mesne profits up to the date of the suit and there should be no difficulty in granting that relief to them. In the plaint they have stated that mesne profits are due at the rate of Rs. 500 per mensem although they confine their claim to Rs. 5,000 for three years commencing from 1st February, 1962. The Defendants have merely stated that the Plaintiffs are not entitled to mesne profits and they do not deny the rate of mesne profits claimed by the Plaintiffs. Thus the amountn of Rs. 5,000 would be awarded to the Plaintiffs and Defendant Nos. 3 for the mesne profits. M.K. Kharag Singh (PW 6), however, stated that the property could easily fetch Rs. 1,000 per mensem as rent. The Defendant''s documents, the letter dated 15-5-1924 (Ex. D 4) and the lease-deed dated 12-10-1924 (Ex.D 6) both indicate that the property was capable of fetching at least Rs. 200 per mensem during those years. From this rate also, the mesne profits now would be very much justified at the rate of Rs. 500 per mensem. The main house is double-strayed. There is another double storeyed cottage. There are numerous servant quarters and independent cottages.

60. Considering the value of the property which is decidedly of several lacs, the mesne profits claimed at the rate of Rs. 500 per mensem are rather on the low side. But regard can be had to the annual repairs and also to taxes paid for the

property and so net mesne profits at this rate may be held to be justified. As such the suit can be decreed for mesne profits at the rate of Rs. 500 per mensem from the date of the institution of the suit until the delivery of possession is granted after partition to the Plaintiffs and the Defendant No. 3.

Issue No. (10):

61. The Plaintiffs are, therefore, entitled to a relief of partition of Sterling Castle estate. Their respective shares as well as the share of Defendant No. 3 have been enumerated under Issues (5) and (6). The property shall be divided by metes and bounds and the Plaintiffs as well as the Defendant No. 3 would be given possession over their respective shares. The share of H.H. Pratap Singh would, of course, be given to Defendants 4 to 8.

62. The Plaintiffs and Defendant No. 3 would be granted a decree in their favour for mesne profits of Rs. 5,000 for the period prior to the institution of the suit. The Plaintiffs and Defendant No. 3 would be entitled to mesne profits at the rate of Rs. 500 per mensem for subsequent period until the date when possession is delivered to them.

ORDER

63. The suit is decreed and a preliminary decree for partition of the disputed property (Sterling Castle) and recovery of mesne profits, therefore, is granted in favour of the Plaintiffs and Defendant No. 3. A Commissioner shall be appointed to partition the property in accordance with the shares specified by the Plaintiffs by metes and bounds, and he shall deliver possession to the Plaintiffs and Defendant No. 3 and the Defendants 4 to 8. The said Commissioner shall also ascertain the mesne profits for the period pendentlite and future at the rate of Rs. 500 per mensem and shall fix up the amounts due to the Plaintiffs and Defendant No. 3, which shall be recoverable from the Defendants 1 and 2 and Defendants 4 to 8, with reference to respective dates of sale deeds in their favour. The amounts of mesne profits thus ascertained by the Commissioner shall be payable to the Plaintiffs and Defendant No. 3 by the Defendants 1 and 2 and Defendants 4 to 8 with reference to the dates of their respective sale deeds.

64. The Plaintiffs and Defendant No. 3 shall pay court-fee for the mesne profits pendent lite and future thus awarded to them, before they realise the amount. The Defendant No. 3 shall pay further court-fee for the relief of partition of her share for which a decree has been granted in her favour.

65. The Plaintiffs and Defendant No. 3 shall get a decree of Rs. 5,000 for mesne profits against the Defendants 1 and 2.

The Plaintiffs shall get their costs from the Defendants 1, 2 and 4 to 8.

