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(1977) 07 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Suit No. 6 of 1970

Narbir Singh — APPELLANT

Vs

The Union of India (UOI) and Others — RESPONDENT

Date of Decision : 25-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1, 151 , 80
Constitution of India, 1950 — Article 143, 226, 291, 32 , 336(22)
Specific Relief Act, 1963 — Section 34

Citation : (1977) 6 ILR HP 501

Hon'ble Judges : T.U. Mehta, J

Bench : Single Bench

Advocate : Kedarishwar, for the Appellant; Chhabil Dass, S.S. Ahuja, H.S. Thakur, B. Sita Ram and J.R. Thakur and A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, J.—The Plaintiff above named Shri Narbir Singh has filed this suit for obtaining a decree for declaration that the decision given by the President of India holding that he is not the original heir of late Maharaja Rajinder Parkash of Sirmur and that ruler ship of Sirmur State has lapsed, is null and void and ineffective as against him. The Plaintiff claims that he alone is the original heir and successor to the entire estate left by the late Ruler of Sirmur State, Maharaja Rajinder Parkash, who has died on 6-11-1964.

2. It is an admitted fact that the late Maharaja Rajinder Parkash of Sirmur was the Ruler of Sirmur State as recognised by the President of India under Article 366(22) of the Constitution. It is found that after his death question of succession to the Gadi arose and at this time the Plaintiff filed serveral representations to different authorities including the President of India for getting his recognition as Ruler of Sirmur State under Article 366(22) of the Constitution. According to the Plaintiff, the late Maharaja of Sirmur died without leaving any male heir, and since the succession to the Gadi of Sirmur is governed by the rule

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of primogeniture as per custom and usage prevailing in the royal family, and since he is the only co-lateral who, according to the said usage and custom, is entitled to succeed to the throne, the President of India while acting under Article 366(22) of the Constitution ought to have recognised him as the Ruler. According to the Plaintiff, however, the President, in total disregard of the custom and usage prevailing in the royal family of Sirmur as regards the rule of primogeniture, has held that the line of succession has ended, and the Gadi of Sirmur has lapsed. According to the Plaintiff this action of the President is in violation of Article 5 of the agreement of merger which the late Ruler entered into with the Dominion Government. This Article 5 on which reliance is placed by the Plaintiff is in the following terms:

The dominion government guarantees the succession according to law and custom to the gadi of the State and to the Maharaja''s personal rights, privileges, dignities and titles.

3. The Plaintiff further alleges that though he had made several representations for getting recognition as a successor to the Gadi according to the custom and usage prevailing in the family, the President has not given him any opportunity to be heard in the matter, and since property worth lakhs of rupees is involved including the right to receive privy purse as a Ruler, the President''s action is illegal and ultra vires, and should be declared as such.

4. There is no evidence available from the record of this case to show actually on what date the President arrived at his decision. However, from the written statement filed by the union, Defendant No. 1, it appears that the above referred decision of the President was announced in the Lok Sabha in reply to some question on 5-4-1967. The Plaintiff, however, claims that he came to know about this decision only when he received Annexure ''F'' by which an Under Secretary to the Government of Himachal Pradesh wrote letter dated 8-1-1970 to the Plaintiff as under:

I am directed to refer to your application dated the 19th November, 1969, addressed to the Secretary to the Government of India in the Ministry of Home Affairs, on the above subject, and to say that your claim for succession to the Gaddi of Sirmur State was duly considered and rejected by the Government of India. However, I am further to inform you that no person has been recognised as the Ruler of Sirmur State in succession to his Highness the late Maharaja Rajinder Parkash of Sirmur, meaning thereby that the rulership of Sirmur State has lapsed.

5. After receiving the above letter the Plaintiff has instituted this suit on 21-3-1970.

6. The suit of the Plaintiff is resisted on merits by all the Defendants. Defendant No. 1 is the Union of India while the Defendant No. 2 is the State of Himachal Pradesh. Defendant No. 3 Maharani Durga Devi is the senior wife on the late Mabaaja, while Defendant No. 4 is the sister of the late Maharaja. Defendants

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Nos.5 and 6 are his daughters. Defendant No. 7 is said to be the ''sarotra'' son, that is, a son be-gotten through a lady who was not the wedded wife of the late Maharaja. Defendant No. 8, Udeyvir Singh is said to be the adoptcd son of the deceased. The adoption is said to be made by Defendant No. 3 Maharani Durga Devi, senior wife of the deceased. Originally Raj Mata Madalsa Devi, the mother of the deceased Maharaja, was also joined as a party to this suit. But after the institution of this suit she died and therefore, her legal representatives were brought on record.

7. The Defendants have raised certain legal contentions and these legal contentions are kept as preliminary issues. These contentions are that the present suit is barred by the provisions of Article 363 of the Constitution, that since the President of India has taken a decision in exercise of the powers which he has got under Article 366(22) of the Constitution, this Court has no Jurisdiction to reopen that decision, that the suit is barred by time, that the suit is not properly valued and, therefore, court fees paid are deficient, that the suit is bad for multifariousness, that the suit has become infructuous in view of 26th Amendment to the Constitution of India which came into force after the institution of the suit, and that statutory notice contemplated by Section 80 of the CPC is defective with the result that the suit is liable to be dismissed-on that ground. All these contentions of law have been recorded in seven issues which are treated as preliminary issues. These seven issues are as under:

1. Is the suit barred in view of the provisions of Article 363 of the Constitution?

2. Did the President of India take decision regarding the subject matter of the suit, in exercise of his powers under Article 366(22) of the Constitution? if so, has the court no jurisdiction to reopen that decision?

3. Is the suit barred by time, as alleged?

4. Is the suit not properly valued and the court fee paid is deficient?

5. Is the suit bad for multifariousness, as alleged?

6. Has the suit become infructuous in view of the 26th Amendment of the Constitution of India? If it liable to be dismissed on that account?

7. Is the notice u/s 80, Civil Procedure Code, defective for the reasons Stated? If so, its effect?

I find that there is one more issue about the frame of the suit and it is issue No. 8 which is as under:

Whether a mere suit for declaration is maintainable in respect of the property in dispute?

Since even this issue goes to the root of the question I have added it to the list of preliminary issues and have heard the learned Advocates of the parties even on that issue with the result that first 8 issues out of the issues framed by this

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Court are required to be determined at this stage.

8. It is the issue No. 1 with regard to the bar of Court''s Jurisdiction contemplated by Article 363 of the Constitution, which is most material in this case, and this is more so, because if we have a look on the plaint, it will be evident that the whole suit of the Plaintiff is nothing but a claim as regards the rights and benefits which would accrue to the Petitioner, if he is declared to be the Ruler of Sirmur State by the President under Article 366(22) of the Constitution. Since the President has not given this recognition, the Plaintiff has filed this suit for a declaration that the action of the President is illegal.

9. At the outset it should be noted that when the suit was filed, 26th Amendment to the Constitution was not carried out and, therefore, all the provisions as were found in Articles 291, 362 and 366(22) of the Constitution were in force as they were before the amendment. Article 291 provided for the charge of the amount of privy purses on the consolidated fund of India, and thereby gave a constitutional recognition to the right of a Ruler to receive privy purse and other privileges after he is recognised as such by the President under Clause (22) of Article 366. This Clause (22) of Article 366 was in the following terms:

''Ruler'' in relation to Indian States means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in Clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by President as the successor of such Ruler.

10. There are two articles to which reference would be proper at this stage. They are Articles 362 and 363. Article 362, as it stood at the relevant time, was recommendatory in nature, and provided that due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Article 291 with respect to personal rights, privileges and dignity of a Ruler whenever legislature makes laws or executive power is exercised. Article 363(1) with which we are much concerned in this suit is in the following terms:

(1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Government''s was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad, or other similar instrument.

An analysis of this Article shows that it puts bar to the interference by Courts in two types of disputes. These two types of disputes are contemplated by two

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limbs of this article. The first limb bars the Court''s jurisdiction in any dispute "arising out of any provision of treaty, agreement, covenant, engagement, sanad and other similar instrument". The second limb of the article puts bar to the courts jurisdiction in any dispute in respect of any right, liability or obligation accruing or arising out of "any provisions of the Constitution relating to such treaty, agreement, covenant etc." Thus the first limb contemplates disputes directly arising out of any covenant or agreement, while the second limb refers to disputes in respect of a right or liability arising out of any of the provisions of the Constitution, provided such a provision of the Constitution is "relating to" any such treaty, agreement or covenant as above referred to. Under the second limb, therefore, what is required to be shown is that right or liability in question not only arises out of the provisions of the Constitution, but also that such a provision of the Constitution "relates to" any treaty, agreement or covenant etc.

11. The above analysis of Article 363 shows that a Civil Court''s jurisdiction is barred if-

(1) The dispute directly arises out of a treaty, agreement or covenant etc., or

(2) the dispute is in respect of any right accuring under

any provision of the Constitution relating to such treaty, agreement or covenant etc., or

(3) the dispute is in respect of any liability or obligation arising out of any provision of the Constitution relating to such treaty, agreement or covenant.

Out of these three categories of cases the first category falls within the first limb of Article 363, while the second and third categories fall within the second limb of the said article. The crucial words in the second limb of the article are "provision of Constitution relating to treaty, agreement, covenant etc." These words are interpretted by the Supreme Court in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, (popularly known as Privy Purses case) as meaning "provisions having a dominant and immediate connection with". The Supreme Court has, in that case, made clear that these words do not connote a wide meaning of "having reference to". I shall advert to this aspect of the matter at a subsequent stage. But it would be sufficient at this stage to note that if the court finds that the dispute between the parties is in respect of any right or any obligation which accrues or arises out of a provision of the Constitution and if that provision of the constitution relates to a treaty, agreement or covenant etc., then the bar contemplated by Article 363 comes into play only if it is found that the above referred relation of the provision of the Constitution with treaty, agreement or covenant, has a connection which is dominant and immediate.

12. Now the contention which is raised on behalf of the Plaintiff by his learned Advocate is that, as held by the Supreme Court in Madhav Rao Scindia''s case, right to receive privy purse is an incident of rulership, and since the privy purse

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is a property, any decision given by the President of India under Article 366(22) of the Constitution involves the proprietary rights of the person who claims to be a Ruler, and if that be so, the action of the President of India under Article 366(22) is justiciable. In this connection the learned Advocate of the Plaintiff drew my attention to some of the observations made by Shah. J. (as he then was) who delivered the majority Judgment on behalf of seven judges in that case. It is particularly pointed out that while dealing with the plea of the Attorney General in that case that recognition of rulership was a gift of the President, the Supreme Court has rejected the plea by observing that the President is made by the Constitution a repository of the power to recognise the Rulers and this power should therefore be exercised consistently with and in aid of the Constitutional scheme. Dealing with this point the Supreme Court has further observed that power to recognise a Ruler should be exercised "having regard to the the custom and law governing the State if the Ruler dies, or becomes incapable of functioning or his recognition is withdrawn". It was pointed out that while interpretting the expression "for the time being" in Clause (22) of Article 366, the majority of the Judges has observed that the President is not invested under Article 366(22) with authority to accord a temporary recognition to a Ruler nor with authority to recognise or not to recognise a Ruler arbitrarily; the expression "for the time being" predicates that there shall be a Ruler of the Indian State, that if the first recognised Ruler dies, or ceases to be a Ruler, a successor shall be appointed, and that there shall not be more Rulers than one at a time.

13. Replying upon all these observations Shri Kedarishwar, the learned Advocate of the Plaintiff, contended that they enjoin upon the President of India to recognise some person as the Ruler because by the above referred observations the Supreme Court has declared the law as saying that no Gadi shall remain vacant and the institution of rulership shall not be allowed to be extinguished.

14. This argument was developed further by the learned Advocate of the Plaintiff by contending that if above is the correct position, the President has erred in declaring that succession to the Gadi of Sirmur State has come to an end and the rulership has lapsed. It was further pointed out that while deciding the question as to the recognition of rulership under Article 366(22) of the Constitution, the President was bound in law to take into account the solemn pledge given to the Ruler of Sirmur State by Article 5 of the merger agreement and, therefore, the President was bound to take into account the usage and custom relating to primogeniture as regards the succession to the Gadi. However, the President has not done so, and has come to the impugned conclusion on the ground that the Plaintiff was four degree remote to the late Ruler, and therefore, the line of succession ended and the rulership lapsed. According to the Plaintiff, therefore, in cases such as this, Article 363 has no application and the jurisdiction of this Court is not barred under that Article to consider the question raised in the suit.

15. On behalf of the contesting Defendants it is contended that the ratio of the decision of the Supreme Court in Madhav Rao Scindia''s case is not applicable to

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the facts of the present case because in this case the Plaintiff has not acquired any constitutional or statutory right, and would acquire these rights only if the President gives recognition as contemplated by Article 366(22). According to the Defendants, therefore, there is a clear bar of Article 363 to the Plaintiff''s suit looking to the facts pealded in the Plaint.

16. Since the arguments of both the sides revolve around the interpretation of the decision given by the Supreme Court in Madhav Rao Scindia''s case, I will immediately take up that decision for my consideration to find out how far the ratio of the majority decision in that case is applicable to the point under consideration.

17. So far as the first issue is concerned, it is confined only to the applicability or otherwise of Article 363 of the Constitution and, therefore, I will confine my reference to the decision of the Supreme Court above referred to only in so far as Article 363 is concerned.

18. The facts of Madhav Rao Scindia''s case show that a motion for the consideration of a Bill for the abolition of privy purses having failed to obtain the requisite majority in the Rajya Sabha, the President of India, purporting to exercise power under Clause (22) of Article 366 of the Constitution, signed an instrument withdrawing recognition of all the Rulers in India. It was the case of en mass de-recognition of all those who were already recognised as rulers, and who, as such, were entitled to receive different amounts as privy purses, charged on, and paid out of, the consolidated fund of India under Article 291 of the Constitution. The question which arose before the Supreme Court was whether this action of en mass derecognition of recognised Rulers was legally justified. A contention which was, inter alia, raised on behalf of the union in that case was that the right to claim rulership and privy purses was a political right, and the action taken by the President in de-recognising the Rulers was a political action relating to political treaties, covenant and agreement signed by Rulers and, therefore, there was a bar to Court''s jurisdiction under Article 363 of the Constitution.

19. The Supreme Court held by majority that the right to claim rulership and privy purses ceased to be a political right, the moment it was recognised by the Constitution, that it became purely a contitiutional right by virtue of the fact that these recognitions and de-recogngitions were pursuant to the power vested in the President by and under the Constitution as also by virtue of the fact that privy purse was a charge upon the consolidated fund under Article 291 of the Constitution, that such a vested right cannot be divested in an arbitrary manner as was done by the President, and that Article 363 had no application to such cases because that Article applies only where the action in question has "dominant and immediate connection" with any treaty, agreement or covenant and not where the action is in breach of a constitutional or a statutory mandate.

20. The question is what is the ratio of this decision so far as the applicability of

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Article 363 is concerned. In order to find out this ratio I will first take up for my consideration the judgment delivered on behalf of seven judges by Shah J.

21. While discussing the scope and ambit of the exclusion of Civil courts'' jurisdiction under Article 363 the majority judgment has explained the two limbs of this Article in paragraphs 128 and 135 of the reported judgment in the following words:

Exclusion of the jurisdiction of the Courts is emphasized by the non obstante clause with which the Article commences. Notwithstanding the investment of jurisdiction upon this Court by Article 32, notwithstanding the jurisdiction conferred upon the High Courts by Article 226, and notwithstanding the competence of all Civil Courts to decide disputes in respect of the obligations of the Union, it is declared that the Courts have no jurisdiction in respect of the two classes of disputes. The exception carved out of the exclusion in respect of the jurisdiction conferred upon this Court by Article 143 is not a real exception for the jurisdiction of this Court under Article 143 is merely advisory. The non-obstante clause, however, does not enlarge the field of exclusion of judicial authority.

And then in paragraph 135 the judgment observes as under:

The jurisdiction to try a proceeding is barred under the first limb of Article 363 if the dispute arises out of the provision of a covenant: it is barred under the second limb of Article 363 if the Court holds that the dispute is with respect to a right arising out of a provision of the Constitution relating to covenant.

The majority judgment then proceeds to consider whether any of the two limb of Article 363 applied to the facts of the case before the Court. While considering this question it is observed in Para 135 of the report as under:

A dispute that an order of an executive body is unauthorised, or a legislative measure is ultra vires, is not one arising out of any covenant under the first limb of Article 363, merely because the order or the measure violates of the rights of the citizen which, but for the act or measure were not in question. The dispute in such a case relates to the validity of the acts or the vires of the measure.

These observations show that, on the facts of the case before it, the Supreme Court thought that the bar of Article 363 did not apply to those facts because the dispute before it related to the very authority of the President to order en mass de-recognition of a recognised status in an arbitrary manner. According to the view taken by the Supreme Court in the above observations, if this basic authority to take such an action was lacking, and if the action was non-est in law, the dispute did not arise out of any covenant; it rather arose out of something which was void under the Constitution itself. As observed by Hidayatullah, C.J. in that case:

Where the President acts wholly outside the provisions of Article 366(22) his action can be questioned because the bar (under Article 363) applies on a bona-

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fide and legitimate action and not to ultra vires actions.

Now in the instant case which is before me, no question of the authority of the Presidents involved because it cannot be gainsaid that the power to recognise or to refuse to recognise a particular person as a Ruler under Article 366(22) was only with the President. The Plaintiff''s plea in the instant case is that by not giving recognition to any one as a Ruler the President has acted in violation of established custom and usage prevailing in the ruling family of Sirmur, and has thereby committed an illegality, as according to the terms of the merger agreement, Article 5, the right of succession to the Gadi was to be governed only in accordance with such a custom and usage. In other words, the action of the President is challenged in this suit not on the ground of want of any authority but on the ground of an illegality or of a wrong decision arising out of the breach of the terms of Article 5 of the merger agreement.

22. The question, therefore, is whether in cases such as this, where the dispute arises out of an alleged breach of an article of merger agreement, bar contemplated by Article 363 operates or not. In my opinion, if once it is found that the dispute does not relate to a breach of any constitutional or statutory provision of law, but relates to the alleged breach of an agreement of merger, it is impossible to escape from the bar contemplated by both the limbs of Article 363.

23. As already noted above, the first limb of this Article has reference to a dispute directly arising out of any provision of a treaty, agreement or covenant. In my opinion, the present is the case of such a dispute, as according to the Plaintiff, the President has acted in breach of Article 5 of the document called merger agreement which gives recognition to the ruling families'' custom and usage as regards succession to the Gadi. As held by the Supreme Court in State of Seraikella Vs. Union of India (UOI) and Another, if a dispute arises in respect of a document of such a description, and if such document has been executed before the constitution by a Ruler and which has or had continued in operation after the commencement of the Constitution, the court has no jurisdiction to determine such a dispute. In my opinion therefore, the first limb of Article 363 has direct application to the facts of the present case.

24. I further find that even the second limb of this article is attracted because the dispute which is raised in this suit by the Plaintiff becomes one which is in respect of a "right accruing under" or an "obligation arising out of" the provision of Constitution "relating to treaty, agreement, covenant etc." To me it is obvious that the dispute raised by the Plaintiff in this case is the dispute in respect of his alleged right to be recognised as the Ruler of Sirmur State as also in respect of the President''s obligation to give him the said recognition under Article 366(22) which is the provision of the Constitution and which is "relating to" Article 5 of the agreement of merger. The expression "relating to" appearing in the second limb of Article 363 is explainted in the majority judgment of Supreme Court in Madhav Rao''s case as meaning "having a dominant and immediate connection

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with" and not as meaning merely "having reference to". Thus, wide meaning of this expression is rejected by the Court (vide para 134). I find that even on the test of such a narrow meaning, there can be no doubt that the dispute raised by the Plaintiff has direct, dominant and immediate connection with the merger agreement and is, therefore, covered even by the second limb of Article 363. This position is made further clear by the following observations found in paragraph 135 of the reported judgment:

If the constitutional provision relating to a covenant is the source of the right claimed to accrue, or liability claimed to arise, then clearly under the second limb the jurisdiction of the Court to entertain a dispute arising with respect to the right or obligation is barred.

The question as to how Article 366(22) makes provisions "relating to" treaties, agreement, covenant etc. is very succinctly discussed by Hidayatullah C.J. in paragraph 70 of the separate judgment delivered by him in Mahadav Rao Scindia''s case. He says:

I shall now consider Article 366(22). That is only a definition clause. It is intended to point out who is the Ruler and of which State. It does so by saying that a Ruler is a person (a) who entered into a Covenant or Agreement before the commencement of the Constitution and the payment of any sum free of tax had been guaranteed or assured by the Government of the Dominion of India as Privy Purse or (b) the successor of such Ruler. For purposes of (a) the same repetition is again avoided by the same legislative device of referring to Article 291 for brevity. This Article renders the certainty of assumption of Rulership to depend upon recognition and that recognition is worked out primarily under Covenants and Agreements. The dominant and immediate purpose and application of the Article depends upon Covenants and Agreements. I have earlier said that the President in recognising a Ruler or withdrawing his recognition does no act arbitrarily but in the light of Covenants and Agreements. All such instruments mention law and custom of the family except the Bhopal Agreement where local statute has to be observed. The selection of a Ruler''s successor thus has to be worked out under a Convenant or Agreement. The Article, therefore, has for its dominant purpose the selection of Rulers through the application of the Covenants and Agreements. After the President has exercised his jurisdiction and power to recognise a Ruler according to his understanding of the implications of a Covenant etc., no one else has jurisdiction to enter upon the same question unless it can be proved that the act was null and void in to to when the President acts within the four corners of his authority the matter is barred by Article 363. If this were not so then the recognition of a Ruler or successor by the President would be subject to further confirmation by the Courts and that is not the meaning of Article 366(22).

These observations are not contrary to the above referred observations of the majority judgment delivered by Shah J. In fact, these observations of Hidayatullah C.J. are merely supplementary to the above referred observations of

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the majority judgment delivered by Shah J. That being the position, it is clear that bar of Article 363 applies in cases where in a potential right or a supposed right of a person to claim Rulership has not ripened into a constitutional right by the recognition to be given by the President under Article 366(22), with the result that no constitutional right to receive privy purse has also arisen in his favour under Article 291 of the Constitution.

25. Further it should be noticed that to insist on observation of custom and usage prevailing in the family of Sirmur Ruler under Article 5 of the merger agreement (as is done by the Plaintiff in this case), amounts to enforcement of a right flowing from that agreement. It also amounts to a claim to enforce the recognition by the President of a right of rulership under Article 366(22). Such an enforcement of a right is held as totally barred under Article 363 as is clear from the following observations of Shah J. in the above referred case:

A claim to enforce the rights, privileges and dignities under the covenants will therefore be barred by the first. limb of Article 363 and a claim to enforce the recognition of rights and privileges recognised by Article 362 will be barred under the second limb of Article 363. The jurisdiction of the Court will, however, not be excluded where the relief claimed is founded on a statutory provision enacted to give effect to personal rights under Article 362.

Explaining the mandate of Article 363 regarding bar to court''s jurisdiction the majority judgment of the Supreme Court has summarised the position as under in paragraph 142:

The Court will give effect to the constitutional mandate if satisfied that the dispute arises out of any provision of a covenant which is in force and was entered into or executed before the commencement of the Constitution and to which the predecessor of the Government of India was a party, or that it is in respect of rights, liabilities or obligations accruing or arising under any provision of the Constitution relating to a covenant. But since the right to the Privy Purse arises under Article 291 the dispute in respect of which does not fall within either clause, the jurisdiction of the Court is not excluded.

The concluding portion of the above quoted observations shows that in Madhav Rao Scindia''s case right to privy purse arose out of Article 291, and hence the dispute as regards that right did not fall within any of the two limbs of Article 363. That right arose out of Article 291 because the Petitioner of that case and other princes were already recognised as Rulers under Article 366(22). No such right has arisen in favour of the Plaintiff in this case for the simple reason that he is not a Ruler recognised under Article 366(22). He is yet to obtain that recognition. Till he gets the recognition as a Ruler, he has no right to a privy purse. If he has got any right "to be recognised" the source or the fountain of that right is only Article 5 of the merger agreement and not any provision of law under the Constitution or under any other statute. It is, therefore, apparent that the claim of the Plaintiff is covered completely by the provisions of Article 363

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which bars the jurisdiction of this Court.

26. More emphasis was placed by the learned Advocate of the Plaintiff on the observations of the majority judgment in paragraph 110 of the report to the effect that the expression "for the time being" in Clause (22) of Article 366 predicates that there shall be a Ruler of the Indian State, and that if the first recognised Ruler dies or ceased to be the Ruler, a successor shall be appointed. It was canvassed that these observations mean that the President can never come to a conclusion that rulership for a particular Gadi of a State has lapsed and that it is obligatory upon the President to find out a Ruler because the institution of rulership was considered to be a must before 26th Amendment to the Constitution was brought in. In my opinion, this argument arises out of some misconception about the context in which the majority has made the above observations.

These observations were made to meet the contention of the State that rulership was a gift of the President who enjoyed paramount power after the alien power left the land. These observations cannot be construed to mean that even if a particular line of succession is extinct, the President is bound to find out some body as a successor to the throne so that the institution of rulership would perpetually go on. In fact, nowhere in the decision of the majority one finds any observation which would deny the President''s power to decide not to give recognition to anybody as a Ruler if the President is of the opinion that line of succession to the Gadi has stopped to exist. However, I find that Hidayatullah C.J. has clarified this position in unequivocal terms by observing as under:

The continuity of a Ruler of an Indian State is obligatory so long as the Ruler is alive or a successor can be found. It may be that where the line becomes extinct (as happened in some cases) or no suitable successor could be found that no Ruler need be recognised." (vide para 49 of the report).

27. It follows from the above discussion that the first issue must be decided in favour of the contesting Defendants as the whole suit, which is nothing but the suit to claim rulership of ''Sirmur State is barred by Article 363 of the Constitution.

28. The second issue is whether the President has taken decision regarding the subject matter of the suit under Article 366(22) and if so, the court has no jurisdiction to reopen that decision.

29. Before I take up this issue for discussion I should note that after the hearing commenced and the learned Advocate of the Defendants referred to me to certain portions of the written statement filed on behalf of the Union, the learned Advocate of the Plaintiff made a complaint that he has not been supplied with any copy of the written statement which was read in court. He further submitted that the copy which he has received as the written statement of the Union is something else and does not contain many averments of facts which are found in the written Statement read over in Court. The copy which the learned Advocate

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of the Plaintiff showed from his possession was of some document purporting to be reply of the Union Government dated 14-5-1971. The written statement of the Union Government which is found in the file of this case is found to have been filed on 18-11-1971. It bears the endorsement of the Assistant Registrar showing that it was filed on 18-11-1971. I have made reference to the order sheet but I find that it makes no reference either of written statement dated 14-5-1971, the copy of which was in possession of the Plaintiff''s learned Advocate, or of the written statement dated 18-11-1971 which is actually found in the record of the case. That, however, is purely a mistake of the office of the Court. But the fact remains that the written statement which is actually found in the record of the case is the one which is filed on 18-11-1971. It is not possible to know how a copy of some other written statement dated 14-5-1971 has come in the possession of the Plaintiff. So far as the record of this case is concerned, the written statement which is filed on 18-11-1971 is in the record of this case since last about six years. Moreover, though the proceedings of the case make no reference as to the date on which written statement of the Union which is Defendant No. 1, was filed, I find that on 12-12-1971 that is after the written statement of the Union was filed on 18-11-1971, the Registrar of the Court has drawn the following proceedings:

The learned Counsel for the Defendants Nos. 3 to 7, 8 and 9 request for time to file written statement. The request is not opposed. Written statement be filed on 10-1-1972.

These proceedings show that the written statement of Defendant No. 3 to 9 were not filed. If, therefore, the written statement of Union was not filed on any prior date, reference to not filing of that written statement by the Union would have been made in this subsequent proceeding on 20-12-1971. I, therefore, reject the contention of the Plaintiff that this written statement of the Union is wrongly received in the file of this Court or is surreptitiously introduced in this file. In fact, this written statement was there in the record of this case for years together and the file of the court was open to the parties to this case for inspection for all these years.

30. However, in order that no prejudice would be caused to the Plaintiff, I have thought it proper to give the Plaintiff an opportunity to file rejoinder, if any, to the written statement of the Union which is filed on 18-11-1971.

31. I would now proceed to consider the merits of issue No. 2. The question is whether, when the President takes decision under Clause (22) of Article 366 of the Constitution, this Court has jurisdiction to reopen that decision. In order to determine this question the first point which requires the consideration is what is the nature of the action which the President is supposed to take while giving recognition under Article 366(22). Is it a judicial decision, or a quasi-judicial decision or an administrative decision of the President when he either gives recognition or refuses to give recognition to a person as a Ruler. The case of the Plaintiff is that the decision of the President under this clause of Article 366 is

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quasi judicial inasmuch as it affects the Plaintiff''s rights to receive certain properties including the privy purse. The Plaintiff has further contended that the right which he claims rests on the usage and custom of Sirmur State as regards succession to the Gadi and, therefore, if the President illegally refuses to take that right into consideration, the matter becomes justiciable and open to be revised by this Court. I find that these contentions omit to take into consideration the field in which the discretion of the President under Clause (22) of Article 366 operates. I have already quoted the provisions of Clause (22). There is nothing therein to suggest that the President is bound to take into consideration only particular facts such as custom and usage of the family in question. For coming to the conclusion that a particular person is fit for rulership a mere right to succession is not the all which the President is bound to take into consideration. For instance, even if the President finds that a partcular person is the direct descendant of a deceased Ruler, the President being guided by certain questions of public policy may refuse to give recognition to that person. Thus while exercising his discretion the President is not bound only by the rule of succession. His action is, therefore, purely administrative as no lis is involved in the decision which he is supposed to give under Clause (22) of Article 366. It is, of course, true that even in administrative decisions which have civil consequences, and which may act adversely to a person interested in the decision, rules of natural [justice should be complied with. The rules of natural justice have no set formula. As to what rule of natural justice should be followed in a particular case, and in what manner, depends principally upon the nature of the action required to be taken, the considerations which would serve as guide lines to such an action, and the legal provisions under which the action is required to be taken. So far as the facts of this case are concerned, it is an admitted position that the Plaintiff had submitted his representations drawing out his case as regards his claim to the rulership of the State. The President has taken these representations into consideration and has come to the conclusion to which he has arrived. This, in my opinion, is quite sufficient to comply with the rules of natural justice. The rules of natural justice do not provide that in every case, the person interested should be heard personally, or should be allowed to adduce evidence in support of his claim. The question of rulership being a question dealing with the public policy of the State, the resolution of that question is left advisedly by the Constitution framers to the discretion of the highest dignitary of the country, namely the President. Such questions involve public policy and should not be given the treatment which is given to ordinary litigation in court. In my opinion, therefore, unless it is shown that the action of the President is without authority, ultra vires, or non-est, the decision taken by the President acting under Clause (22) of Article 366 is not open to revision by a Civil Court. Therefore, issue No. 2 is decided accordingly.

32. In view of this decision on issue No. 2, I do not propose to refer to various averments made by the Union in its written statement showing what facts the President has taken into consideration in giving his decision under Clause (22) of

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Article 366.

33. The third issue is as regards the bar of limitation. There is no date available to show when the President actually has given his decision. But the Union of India relies upon some statement made in the Lok Sabha in the month of April 1971. It is, therefore, contended that the limitation begins from 5-4-1971. This contention is wholly unacceptable because the Plaintiff was not bound to take notice of the questions put in Lok Sabha. In fact, the Plaintiff has received the notice about the decision of the President as late as 8-1-1970. There is nothing in the record to show that before that date the Plaintiff knew anything about the decision of the President. Therefore, I hold that the suit is not barred by time.

34. The fourth issue is about valuation of the suit. If the suit is found to be proper as a declaratory suit, the court fees paid are also proper and not deficient.

35. Issue No. 5 is about the multifariousness. But it is not shown how the suit suffers from this defect.

36. Issue No. 6 is whether the suit has become infructuous in view of 26th Amendment of the Constitution. 26th Amendment of the Constitution was introduced pending this suit, and it is prospective in its operation and, therefore, the Plaintiff, if his suit is maintainable, would be entitled to claim his rights and privileges which accrued to him before 26th Amendment came into force, and if that be so, it is difficult to understand how it would become infructuous merely because 26th Amendment has come into force during the pendency of the suit.

37. Issue No. 7 is with regard to the statutory notice contemplated by Section 80 of the Code of Civil Procedure. The Union has not raised any contention with regard to this notice and after perusing the notice I do not find anything to show that the notice is in any manner defective.

38. The last issue which requires the consideration is whether a mere suit for declaration is maintainable. I have already referred to the relief which the Plaintiff has claimed in this suit. It cannot be disputed successfully that these relief claim anything more than a mere declaration. Section 34 of the Specific Relief Act says that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled. In such suit the Plaintiff need not ask for any further relief. However, this provision is controlled by proviso which is in the following terms:

Provided that no court shall make any such declaration where the Plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

The question is whether this proviso applies to the facts of this case. Now to answer this question we have to go to the record of the case. It should be noticed that initially when the plaint was originally filed, it gave no description of any property left by the deceased and contained no averment to show that the

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Plaintiff was in possession of this property. Thereafter several proceedings took place as regards interim orders and ultimately the Plaintiff amended his plaint and introduced the following paragraph as paragraph 18-A. This is in the following terms:

That on the death of Maharaja Rajindra Parkash Ruler of the Sirmur State, the Plaintiff being the sole heir to the late Maharaja has succeeded the Gaddi and to the suit property to the exclusion of anybody else and he is in possession of the suit property, but vide order of the Defendants Nos. 1 and 2 contained in Annexure ''F'' of 8th January 1970, a cloud has been cast on the rights of the Plaintiff, therefore, the Plaintiff submits that the order contained in Annexure ''F'' is wrong, illegal, null an void and without jurisdiction and it be declared so.

Relying upon the averments contained in this amended paragraph 18-A, it was contended on behalf of the Plaintiff that now the plaint as it stands clearly states that the Plaintiff is in possession of the suit property.

39. In ordinary course I would have been surely guided by the averments in the plaint but these averments are not the only averments in the record of the case as I find that during the course of miscellaneous petitions filed by the Plaintiff in order to get interim orders he has filed many affidavits. These affidavits clearly show that the Plaintiff is not in possession of practically any property left by the deceased. I will shortly refer to these averments. In O.M.P. No. 71 of 1971 the Plaintiff has prayed for an order under Order 39 Rules 1 and 2 of the CPC and while describing the subject matter of the application the Plaintiff has stated as under:

Application under Order 39 Rules 1 and 2 CPC and Section 151 CPC to the effect that the Defendants numbers 3 to 7 and Defendant No. 9 may kindly be restrained by temporary injunction not to alienate the property whether movable or immovable which belonged to the late H.H. Maharaja Ranjinder Parkash of Sirmur and which is now in possession of the said Defendants and to maintain status quo.

Reply to this affidavit and the rejoinders filed thereto reveal the same state of affairs. In fact, affidavit by way of replication which is filed in this O.M.P. No. 71 of 1971 by the Plaintiff makes the following averments which are evident:

Para No. 1 is denied. The suit is fully competent. The question of possession will be decided if and when any proper legal pleas in accordance with true facts are raised." (Para 1).

All properties of the late Maharaja is the subject matter of dispute in the suit and the allegations made in this para by the Respondents are not correct at all. All kind of properties are covered by the suit, and the Plaintiff is the sole heir and is entitled to the relief claimed by him regarding the entire property of whatever kind. The right of the Plaintiff is based on facts pleaded in the plaint and is not denied by any of the Respondents." (Para 3).

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...the Plaintiff being the only heir as submitted in the plaint is entitled to recover rent and other dues from the persons in possession of the various items of the property." (Para 6).

The Plaintiff is entitled to recover rent and profits being the sole successor and heir of the late ruler and the Defendants concerned have absolutely no right or interest in the property in dispute and the tenant and the bankers etc., are not willing to pay anything to them. The only relief i.e. open to the Plaintiff is by way of declaration, which he is seeking in the suit." (Para 6).

Thereafter the Plaintiff is also found to have filed O.M.P. No. 59 of 1976 to obtain an order for the appointment of a receiver under Order 40 Rule 1 CPC There in para 2 the Plaintiff has referred to certain properties as "in medio". These averments are as under:

That the landed property is in the possession of the Plaintiff through the tenants and properties like palace including out houses, Furniture, Toshakhana, Bhandar, Household office, Frashkhana and other buildings referred to in the list attached and situated in Nahan town are "in medio" because these properties are in the possession of the Plaintiff through the Manager and other employees who were employed during the time of late the Maharaja Rajindera Parkash of Sirmur State. Similarly the properties situate in Dehradun proper and in the villages as given in the list attached herewith are either "in-medio" or they are with the tenants. Moveable property like money in the Banks, Share in the various Companies, Oranments, Jewellery, Furniture and other articles mentioned in the list attached are also "in-medio" because they arc either in the banks or in the Toshakhana or with the various Companies. But the Defendants arc laying false claims to these properties thereby creating unnecessary disputes.

Thereafter in para 5 of that very petition the Plaintiff has alleged as under:

That the Plaintiff/Petitioner reasonably apprehends that the Defendants 3 to 9 are making secret deals in respect of the property in dispute, mutations are being got effected without notice to the Plaintiff, be-nami transactions are being entered into and even otherwise most of the properties are being wasted secretly. The Petitioner further believes that the movable property in the Toshakhana, in the Palace and in other residential houses of the late Ruler of the State are also either being pilfered, wasted or disposed of without any control from any quarter and the Manager or other persons who are incharge of such properties are acting in a manner as if they are not answerable to any one. In view of this vacum all those who are concerned with the management of the properties in one way or the other are wasting the property of the late Ruler and which property I have legitimately claimed in the suit.

40. All these averments are the averments made by the Plaintiff himself on oath before this very court. These averments leave no doubt in my mind that at least a substantial quantity of property regarding which the Plaintiff has filed this suit is not in his possession. Therefore, granting of a declaratory decree pure and

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simple would not dispose of the dispute between the parties, and this is found to be the case in which the above referred proviso to Section 34 of the Specific Relief Act applies as the Plaintiff is able to seek further relief, and hence his mere suit for declaration cannot be entertained.

41. This disposes of all the preliminary issues. The net result is that the Plaintiff? s suit is not maintainable under Article 363 of the Constitution and the provision to Section 34 of the Specific Relief Act. The suit, therefore, fails and the same is dismissed with costs. Interim orders passed by the Court stand vacated.

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