



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)
National Highways Authority of India
(Ministry of Road Transport and Highways, Govt. of India)

NHAI PIU –Shimla, House No. 1, Rishikesh Sadan, Shanti Kutia, Chakkar Shimla-171005, H.P.
Email: pdpiushimla@nhai.org; pdpiushimla@gmail.com | Phone: 0177-2633318



11008/3/2012/Forest/S-K/PIU-SML/2878

05th, Feb., 2025

To,

Nodal Officer-cum-APCCF (FCA),
Tolland, Shimla (HP).

Sub: Diversion of Forest Land measuring 2.4589 hectare in village Kathali for four laning of Solan to Kaithlighat section from R/D 127/450 to 128/250 in the state of Himachal Pradesh. (Proposal No. FP/HP/ROAD/120302/2021) reg. stage-II approval.

Ref: (i) Dy. Inspector General of Forest (C) letter no. nil dated nil uploaded on the portal on 30.09.2024.
(ii) This office letter no. 1120 dated 30.07.2024.
(iii) Dy. Inspector General of Forest (C) letter dt. 22.12.2023.
(iv) MOEF & CC, Shimla letter no. FC/HPB/06/13/2022 dt. 07.07.2022.

Sir,

This is in reference to Dy. Inspector General of Forest (C) letter no. nil dated nil uploaded on the portal on 30.09.2024 submitting vide which following observation was raised:

"State Govt. has uploaded the reply (i.e. uploaded on 16.08.2024) of earlier EDS which was issued on 22.12.2023. However reply of latest EDS which was raised on 15.07.2024 is not fund uploaded. Therefore, State Govt. shall ensure to upload the correct and legibly copy of the reply in respect to the EDS issued on 15.07.2024 with relevant/supportive documents, duly authenticated by Nodal Officer".

2. In this regard, it is submitted that this office vide letter no. 1120 dated 30.07.2024 provided its submission w.r.t the EDS raised by MoEF&CC vide letter dated 15.07.2024 (Copy enclosed) and same was also uploaded on the portal. However, the submission of NHAI w.r.t. EDS dated 15.07.2024 regarding subject cited proposal is once again reproduced as below:

Civil Court Kandaghat has decided the Civil Suit no. 57-K/1 of 2020 titled as State of H.P. through Additional Chief Secretary (Forest), Govt. of H.P vs Pankaj Kumar & Ors on 28.09.2023 & has passed the direction that *"The Suit of the plaintiffs is decreed and the Plaintiffs are entitled to a decree of declaration to the effects that they are the owners in possession of the suit land and the revenue entries showing the Defendant as owners in possession of the suit land are wrong, illegal, null and void. The Plaintiffs are alos entitled to a decree of Permanent Prohibitory Injunction restraining the Defendants from causing any interference in the ownership and peaceful possession in or over the suit land"*. Copy of the judgement enclosed.

3. Accordingly, it is requested to accord the Stage-II approval for the subject cited diversion case to this office please

Encl: As above


(Anand Kumar)
Project Director
NHAI, PIU-Shimla

Copy for information to:

- (i) Regional Officer, NHAI RO Shimla (HP)
- (ii) Divisional Forest Officer, Shimla Forest Division (HP).
- (iii) Conservator of Forest, Forest Circle Shimla (HP).



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)
National Highways Authority of India
(Ministry of Road Transport and Highways, Govt. of India)

NHAI PIU –Shimla, House No. 1, Rishikesh Sadan, Shanti Kutia, Chakkar Shimla-171005, H.P.
Email: pdpiushimla@nhai.org; pdpiushimla@gmail.com | Phone: 0177-2633318



11008/3/2012/Forest/S-K/PIU-SML//120

30th July, 2024

To,

Nodal Officer-cum-APCCF (FCA),
Tolland, Shimla (HP).

Sub: Diversion of Forest Land measuring 2.4589 hectare in village Kathali for four laning of Solan to Kaithlighat section from R/D 127/450 to 128/250 in the state of Himachal Pradesh. (Proposal No. FP/HP/ROAD/120302/2021) reg. stage-II approval.

Ref: (i) Dy. Inspector General of Forest (C) letter dt. 15.07.2024.
(ii) MOEF & CC, Shimla letter no. FC/HPB/06/13/2022 dt. 07.07.2022.


Sir,

This is in reference to Dy. Inspector General of Forest (C) letter dt. 15.07.2024 requesting therewith to intimate this office about the final outcome of the civil case pending before Civil Court, Kandaghat if stand decided.

2. In this regard, it is submitted that Civil Court, Kandaghat has decided the Civil Suit no. 57-K/1 of 2020 titled as State of H.P. through Additional Chief Secretary (Forest), Govt. of HP vs Pankaj Kumar & Ors on 28.09.2023 & has passed the direction that *"Plaintiffs are entitled to a decree of declaration to the effect that they are the owners in passion of the suit land and the revenue entries showing the defendant as owners in possessions of the suit land are wrong, illegal, null and avoid. The plaintiffs are also entitled to a decree of permanent Prohibitory Injunction restraining the Defendants from causing any interference in the ownership and peaceful possession in or over the suit land"*. Copy of judgment enclosed.

3. Accordingly, it is requested to accord the stage-II approval for the subject cited diversion case to this office please.

Encl: As above


(Anand Kumar)
Project Director
NHAI, PIU-Shimla

Copy for information to:

- (i) Regional Officer, NHAI RO Shimla (HP)
- (ii) Divisional Forest Officer, Shimla Forest Division (HP).
- (iii) Conservator of Forest, Forest Circle Shimla (HP).

State Vs. Pankaj Kumar and another

Type: Civil Suit

CIS Registration No. 27/2020

CNR No. HPSO080001462020

**IN THE COURT OF CHUNAUTI SAGROLI, CIVIL JUDGE
KANDAGHAT, DISTRICT, SOLAN, H.P.**

CIS CNR No. :HPSO080001462020

CIS Case Type : Civil Suit.

CIS Registration No : 27/2020

Civil Suit No.: 57-K/1 of 2020

Instituted On: 01.10.2020

Decided On 28.09.2023

In the suit of:

1. State of HP through Additional Chief Secretary (Forest)
Government of H.P.
2. The District Collector, Solan, District Solan, HP.

.....Plaintiffs

Versus.

1. Sh. Pankaj Kumar son of Sh. Ruder Dutt,
2. Sh. Tara Dutt son of Sh. Kripa Ram,
3. Sh. Rajinder Kumar son of Sh. Tara Dutt,
4. Sh. Vikas son of Sh. Lekh Ram,
5. Smt. Lajjya wife of Sh. Lekh Ram,
6. Sh. Anil Kumar son of Late Sh. Moti Ram,
7. Sh. Deepak Kumar son of Late Sh. Moti Ram,
8. Sh. Shankar Lal son of Sh. Durga Ram,
9. Sh. Som Dutt son of Sh. Nek Ram **(Now deceased through his LRs)...**
 - (a) Sh. Madan Lal son of Late Sh. Som Dutt,
 - (b) Sh. Ashok Kumar son of Late Sh. Som Dutt,
 - (c) Sh. Subhash son of Late Sh. Som Dutt,
 - (d) Smt. Meera wife of Late Sh. Som Dutt,
 - (e) Smt. Godawari mother of Late Sh. Som Dutt **(Deleted vide order dated 26.07.2022)**
10. Sh. Devender Kumar son of Sh. Nek Ram,
11. Smt. Godawari widow of Late Sh. Nek Ram **(Deceased through LRs already on record as 9 (a) to 9 (c)**
12. Sh. Jagdish son of Late Sh. Durga Nand,
13. Sh. Prem Dutt son of Sh. Durga Nand,
14. Sh. Om Prakash son of Sh. Durga Nand,
15. Smt. Dwarku wife of Sh. Durga Nand, **(Deleted by Court vide order dated 22.04.2022)**
16. Sh. Daya Nand **(Now Deceased through his LRs)**
 - (A) Sh. Ramesh son of Late Sh. Daya Nand.
17. Sh. Sushil Kumar son of Sh. Ram Krishan,
18. Sh. Dinesh Kumar son of Sh. Ram Krishan,
19. Sh. Surinder Kumar son of Late Sh. Bala Ram,

20. Project Director NHAI, House No. 1, Rishikesh Sadan
Shanti Kutiya Chakkar, Shimla-5.

....Defendants

**SUIT FOR DECLARATION AND PERMANENT PROHIBITORY
INJUNCTION.**

For the Plaintiffs	: Ms. Sushma Thakur, Ld. ADA
For Defendants No. 1 to 8, 10, 12 to 14, 17 to 19 and L.R.s of deceased Defendant No. 9 and L.R.s of deceased Defendant No. 11 and 16-A	: Sh. P.C. Sud, Advocate.
For Defendant No. 20	: Sh. Arvind Negi, Advocate vice to Sh. Balram Sharma, Advocate.

Defendant No. 9 dead.

**Name of Defendant No. 15 deleted from the array of parties
vide order dated 22.04.2022**

J U D G M E N T:

The present suit is a suit for Declaration and Permanent Prohibitory Injunction against the Defendants. The suit is filed by the Plaintiffs against the Defendants praying for a decree of Declaration to the effect that the Plaintiffs are the owners in possession of the land comprised in Khewat No. 1(min) Khatauni No. 1(min) Khasra No. 5, 287/6, 220, 319/290/240, 327/244, 248, Khewat No. 14 (min), Khatauni No. 15 (min), Khasra No. 4, 221, 321/241, 329/245, 247, Khewat No. 24 (min), Khatauni No. 30 (min), Khasra No. 317/289/239, 331/246, Khewat No. 22 (min) Khatauni No. 25 (min) Khasra No. 3, 323/242, 274/238, 315/275/238, Khewat No. 27 (min), Khatauni No. 39 (min) Khasra No. 2, 313/219, 325/243, 270/236, 311/268/218, 272/237, 233/249, Khewat No. 38 (min) Khatauni No. 61 (min) Khasra No. 287/1, 222, Kitta 26, area measuring 96-19 bighas entered in Jamabandi for the year 2015-16 situated in Mauja Kathli, Pargana Bagri Kalan, Tehsil Kandaghat, District Solan, HP (hereinafter referred to as the suit land). and further,

that the revenue entries showing the Defendants as owners in possession of the land mentioned above are wrong, illegal, null and void and thus, have no binding force upon the Plaintiffs. Furthermore, a decree of Permanent Prohibitory Injunction is also prayed for restraining the Defendants from causing any type of interference.

2. It is contended that the Plaintiffs are the absolute owners in possession of the suit land. Further, that the State of Punjab, predecessor in interest of the Plaintiffs was the owner in possession of the suit land comprised in old Khasra No. in Khewat No. 1(min) Khatauni No. 1(min) Khasra No. 5, 287/6, 220, 319/290/240, 327/244, 248, Khewat No. 14 (min), Khatauni No. 15 (min), Khasra No. 4, 221, 321/241, 329/245, 247, Khewat No. 24 (min), Khatauni No. 30 (min), Khasra No. 317/289/239, 331/246, Khewat No. 22 (min) Khatauni No. 25 (min) Khasra No. 3, 323/242, 274/238, 315/275/238, Khewat No. 27 (min), Khatauni No. 39 (min) Khasra No. 2, 313/219, 325/243, 270/236, 311/268/218, 272/237, 233/249, Khewat No. 38 (min) Khatauni No. 61 (min) Khasra No. 287/1, 222, Kitta 26, area measuring 96-19 bighas entered in Jamabandi for the year 2015-16 and the State of Punjab, the predecessor in interest of Plaintiff was owner in possession of the suit land comprised in old Khasra No. 5, 6, 220, 240, 244, 248, 4, 221, 241, 245, 247, 239, 246, 3, 242, 238/1, 249, 219, 243, 2, 236/1, 218/2, 237/1, 1 & 222 Kita -25 measuring 105-03 bigha, whereas the predecessors of the Defendants were recorded as non-occupancy tenants in revenue records upto the year 1977 till the mutations were attested in favour of Defendants No. 1 to 19. However, it is stated that in the year 1977, vide mutation No. 97 to 101 dated 04.03.1977, the land was attested in favour of Defendants No. 1 to 19. The copy of Jamabandi for the year 1981-82, 1985-86, 1990-91, 1995-96, 2000-01, 2005-06, 2010-11 are placed on record and it is contended that the suit land was attested in favour of

predecessors of Defendants No. 1 to 19 without any lawful authority and behind the back of the Plaintiffs. Further, that the ownership of the land had been vested in favour of the Plaintiffs/predecessor in interest i.e. State of Punjab and State of PEPSU and the suit land was classified as Class-II Forest as per erstwhile Patiala Forest Act, emarcated forest, D-48 Raikot Now, D-227 Raikot. It is averred that it got vested in the State of PEPSU vide mutations No. 55, 56, 57, 58, 59, 60, 61 and 66 dated 11.12.1957 and on the basis of the mutation No. 40, dated 04.01.1953 in the Official Gazette of PEPSU State, the Jungle was shown to be owned by PEPSU State. The copy of notification No. 40 is dated 04.01.1953. After the notification it is averred that the Forest Department conducted the survey and the suit land was specified at the spot and the suit land was identified on the spot by erecting pucca boundaries pillar numbering 25 to 48 which are still existing. However, all of a sudden, the revenue authorities while preparing Jamabandies for the year 1980-81, are said to have changed the revenue entries and depicted Pankaj Kumar son of Sh. Rudra Dutt, Tara Dutt son of Kirpa Ram, Ram Krishan son of Anant Ram as owners on the suit land without any basis and authority and against the entries of mutations 55, 56, 57, 58, 59, 60, 61 and 66 dated 11.12.1957.

3. Further that, a copy of Jamabandi for the year 1962-63 also clearly depicts that Punjab State is the owner in possession of the suit land which is recorded in the possession of Forest Department of HP. The Forest Department is said to be continuously maintaining the said land by raising plantation and protecting the forest from fires which have taken place from time to time. It is also stated that the land in question is in physical possession of the State of HP through Forest Department and the revenue record that depicts Defendants either as owners or as tenants are merely paper entries without any authority of law and the same are said to be illegal. The cause of action to the

Plaintiffs/State is said to have arisen when the land was acquired by NHAI for the purpose of four lane construction and the land in DPF 2 to 7 Raikot C-iii was coming within the alignment and when the Defendants were claiming compensation on the basis of being recorded as owners in possession of the suit land in the revenue record. It is stated that actually the land is owned by the State of HP which is possessed by the Forest Department on the spot and even boundary pillars are laid down which indicates the possession of Forest Department is still exist on the spot. The suit is valued for the relief of decree of declaration as ₹98/- while that for Permanent Prohibitory Injunction as ₹23/-. The suit land is situated in Village Kathli, Pargana Bagri Kalan, Tehsil Kandaghat, District Solan and said to be within the territorial jurisdiction of this Court. It is thus prayed that a decree of declaration be granted to the effect that the Plaintiffs are the owner in possession of the suit land and the Defendants have no right, title or interest over the same. Furthermore, a decree of declaration is sought to the effect that the revenue entries showing the Defendants as owners in possession of the suit land are wrong, illegal, null and void and the mutation No. 97 to 101 are wrong, illegal, null and void and without any jurisdiction. Furthermore, a decree of Permanent Prohibitory Injunction is sought for restraining the Defendants from claiming any right, title or interest in or over the suit land and also from causing any type of interference in the ownership and peaceful possession on any portion of the suit land. Further, a prayer is made that Defendant No. 20 NHA may be directed to be restrained from granting or releasing or sanctioning or disbursing the compensation amount in favour of Defendants No. 1 to 19.

4. In the written statement filed by Defendants No.1 to 8, 10 to 13, 17 to 19, preliminary objection as to locus standi, suit be barred by limitation, estoppel, maintainability, mis-joinder of cause of action have been made. On merits, it is contended that

the Plaintiffs are legal owners nor in possession of the suit land and it is vehemently denied that the State of Punjab was the predecessor in interest of the Plaintiffs or that it was the owner in possession of the suit land. The mutations, revenue entries in favour of the Plaintiffs, their predecessors in interest are said to be wrong, illegal, null and void and also the revenue entries depicting the Defendants and their predecessors as tenants at Will are also not admitted to be correct. It is pleaded that the Defendants are the owners in possession of the suit land from the very beginning and that the Revenue Agency on its own made such entries in a casual manner in favour of the Plaintiffs. The State Government is said to have never taken possession from the Defendants at any point of time. The mutation No. 55 to 61 and 66, dated 11.12.1957 and notification No. 40 dated 04.01.1953 are all denied. It is also stated that the notification was not published in a lawful manner. It is also averred that the Plaintiffs have filed the instant suit challenging the revenue entries after more than 66-67 years. It is denied that the wrong revenue entries came in the knowledge of the Forest Department during the month of April, 2015 when the suit land was acquired by NHAI. It is submitted that the Plaintiff No. 1 had in 1983 filed a revision petition before FC (Appeals) challenging the revenue entries and the revision petition was decided on 09.03.1993 but the Plaintiffs are said to have not challenged either the revenue entries or the order of FC till today and thus, the plea of the Plaintiffs of acquiring knowledge in April 2015 is said to be false and wrong. Thus, the suit is said to be time barred and the same is prayed to be dismissed.

5. In the written statement filed by Defendant No. 20 the preliminary objection as to maintainability has been taken and it is instead stated that the land in question is vested with the replying Defendants free from all encumbrances for construction of four lane/maintenance of National Highways. The rest of the

averments as made in the plaint are not denied and are said to be apart of record. It is also submitted that the development and maintenance of Highways is reflected in entry No. 23 of the Union list of the seventh schedule of Indian Constitution, 1950 and thus, it is a central subject. The suit is finally prayed to be dismissed.

6. In the replication filed the averments made in the plaint are re-iterated and re-asserted and those made in the written statements are denied. It is vehemently pleaded that the suit land is in ownership and possession of the Forest authorities on the spot. Hence, the suit is prayed to be decreed.

7 From the pleading of the parties following issues were framed dated **30.08.2022**:

1. Whether the plaintiffs are entitled for decree of Declaration to the effect that they are owners in possession of the suit land, as prayed for?.....OPP.
2. Whether the Plaintiffs are entitled for decree of Declaration to the effect that the revenue entries showing the Defendants as owners in possession of the suit land are wrong, illegal and not binding on the Plaintiffs in any manner, as prayed for?.....OPP.
3. Whether the Plaintiffs are entitled for decree of Permanent Prohibitory Injunction restraining the Defendants from causing any interference in the ownership and peaceful possession in or over the suit land, as prayed for?.....OPP.
4. Whether the Plaintiffs have neither any locus standi nor any cause of action against the Defendants, as alleged?..... OPD-1 to 8, 10 to 13, 16 to 19.
5. Whether the suit of the Plaintiffs is barred by

limitation, as alleged?.....OPD-1 to 8, 10 to 13, 16 to 19.

6. Whether the Plaintiffs are not in actual, physical possession of the suit land, as alleged?..... OPD-1 to 8, 10 to 13, 16 to 19.

7. Whether the Plaintiffs are estopped by their own acts, conduct, acquiescences, deeds and admission from filing the present suit, as alleged?.....OPD-1 to 8, 10 to 13, 16 to 19.

8. Whether the present suit is not maintainable in the present form, as alleged?.....OPD-1 to 8, 10 to 13, 16 to 19.

9. Whether the suit is bad for mis-joinder of cause of action, as alleged?.....OPD-1 to 8, 10 to 13, 16 to 19.

10. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction, as alleged?.....OPD-1 to 8, 10 to 13, 16 to 19.

11. Whether this Court has no jurisdiction to try the present suit, as alleged?.....OPD-20.

12. Relief.

8. I have heard the Ld. Counsels for the parties and carefully gone through the case file. For the reasons to be recorded hereinafter, while discussing the issues, my findings on the issues are as under:

Issue No. 1 : Yes.

Issue No. 2: Yes.

Issue No. 3 : Yes.

Issue No. 4 : No.

Issue No. 5 : No.

Issue No. 6 : No.

Issue No. 7 : No.

Issue No. 8 : No.

Issue No. 9 : No.

Issue No. 10 : No.

Issue No. 11 : No.

Relief : The Suit of the plaintiffs is **decreed** as per operative part of the judgment.

9. In order to prove their respective contentions the plaintiffs as well as defendants had led oral as well as documentary evidence. Discussed in brief the evidence of the parties are as under:

EVIDENCE ON RECORD:

10. **Pankaj Sharma son of Sh. Shankar Dutt Sharma, Junior Assistant, A/P Reader to SDM, Kandaghat.**

He has stated that he is working as Reader in the SDM office since May, 2022 and has proved the demarcated forest/suit land a D-227 Forest as per entry No. 3286/87 on his record. He has also proved the letters written by DFO Shimla to SDM, Kandaghat dated 16.07.2016 being letter No. 2451 to 2454. Further, letter written from DFO, Shimla to DC, Solan dated 22.12.2022 is proved as Ext.PW-1/B. In his cross-examination, he has stated that the Collector vide letter dated 16.07.2016 addressed to DFO, Shimla had stated that revenue record could not be corrected on the basis of a letter.

11. **PW-2: Sumit Verma, Record Patwari, SDM, Office Kandaghat, District Solan.**

He has proved the mutations No. 55, 56, 57, 58, 59, 60, 61, 66 (objected to on the mode of proof), Jamabandi of Mauja Kathli from Ext.PW-2/L to Ext.PW-2/P. In his cross-examination, he has stated that he is merely a custodian of the record who has no knowledge about the correctness thereof.

12. **PW-3: Smt. Shakuntla Devi, Urdu Translator, DC, Office Solan.**

She is stated that she is working as a Urdu Translator from the year 2016 and has proved the translated certified copy Ext.PW-2/A of mutation No. 55 and all other mutations.

13. **PW-4: Durga Dass, Senior Assistant, Office of Forest Department, Shimla (Rural).**

He has proved the copy of notification No. 40 dated 04.01.1953 as Ext.PW-4/A, boundary pillar D-27 as Ext.PW-4/B, compartment history Ext.PW-4/C, enlarged view of map as Ext.PW-4/D, compartment history of Rajkot jungle Ext.PW-4/E, misal haqiat Vikrami Samvat 1993-94 as Ext.PW-4/F. In his cross-examination, he has stated that he has no knowledge about the spot and has stated that there is no record in the office showing the dispossession of the Defendants from the suit land on conversion thereof to a forest. He has stated himself only to be a witness to record.

14. **PW-5: Gang Dutt Negi son of Maya Bhagat R/o VPO and Tehsil Sangla, District Kinnari, HP**

He has stated that he worked as a Forest Range Officer and now has retired and has been authorised by Chief Conservator, Shimla for tendering evidence. Authorization certificate is Ext.PW-5/A and his statement is Ext.PW-5/B in which he has admitted his signatures. In his cross-examination, he has pleaded his ignorance about the name of Chief Conservator Forest who authorized him. He merely stated that wrong revenue entries have been made in the Jamabandies against the Plaintiffs and feigned his ignorance about the knowledge of the wrong revenue entries. It is admitted that the Villagers use the suit land as the "ghasni" and a cattle grazing ground. He has admitted that the suit land was not a forest land prior to the notification and he pleaded his ignorance about the rights of Government over such land earlier. He also pleaded his ignorance about the proclamation and other proceedings in Village Kathli of Solan prior to the publication of the alleged

notification. He also feigned ignorance about the acquisition by PEPSU State. Regarding the plantation he stated that it did not take place at his time and has stated that it is true that the trees of *baan* and *cheel* can also get raised without any plantation on their own. He also stated that the *burjees* of the boundaries stand fixed sometimes in the past and were not fixed in his presence.

15. **PW-6: Satish Kumar son of Sh. Jagat Ram, Forest Guard, Shoghi beat.**

He has stated that the authorization certificate for leading evidence is Ext.PW-5/A. In his cross-examination, he stated that he remained posted in Theog Division from the year 2007 to 2011 after which he got transfer to Shimla Division and that he also remained posted in Taradevi Range in Shimla. Further, that the notification of forest took place on 04.03.1953 and at that time the land was a part of Punjab and PEPSU State. He pleaded his ignorance about the status of the suit land prior to settlement. He also stated that the Forest Department conducted no survey in his presence and no demarcation took place in his presence. He pleaded his ignorance about some part of the suit land being mortgaged and has denied that no eviction proceedings took place against the Defendants.

16. **PW-7: Shobha/Urdu Translator wife of Neelkamal, Office of DC Office Solan,HP.**

She has stated that she is posted as Urdu translator in DC Office Solan. Further, she has proved Intkal No. 56 as per Order dated 11.12.1957 as Ext.PW-7/A and Ext. PW-7/B. Similarly, Mutation No. 57 is proved as Ext.PW-7/C, order dated 11.12.1957 is D1, Mutation No. 60 is Ext. PW-7/E and order is Ext.PW-7/F. Field Book of Mauja Kathli is proved as Ext.PW-7/G/ translated copy, Shajra Kishtwar as Ext.PW-7/H. Mutation No. 55 is proved as Ext.PW-7/J.

17. **PW-8:Reena Devi, Forest Guard, Tara Devi, Range**

Totu, Tehsil and District Shimla.

She has stated that she is posted as Range Assistant since 2016 and has proved the record of plantation in the forest D-227 Raikot in March, cash-book of 2004 as Ext.PW-8/A, cash-book of July, 2013 as Ext. PW-8/B, of September as Ext.PW-8/C and plantation voucher from Ext.PW-8/D to Ext.PW-8/H, letter from NHAI dated 06.10.2022 as Ext.PW-8/J, Letter received from DFO, Rural Shimla as Ext.PW-8/K dated 24.07.2023. The documents are objected to . In his cross-examination, he has stated that all these documents are not written down in his hand, nor signed by him, self-stated that they are signed by R.O. and she pleaded ignorance about the R.O. in 2004. (with respect to digging of land for plantation) it is stated that no receipts for making payment to Nepali labourers have been placed on record and further, that mere perusal of record is not sufficient to ascertain that plantation has been done on which Khasra number. She pleaded her ignorance about the name of the labourers from whom the work of pit digging was secured, although, some of them are said to be permanent local residents of the area. She stated that the record of nursery has not been brought regarding the number of saplings that were dispatched for aforestation. The trees are said to be of baan (oak) and daadu (deciduous tree) (Anardana). It is denied that the plantation has been shown only on the papers and the same is conducted on the spot. She has admitted that no demarcation ever took place in her presence.

18. **PW-9:Karampal Thakur, Forest Guard, Forest Beat Shalaghat, Forest Division, Shimla, Taradevi, Range Totu Shimla.**

He has stated that he is posted as Forest Guard since December, 2021 and that the D-227 Raikot Forest comes under Shalaghat beat and that the photographs Ext.PW-9/A1 to A5 have been clicked by him by his camera. In his cross-

examination, he has stated that no demarcation of the land took place in his presence and pleaded ignorance about the boundaries of Khasra No. 274/238 and other Khasra number which is Ext.PW-8/L. Further, that the photos were clicked by him on 11.08.2023 and pleaded his ignorance about the *burjees* shown on Ext.PW-9/A1 to Ext.PW-9/A5. He also stated that the Defendants were not called when photographs were clicked by him and he stated that no demarcation of 35.60 hectares took place in his presence.

19. **DW-1: Jagdish Chand Sharma, son of Sh. Durga Nand, R/o Village Kathli, PO Kaithlighat, Tehsil Kandaghat, District Solan, HP aged 66 years.**

He has furnished an affidavit Ext.DW-1/A in his examination-in-chief in which the contents of the written statement have been re-asserted and re-affirmed. In his cross-examination, it is denied that HP Government is the owner of the Forest land. It is also denied that the State is in possession of the land and further, it is stated that the land is ancestral in nature. It is denied that in the Jamabandi of 1980, the names of Defendants were erroneously reflected. It is denied that the notification of 1953 is correct. It is admitted that such notification was never challenged by them. Self-stated that notification was never told to them. It is admitted that on the basis of this notification, the names of the State got reflected in the revenue papers. Self-stated that it is the Defendants whose names are recorded on the revenue papers and thus, no need was ever felt to challenge the entries. It is denied that the Forest Department maintains or does plantation on the spot. It is also denied that boundaries pillars are also affixed on the spot. It is denied that the mutations No. 97 to 101 dated 1977 vide which land was entered in the name of the Defendants is wrong and false. It is denied that this land was earlier in the ownership and possession of Maharaja of Patiala, then in the name of PEPSU

State and then Punjab Government. He has also stated that no loan has been taken by him on the suit land.

20. **DW-2:Jagdish Chand son of Basti Ram R/o Village Dhiari, P.O. Bisha, Tehsil Kandaghat, District Solan.**

He has tendered in evidence his affidavit Ext.DW-2/A in which the averments as made in the written statement have been re-iterated and re-asserted. In his cross-examination, he has stated that the suit land is situated in Gram Panchayat Bisha. It is denied that the suit land belongs to Forest Department and possessed by the same. It is also denied that in the suit land, Ramesh Chand, Sushil etc. are not in possession. The suggestion of frequent afforestation by the Forest Department is also denied.

21. **DW-3:Padam Chand son of Naukhia, R/o Village Shungal, P.O. Kaithlighat, Tehsil Kandaghat, District solan, HP.**

He has tendered in evidence his affidavit Ext.DW-3/A in which the averments as made in the written statement have been re-iterated and re-asserted. In his cross-examination, he has stated that his Village is 15 minutes away from the suit land and he pleaded ignorance about the rakba of the suit land. It is denied that the suit land belongs to the State Government and is possessed by them on the spot. The suggestion of frequent afforestation by the Forest Department is also denied.

22. **DW-4:Shakuntla Devi, Urdu Translator, DC Office Solan.**

She has stated that she is posted as Urdu Translator since 2016 and has proved the translated copies of several jamabandies. In her cross-examination, it only came out that she is a witness to the record and has no personal knowledge about the case.

23. **DW-5: Shobha Devi, data entry operator/Urdu Translator, DC Office, Solan.**

She has stated that she is working in the aforesaid post from the year 2016 and has further proved the jamabandies from Ext.DW-4/B to Ext.DW-4/Q placed on record. She was not intended to be cross-examined.

24. **DW-6: Ashok Kumar Sharma, Patwari, Patwar Circle Bisha.**

He has stated that he remained posted as Patwari in Patwar Circle Bisha since February, 2022 and has stated that settlement is going on such area and the record is lying with the settlement authorities.

25. **DW-7: Sumit Verma, Record Patwari, Record Room Kandaghat.**

He has proved mutation No. 93 dated 07.01.1976 as Ext.PW-7/A.

26. **DW-8: Shyam Singh son of Sh. Sher Singh office of Patwari, Settlement Wagnaghat, Tehsil Kandaghat, District Solan, aged 53 years.**

He has stated that he is posted in the office of Settlement Wagnaghat as Patwari from the past one year and has proved the record of Village Kathli from 05.08.2022. Khasra Girdawri Rabi from 2014 to 2023 is proved as Ext.DW-8/A and Ext.DW-8/B. He has further stated that the Girdawari is recorded in the name of the people who are recorded in possession on the spot on the area. In his cross-examination, he has admitted that the Girdawari is conducted only of Rabi and Kharif crops, self-stated that it can also be conducted of ghasni and banjar land. It is admitted that whenever departure is made for making of Girdawari, then a report thereto gets recorded and it is admitted that no such report was made at the time of leaving for conducting Girdawari. It is denied that he never went on the spot and thus, could not locate the *burjees*. It is denied that the State is owner and possessor of the forest land/suit land.

27. **DW-9: Shobha Devi, Data Entry Operator/Urdu**

Translator, DC Office, Solan.

She has stated that she is working in the aforesaid post from the year 2016 and has further proved the documents/Urdu record/revenue receipts as Ext.DW-9/A-1 to Ext.DW-9/A-27 which was marked as Z-1 to Z-27. In her cross-examination, she has admitted that the Urdu receipts are not verified or certified by anyone. She has admitted that the date of the translation of the same from Urdu to Hindi has not been mentioned by her although, the same is done with respect to the Jamabandi that are there on record translated by her.

28. This is the entire evidence led by the parties to prove their case.

REASONS FOR FINDINGS:

ISSUES No. 1, 2:

29. Briefly stated grouse of the Plaintiff is that the suit land measuring about a massive area of **96 bighas** was in ownership of state of PEPSU/predecessor in interest of Plaintiff State and the Defendants were recorded as non-occupancy tenants in the same upto the year 1977. However, in the year 1977, it is stated that vide mutation No. 97 to 101 dated 04.03.1977, the land is said to be mutated in the name of Defendants No. 1 to 19 as proprietors which acquired reflection in the Jamabandies for the year 1980-81, 1985-86, 1990-91, 1995-96, 2000-01, 2005-06, 2010-11. The instant suit has thus been filed challenging the ownership entries of the Defendants in the Jamabandies subsequent to 1977 and a Declaration is sought to the effect that such entries are wrong, illegal, null and void and liable to be struck down. It is also pleaded by the Plaintiff/State that the suit land is therefore, in possession of Forest Department of State of HP which is continuously maintaining and protecting the same and thus, the revenue entries reflecting the names of Defendants are stated to be utterly fallacious. It is stated that a Bandobast/settlement took place in the year 1937

according to which the suit land was demarcated and designated as a jungle and acquired by the State. Further, it is contended that the suit land was classified as Class-II Forest as per the erstwhile Patiala Forest Act and designated as demarcated forest D-48 Raikot, now D-22, 27 Raikot. The notification is No. 40, dated 04.01.1953 in the Official Gazette of PEPSU State. After this, a mutation in 1957 is said to be made after holding proper inquiry on the rights of the parties and the suit land was mutated in favour of the State of HP. It is averred that thereafter, **in the Jamabandies for the year 1980-81 and thereafter, it is stated that all of a sudden, the names of Defendants started featuring as against the mutation entries dated 11.12.1957 when it is clearly stated that Jamabandi for the year 1962-63 depicts the Punjab State as owner of the suit land which is in the possession of Forest Department HP.** Thus the major contentions of the Plaintiffs on the basis of which the suit is prayed to be decreed are:

- (i) That land was made a forest as per Bandobast in 1937,
- (ii) It was designated as Class-II, Forest Land and named as D-227 Raikot Forest area. After this, vide mutations in the year 1957, the land got mutated in favour of the State of HP which was in response to the notification No. 40 dated 04.01.1953 which notification is said to be made after proper inquiry.
- (iii) After the year 1977, the names of Defendants suddenly started appearing in the Jamabandies to the ouster to the State of HP which is sought to be declared null and void,
- (iv) That the Defendants failed to challenge the notification dated 04.01.1953 and in the absence of any such challenge, the same is said to be valid and binding as notification is said to be a part of "law" as per Article 13 (3) (a) in Indian Constitution, 1950.
- (v) It is contended that the Defendants must have raised an objection against the notification if it were found unsatisfactory but no counter claim or separate suit is said to be instituted by

the Defendants.

(vi) It is contended that the Plaintiffs have been maintaining the forests continuously by planting of saplings and protecting the same against any forest fire while it would be the duty of the Defendants to do the same if they had been the owners in possession of such land. In fortification to this argument, it is also stated that as per Article 51-A (g) of Indian Constitution, 1950 it is the duty of every citizen to *"protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures"* thus, the Defendants are said to have neglected in performance of their bounden duty.

(vii) It is argued by the Ld.ADA that it is not the case of the Defendants that they assumed ownership by operation of HP Tenancy and Land Reforms Act. Instead they are said to have denied the mutations No. 97 to 101 and have claimed to be owners of the land for this very beginning, still it is argued that they should have filed a suit/counter claim against the above mutations which is not the case here. Also, it is alternatively argued that even if it is believed that the Defendants were granted ownership rights according to Section 104 HP Tenancy and Land Reforms Act, still it is stated that no right of ownership can be granted against State in view of the interpretation of this legislative provision in the case of 'State of HP Vs. Chander Dev and others' 2007 (2) Shimla Law Cases, 7 as provided herein below:

Proviso to Section 104 (9) of HP Tenancy and Land Reforms Act, 1972, provided that nothing contained in this Section shall apply to such land which either is owned by or vested in the Government under any law whether before or after the commencement of this Act and is leased out to any person.

This proviso was added vide Act No. 06 of 1988. It was interpreted in the following manner:-

Devi Chand Vs. State of HP, 1994 (4) SLJ 2926 Justice Devender Gupta observed that the proviso to (9) of Section 104

shall be deemed to have come into force on the date of the commencement of the Act. Thus, the Court was of the view that the land leased out to any person is exempted from the operation of the Section 104 of the Act. Thus, this proviso can be said to be interpreted as retrospective.

30. Dinesh Kumar Vs. State of HP and others (Supplement) SLC 385, Justice Kamlesh Sharma went on to hold that the legislature did not intend to take away the substantive right which had already been vested and according to her the proprietary right which had already accrued and stood automatically conferred could not be taken away by the proviso inserted by way of amendment. Thus, she observed that those who became owners on Government land from 1974 to 1988 shall continue to remain the same but vesting shall be prohibited after 1988.

31. In the light of the aforesaid conflicting views, a division bench of Hon'ble High Court of HP in the case of 'State of HP Vs. Chander Dev and others' 2007 (2) Shimla Law Cases, 7 was constituted comprising of Justice Deepak Gupta and S. Singh to resolve the controversy. They finally observed as follows:-

"Para No. 26: it was lastly urged by Sh. G.D.Verma, Senior Advocate that in case the proviso is held to be retrospective and takes away the vested rights of the tenants, it would lead to chaos in as much as the rights of hundreds and thousands of persons may be affected. As already stated above, we are not deciding the validity of the provision. We are only interpreting the provision as it stands. The language of the Amending Act and the proviso is absolutely clear and unambiguous. There is no manner of doubt that the said amendment has been made retrospectively applicable. Therefore, we have no other option but to hold that the proviso added at the end of Section 09 of Section 104 of the Act by the Amendment Act, No. 6 of 1998 is

retrospective in nature and is also takes away the rights of the persons which rights may have vested in them automatically under the provisions of un-amended Act.

32. Per contra, it is averred by the Defendants that:

- (i) The Plaintiffs/State of HP are not in possession on the spot and were never in possession of the suit land.
- (ii) The suit land is said to be recorded as a *ghasni* on the revenue record and there is no occasion for a forest being in existence on the spot in any manner.
- (iii) No proof of demarcation is placed on record where from it can be ascertained without doubt that the instant suit land/contested Khasra numbers falls within D-227 Forest.
- (iv) Revenue receipts have been placed on record to show that land revenue was paid by the Defendants on the suit land.
- (v) Not even a single photograph depicting a new plantation has been placed on record because there is said to be none done on the spot

33. In the written statement filed by the Defendants it is denied that the Plaintiffs were ever in ownership and possession of the suit land and it is further stated that the mutations and revenue entries in favour of the Plaintiffs and their predecessors in interest are wrong, illegal, null and void. It is pleaded that instead, it is the Defendants who have been in ownership and possession of the suit land since the time of their ancestors. However, it is worth noticing that even if such a plea is taken, still no suit has been instituted by the Defendants to get the Jamabandies prior to 1977 rectified in their favour and to prove that the State is wrongly shown as owner in possession of the instant suit land. It is intriguing to note that although, through the present suit, the Plaintiffs/State of HP intend to get the revenue entires rectified in the bare Act the name of State of HP is sought to be got reflected in the Jamabandies for the year 1977 but the Defendants have neither filed a suit nor a counter claim

to get the ownership entries of the earlier Jamabandies prior to 1977 in their favour. Thus, it can be concluded that even if it is presumed for the sake of arguments that the Defendants are correctly being depicted in the Jamabandies subsequent to the year 1977 i.e. in the Jamabandi for the year 1980-81, still it was the necessary essential/duty of the Defendants to bring all revenue entries in consonance with each other/in their favour. However, non-filing of any such suit/counter claim is deemed to be construed adversely on the genuineness of the claim of the defendants. This has to be read and appreciated in corroboration to the fact that at the time of forest fire, no pain or efforts were made by the Defendants to extinguish the same and no evidence has been led to controvert such evidence brought on record by the Plaintiffs.

34. The Ld. Counsel for the defendants has time and again and vehemently argued and has emphasized on the fact that suit land is depicted as "*ghasni*" and it is not a "*forest*" in any circumstances. The term forest as per Indian Forest Act, 1927 is defined as area occupied by the Government for conservation and management of biological and ecological resources is called a forest. Therefore, it must be kept in mind that a forest is a vast area that is covered by a large number of trees but it is also complex ecological system in which trees are the dominant life form. Thus, a forest is dominated by trees but it is a habitat for a large variety living beings and flora inclusive of grass lands and undercanopy species. It is a dynamic complex of plant, animal and micro-organism communities and their abiotic environment interacting as a functional unit, where trees are a key component of the system. Humans, with their cultural, economic and environmental needs are an integral part of many forest ecosystems. Thus, it can be said that a forest land embraces a "*ghasni*" within its purview. The Jamabandies that are placed on record for the year 1967-

1968 and many others clarify that the land is recorded in the ownership of State of HP and in the recorded possession of "Mehkama Janglat" that is Forest Department who had further inducted the Defendants as gair-marusi for enjoying ghasni of the area. The only change that took place in the Jamabandi for the year 1980-81 is that the name of State Government disappeared and was substituted by the name of the Defendants. However, this change is said to be a result of mutation No. 97 to 101 as clear on perusal of these mutations placed on record whereby, the status of the Defendants was ripened from "non-occupancy tenants/gair marusi" to proprietors/owners. However, it is notable that this is not the case and specific pleading of the Defendants because they have stated that they were always the owners in possession of the suit land and the name of State of HP is wrongly been reflected in the Jamabandi prior to 1977. Thus, there arises no question of acquiring ownership by operation of HP Tenancy and Land Reforms Act. The aforesaid facts of grant of enjoyment of rights of "ghasni" to the Defendants is also corroborated on perusal of mutation No. 55, 56, 57 which are Ext.PW-3/A, Ext.PW-7/B and Ext.PW-7/D on record. They denote that even if it is admitted that some part of the suit land was in the ownership and possession of the Defendants but yet it got acquired as a forest and was classified and demarcated as D-48 Raikot, now D-227 Raikot and got vested in the State of PEPSU. However, the mutation clarified that the rights of the Defendants were taken/extinguished by the State by conversion to forest but the rights of usage of the land as charand, cattle grazing and collection of firewood were kept intact and preserved. Even the perusal of misal haqiat Vikrami Samvat 1993-94 as Ext.PW-4/F, placed on the file clarifies that it was prepared in 1993-94 Vikrami Samwat (year of 1937 of English Calendar) according to which such land was made as a forest. Even if, it is believed that

the notification of acquisition of land as a jungle was made without hearing the objections of the Defendants, still the same should have been agitated since it was *jalsa-aam* or later agitated by filing a suit. However, until date no suit has been known to be filed in this regard by the Defendants.

35. The Ld. Counsel for the Defendants has also argued that the settlement after which the State acquired rights over the suit land as a Forest was never confirmed. However, if that was the case, then again the Defendants should have agitated about the "wrong" entries of ownership in favour of the State. The Defendants have also stated and placed reliance on the revenue receipts as translated by DW-9/Shobha/Urdu Translator. However, neither revenue receipts nor the Khasra Girdawari entries carry a presumption of truth and they cannot seem to inspire the confidence of the Court. No Khasra numbers are mentioned on the revenue receipts which strikes on their relevancy adversely. Even the HP Land Revenue Act, nowhere mentions about the preparation of Khasra Girdawari of a "ghasni" or "banjar" land or a forest area because etymologically, this word means "Harvest Inspection Register." Thus, the Court is also not inclined to rely upon the Khasra Girdawari record. It is worth noticing that the cash-book entries placed on record for buying of saplings for plantation on the alleged forest area have not been controverted and the same are going in favour of the Plaintiffs.

36. Therefore, it can be concluded that the said area is a forest land and the revenue entries depicting the same in the name of the Defendants be corrected and be replaced by State of HP through Forest Department. Thus, the suit of the Plaintiffs is decreed. Further, a consequential relief of Permanent Prohibitory Injunction is also granted by the Court to the effect that the Defendants are restrained from causing any interference on the suit land. The amount of compensation assessed for the

loss of land acquired for construction of four lane had to be disbursed to the victorious party as per the orders of Hon'ble High Court of HP dated 06.07.2023. Thus, in consonance with this order of Hon'ble High Court of HP, the amount of compensation determined by CALA shall be disbursed to the State of HP.

37. In the light of the facts stated, evidence adduced, arguments advanced and reason cited, both these issues are answered in an affirmative, in favour of the Plaintiffs and against the Defendants and the Plaintiffs are entitled to a decree of Declaration to the effect that:

- (1) that they are owners in possession of the suit land;
- (2) that the revenue entries showing the Defendants as owners in possession of the suit land are wrong, illegal, null and void.

ISSUE NO. 3:

38. In the light of the reasons assigned while disposing of issues No. 1 and 2, the present issue is answered in an affirmative in favour of the Plaintiffs and against the Defendants and the Plaintiffs are entitled to a decree of Permanent Prohibitory Injunction restraining the Defendants from causing any interference in the ownership and peaceful possession in or over the suit land.

ISSUE NO. 4:

39. In the light of the reasons assigned while disposing of issues No. 1 and 2, the present issue is answered in a negative in favour of the Plaintiffs and against the Defendants and the Plaintiffs can be said to have the necessary locus standi and cause of action against the Defendants.

ISSUE NO. 5:

40. Ld. ADA for the Plaintiffs has placed on reliance on the order Ext.DX-16 of Financial Commissioner (Appeals) instituted in 27.04.1983 and decided on 09.03.1983. In that

order, it is observed in Para No. 4 that: *"We are in agreement with the Ld. Counsel for the respondents in view of the provisions contained in Section 46 of the Himachal Pradesh Land Revenue Act. It clearly states that if any person considers himself aggrieved as to any right of which he is in possession by an entry in a record of rights or in a periodical record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1963. In case the petitioner feels aggrieved, he has to institute civil suit for declaring of his rights."*

Thus, the Ld. FC had observed that the parties were free to file a suit for Declaration of their rights on the suit land. Ld. ADA has stated that this petition was instituted in the Court of Ld. FC in 1983 while the same was decided in 1993 and thus, cause of action arose in 1983 against the Defendants. As per Article of 112 of Indian Limitation Act, 1963, the limitation period for the State to file any suit is **30 years** except a suit before the Supreme Court in exercise of its original jurisdiction. Furthermore, Section 14 of Indian Limitation Act, 1963 provides for **"Exclusion of time of proceeding bonafide in Court without jurisdiction:**

"In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

41. Thus, the Ld. ADA has argued that Revenue Court/FC did not have the jurisdiction to decide the rights of the parties which jurisdiction lies with a Civil Court while deciding a suit for Declaration. Thus, Revenue Court is said to be a wrong

Court approached by the State with a bonafide intention. On this ground an exclusion of time from 1983 to 1993 is prayed for and in that case, the present suit falls well within limitation.

Per contra, it is pleaded by the Defendants that the aforesaid contention praying for exclusion of limitation has not been made in the pleadings by the Plaintiffs and thus, it cannot be considered by the Court.

42. However, this Court cannot agree with the contention of the Defendants on the ground that it is the duty of the Court to see and examine whether the suit is instituted within limitation period or not. It includes the crucial and critical examination of the principles of exclusion and extension as provided in the Indian Limitation Act, 1963. Thus, the plea of the Plaintiffs can be considered by the Court without any prejudice to realise the ultimate goal of justice. Section 14 provides for excluding the time that is spent by a party in pursuing the case with a bonafide intention in wrong forum lacking jurisdiction. Thus, the suit of the Plaintiffs though late is well within limitation and the present issue is answered in a negative against the Defendants and in favour of the Plaintiffs. The suit can thus not be said to be time barred.

ISSUE NO. 6:

43. In the light of the reasons assigned while disposing of issues No. 1 and 2, the entries of cash-book register, photographs, maintenance in the form of extinguishing of forest fires, the present issue is answered in a negative, in favour of the Plaintiffs and against the Defendants and the Plaintiffs can be said to be in actual, physical possession of the suit land.

ISSUE NO. 7, 8:

44. In the light of the reasons assigned while disposing of issues No. 1 and 2, the present issue is answered in a negative in favour of the Plaintiffs and against the Defendants and the Plaintiffs cannot be said to be estopped from filing the suit, nor

the suit can be said to be as not maintainable.

ISSUE NO. 9:

45. It is argued by the Defendants that the suit is bad for mis-joinder of cause of action. It is pleaded that the Defendants on the ground of being recorded as owners in possession of separate Khasra Numbers has raised loan against their Khasra numbers and certain Khasra numbers are also mortgaged with individual person and as such, separate suits against such persons was required to be filed. In regard to the contention made, the Court cannot rely on the entries on Jamabandi of mortgage for the simple reason that these revenue entries recording Defendants as owners of the suit land are itself a subject matter of litigation and no subsequent interest can thus flow. Even none of the Defendants have stated in the Court about the fact that they have mortgaged the land in faovur of another person. In the cross-examination, DW-1 has denied the fact of taking loan and in such circumstances, the burden shifted on the Defendants to prove the fact of taking of loan, as it is also, the initial burden to prove this issue was on the Defendants. Thus, no evidence is brought on record by the Defendants to prove the mis-joinder of cause of action or non-joinder of parties. As such, this issue is answered in a negative, against the Defendants and in favour of the Plaintiffs.

ISSUE NO. 10, 11:

46. In the absence of any evidence adduced by the Defendants in proof of these issues, these issues are answered in a negative, against the Defendants and in favour of the Plaintiffs.

RELIEF:

47. Keeping in view the reasons and findings on the aforesaid issues, the suit of the plaintiffs is **decreed** and the Plaintiffs are entitled to a decree of Declaration to the effect that they are owners in possession of the suit land and the revenue

entries showing the Defendants as owners in possession of the suit land are wrong, illegal, null and void. The Plaintiffs are also entitled to a decree of Permanent Prohibitory Injunction restraining the Defendants from causing any interference in the ownership and peaceful possession in or over the suit land. Decree sheet be prepared accordingly. The case file after due completion, be consigned to the record room.

Announced in the open Court on this **28th Day of September, 2023** in the presence of Ld. Counsels for the parties.

(Chunauti Sagroli)
Civil Judge, Kandaghat,
District Solan, H.P.

/Manju/

FORM-A**LIST OF WITNESSES:**

Sr. No	No.of PWs/D	Name of witnesses	Whether witnesses of plaintiff or defendants.
1	PW-1	Sh. Pankaj Sharma	Plaintiff's witness
2.	PW-1	Sh. Sumit Verma	Plaintiff's witness
3.	PW-1	Smt.Shakuntla Devi	Plaintiff's witness
4.	PW-1	Sh. Durga Dass	Plaintiff's witness
5.	PW-1	Sh. Gang Dutt Negi	Plaintiff's witness
6.	PW-1	Sh.Satish Kumar	Plaintiff's witness
7.	PW-1	Smt.Shobha	Plaintiff's witness
8.	PW-1	Smt.Reena Devi	Plaintiff's witness
9.	PW-1	Sh. Karanpal Thakur	Plaintiff's witness
10.	DW-1	Sh. Jagdish Chand Sharma	Defendant's witness
11.	DW-3	Sh. Jagdish Chand	Defendant's witness
12.	DW-3	Sh. Padam Chand	Defendant's witness
13.	DW-4	Smt.Shakuntla Devi	Defendant's witness
14.	DW-5	Smt.Shobha Devi	Defendant's witness
15.	DW-6	Sh. Ashok Kumar Sharma	Defendant's witness
16.	DW-7	Sh. Sumit Verma	Defendant's witness
17.	DW-8	Sh. Shyam Singh	Defendant's witness
18.	DW-9	Smt.Shobha	Defendant's witness
19.	DW-10	Sh. Kapil Sharma	Defendant's witness

FORM-B**LIST OF EXHIBITS**

Sr. No.	Exhibit	Date	Description
1.	Ex.PW-5/B	25.04.2023	Affidavit of Sh. Ganga Dutt
2.	Ex.PW-6/A	25.04.2023	Affidavit of Sh. Satish Kumar
3.	Ext.PW-5/A	25.04.2023	Authorization Certificate.
4.	Ext. DW-1/A	20.05.2023	Affidavit of Sh. Jagdish Chand
5.	Ext.DW-2/A	20.05.2023	Affidavit of Sh.Jagdish Chand.
6.	Ext.DW-3/A	20.05.2023	Affidavit of Sh.Padam Chand.
7.	Ext.PW-2/A	22.12.2022	Copy of Intkal No. 55
8.	Ext.PW-2/B	22.12.2022	Copy of Intkal No. 56
9.	Ext.PW-2/C	22.12.2022	Copy of Intkal No. 57
10.	Ext.PW-2/D	22.12.2022	Copy of Intkal No. 58
11.	Ext.PW-2/E	22.12.2022	Copy of Intkal No. 59
12.	Ext.PW-2/F	22.12.2022	Copy of Intkal No. 60
13.	Ext.PW-2/G	22.12.2022	Copy of Intkal No. 61
14.	Ext.PW-2/H	22.12.2022	Copy of Intkal No. 66
15.	Ext.PW-2/J	22.12.2022	Field Book
16.	Ext.PW-2/K	22.12.2022	Tatima
17.	Ext.PW-2/L	22.12.2022	Certified copy of Jamabandi for

State Vs. Pankaj Kumar and another

Type: Civil Suit

CIS Registration No. 27/2020

CNR No. HPSO080001462020

18.	Ext.PW-2/M	22.12.2022	the year 1962-63 Certified copy of Jamabandi for the year 1967-68
19.	Ext.PW-2/N	22.12.2022	Certified copy of Jamabandi for the year 1972-73
20.	Ext.PW-2/O	22.12.2022	Certified copy of Jamabandi for the year 1975-76
21.	Ext.PW-2/P	22.12.2022	Certified copy of Jamabandi for the year 2015-16
22.	Ext.PW-2/Q	18.01.2023	Intkal No. 97
23.	Ext.PW-2/R	18.01.2023	Intkal No. 98
24.	Ext.PW-2/S	18.01.2023	Intkal No. 99
25.	Ext.PW-2/T	18.01.2023	Intkal No. 100
26.	Ext.PW-2/U	18.01.2023	Intkal No. 101
27.	Ext.PW-2/V	18.01.2023	Certified copy of Jamabandi for the year 1980-81
28.	Ext.PW-2/W	18.01.2023	Certified copy of Jamabandi for the year 1985-86
29.	Ext.PW-2/Y	18.01.2023	Certified copy of Jamabandi for the year 1995-96
30.	Ext.PW-2/Z	18.01.2023	Certified copy of Jamabandi for the year 2000-01
31.	Ext.PW-2/AA	18.01.2023	Certified copy of Jamabandi for the year 2005-06
32.	Ext.PW-2/BB	18.01.2023	Certified copy of Jamabandi for the year 2010-11
33.	Ext.PW-3/A	22.12.2022	Certified translated copy of Intkal No.55 of Mauja Kathli.
34.	Ext.PW-3/B	22.12.2022	Certified copy of Intkal No.58
35.	Ext.PW-3/C	22.12.2022	Translated copy of Intkal No.59
36.	Ext.PW-3/D	22.12.2022	Certified copy of Intkal No.59
37.	Ext.PW-4/A	18.01.2023	Notification No. 40 dated 04.01.1953.
38.	Ext.PW-4/B	18.01.2023	Certified copy of Register of Boundary Pillar D-27 of Rajkot Jungle.
39.	Ext.PW-4/C	18.01.2023	Certified copy of Compartment History of D-27 Rajkot Jungle (Naksha)
40.	Ext.PW-4/D	18.01.2023	Enlarged copy of Naksha
41.	Ext.PW-4/E	18.01.2023	Certified copy of Compartment History of D-27, Rajkot Jungle
42.	Ext.pW-4/F	18.01.2023	Certified copy of Misal Haqiat Vikrami Sambat 1993-94
43.	Ext.PW-5/A	25.04.2023	Authorization Certificate.

44.	Ext.PW-5/B	25.04.2023	Affidavit of Ganga Dutt.
45.	Ext.PW-7/A	02.05.2023	Translated copy of Intkal No. 56 of Mauja Kathli
46.	Ext.PW-7/B	02.05.2023	Translated copy of Intkal No. 56 of Mauja Kathli
47.	Ext. PW-7/C	02.05.2023	Translated copy of Intkal No. 57 of Mauja Kathli
48.	Ext.PW-7/D	02.05.2023	Translated copy of Intkal No. 57 of Mauja Kathli
49.	Ext.PW-7/E	02.05.2023	Translated copy of Intkal No. 60 of Mauja Kathli
50.	Ext.PW-7/F	02.05.2023	Translated copy of Intkal No. 60 of Mauja Kathli
51.	Ext.PW-7/G	02.05.2023	Field Book of Mauja Kathli.
52.	Ext.PW-7/H	02.05.2023	Shajra Kishtwar.
53.	Ext.PW-7/J	02.05.2023	Certified copy of Intkal No.55.
54.	Ext.PW-7/K	02.05.2023	Tatima
55.	Ext.PW-8/A	18.09.2023	Cash-Book of March, 2004 regarding Plantation.
56.	Ext.PW-8/B	18.09.2023	Cash-Book of July, 2013 regarding Plantation.
57.	Ext.PW-8/C	18.09.2023	Cash-Book of September, 2014 regarding Plantation.
58.	Ext.PW-8/D, E, F, G	18.09.2023	Voucher for the year 2016-17 and 2013
59.	Ext.PW-8/H	18.09.2023	Detail of Plantation
60.	Ext.PW-8/J	18.09.2023	Letter received from NHAI
61.	Ext.PW-8/K	18.09.2023	Letter received from DFO, Shimla
62.	Ext.PW-8/L	18.09.2023	General Abstract of D-227
63.	Ext.PW-8/M	18.09.2023	Letter
64.	Ext.PW-9/A1 to A5	18.09.2023	Photographs.
65.	Ext.PW-1/A	22.12.2022	Letter dated 16.07.2016
66.	Ext.PW-1/B	22.12.2022	Letter dated 08.05.2015
67.	Ext.DW-4/A &Ext.PW-4/B	19.07.2023	Translated copy of Bandobasti, of Mohal Kathli,
68.	Ext.DW-4/C	19.07.2023	Certified copy of Jamabandi Sambat 1971-72
69.	Ext.DW-4/D	19.07.2023	Translated Certified copy of Jamabandi Sambat 1971-72
70.	Ext.DW-4/E	19.07.2023	Certified copy of Jamabandi

71.	Ext.DW-4/F	19.07.2023	Sambat 1974-75 Certified copy of Jamabandi Sambat 1974-75
72.	Ext.DW-4/G	19.07.2023	Certified copy of Jamabandi Sambat 1979-80
73.	Ext.DW-4/H	19.07.2023	Translated Certified copy of Jamabandi Sambat 1979-80
74.	Ext.DW-4/J	19.07.2023	Translated Certified copy of Jamabandi Sambat 1983-84
75.	Ext.DW-4/K	19.07.2023	Urdu Jamabandi Sambat 1983- 84
76.	Ext.DW-4/L	19.07.2023	Certified copy of Jamabandi Sambat 1987-88
77.	Ext.DW-4/M	19.07.2023	Urdu Jamabandi Sambat 1987- 88
78.	Ext.DW-4/N	19.07.2023	Certified copy of Jamabandi Sambat 1991-92
79.	Ext.DW-4/O	19.07.2023	Urdu Jamabandi Sambat 1991- 92
80.	Ext.DW-4/P	19.07.2023	Certified copy of Jamabandi Sambat 1995-96
82.	Ext.DW-4/Q	19.07.2023	Urdu Jamabandi Sambat 1995- 96
83.	Ext.DW-4/R	19.07.2023	Certified copy of Jamabandi Sambat 2010-11
84.	Ext.DW-4/S	19.07.2023	Certified copy of Jamabandi Sambat 1925-26
85.	Ext.DW-4/T	19.07.2023	Misal Haqiat Bandobasti
86.	Ext.DW-7/A	19.07.2023	Mutation No. 93 dated 07.01.1976
87.	Ext. DW-7/B	19.07.2023	Certified copy of Jamabandi for the year 1954-55
88.	Ext.DW-8/A &Ext.DW8/B	05.08.2023	Khasra Girdawari, for the year 2010-11
89.	Ext.DX-1 to Ext.DX-16	05.08.2023	Certified Copies of Jamabandies and Orders passed by the Ld. Financial Commissioner (Appeals).
90.	Ext.DW-9/A1 to DW-9/A- 27	17.08.2023	Translated copy of Rabi,Kharif etc.

State Vs. Pankaj Kumar and another

Type: Civil Suit

CIS Registration No. 27/2020

CNR No. HPSO080001462020

91	Ext.PW-10/A1 to A-18	08.09.2023	Receipts.
92	Ext.DZ-1 to DZ-6	08.09.2023	Copies of Award of Compensation.

(Chunauti Sagroli)
Civil Judge, Kandaghat,
District Solan, H.P