IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 30th OF JUNE, 2025

FIRST APPEAL NO.437 of 2000

BEGUM SURAIYA RASHID & OTHERS

VS.

BEGUM MEHR TAJ NAWAB SAJIDA SULTAN & OTHERS

&

FIRST APPEAL NO.296 of 2000

NAWABZADI QAMAR TAJ RABIA SULTAN & OTHERS

VS.

NAWAB MEHR TAJ SAJIDA SULTAN & OTHERS

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Appearance:

Shri Aadil Singh Bopari, Shri Abhishek Dubey, Ms. Ayesha Jamal, Shri K. Jaggi, Shri Gurlabh Singh Sidhu – Advocates for the appellants.

Shri S. Sreevastava – Senior Advocate with Shri Arjun Rao, Shri Sooraj Bajpai, Shri Aishwarya Vikram and Shri Shrikant Mishra, Shri Siddharth Sharma, Shri Adil Usmani, Shri Akhilesh Jain, Shri Sanjay Agrawal – Senior Advocate with Shri Sheersh Agrawal, Shri Sanjeev Tuli, Shri Varun Tankha and Shri Harshit Bari – Advocates for the respondents.

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Reserved on : 06.02.2025
Pronounced on : 30.06.2025

JUDGMENT

With the consent of learned counsel for the parties, both the appeals are finally heard.

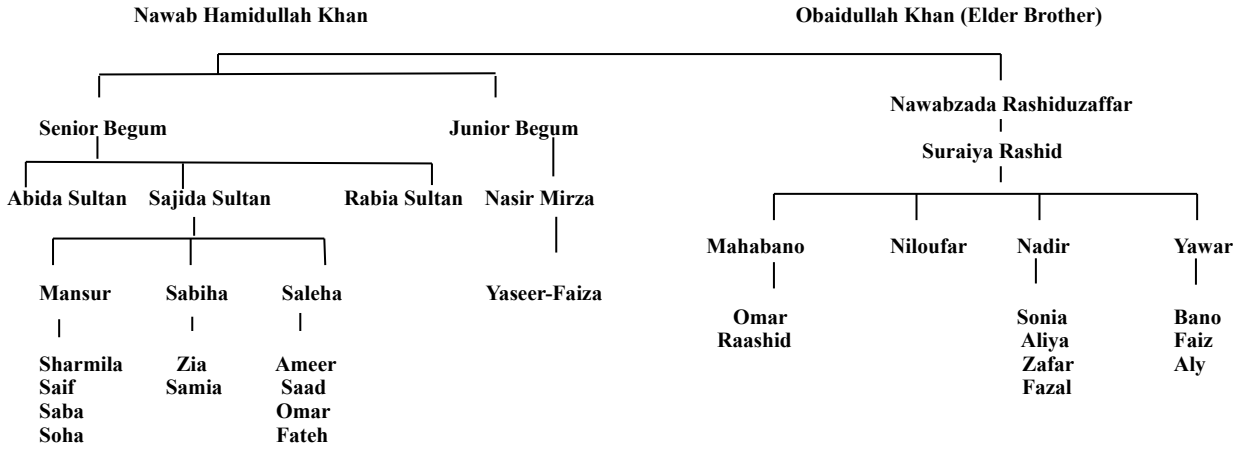
2. The present appeals have been filed by the appellants challenging the impugned judgment and decree dated 14.02.2000 passed by the

Court of District Judge, Bhopal, by a common judgment passed in Suit No.63-A/1999 and Suit No.64-A/1999.

3. The suits preferred by the plaintiffs/appellants were dismissed by the trial Court relying upon a judgment of the Allahabad High Court reported in **AIR 1997 All 122 (Miss Talat Fatima Hasan Vs. His Highness Nawab Syed Murtaza Ali Khan Sahib Bahadur and others)** saying that the issue involved in the case is squarely covered. However, the said case later on got overruled by the Supreme Court in a case reported in **(2020) 15 SCC 655 (Talat Fatima Hasan through Her Constituted Attorney Syed Mehdi Husain Vs. Syed Murtaza Ali Khan (Dead) by legal representatives and Others)**.

4. As per facts of the case, the plaintiffs had filed suits for partition of the suit property, possession and settling the account of estate left by his late Highness. The suit property has been described in the list A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S and T in paragraph-8 of the Suit No.64-A/1999 and in the list 1A, 1B, 2A, 2B, 2C, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 4A, 4B, 4C, 5A, 5B in paragraph-4 of the Suit No.63-A/1999 and now it has been addressed with the suit property.

5. As per the plaintiffs, Mohd. Hamidullah Khan was the Nawab of Bhopal *riyasat* and died on 04.02.1960. The suit property was said to have been his personal property. The plaintiffs and defendants are the legal heirs of deceased Nawab Mohd. Hamidullah Khan whose genealogy is as under:-



6. On 30.04.1949, Bhopal *riyasat* was merged in the Union of India under an agreement in writing. The agreement contained a clause i.e. Clause No.II revealing that after the merger, all the special rights which the Nawab (Ruler) had, shall remain continued and according to Clause No.V of the agreement, it was agreed that all the property which is their personal property, shall be of their absolute ownership and succession of the *Gaddi* (throne) shall be under the Bhopal Succession to the Throne Act, 1947 (for short the 'Act of 1947'). As per the plaintiffs, the suit property was the personal property of Nawab Mohd. Hamidullah Khan. Upon his death, according to Clause No.VI of the Act of 1947, defendant Sajida Sultan was declared Nawab (Ruler) and the defendant-Government of India, vide its letter dated 10.01.1962, mentioned the personal property under Article 366(22) of Constitution of India as personal property of defendant Sajida Sultan.

7. It is also averred in the plaint that the order of Government of India is not lawful because upon the death of Nawab Mohd. Hamidullah Khan, partition of his personal property should have been done between the plaintiffs and defendants according to Muslim Personal Law. The suit property is liable to be divided and it should not have been written as absolute personal property of defendant Sajida Sultan and, therefore,

the plaintiffs demanded partition from the defendants and filed the suit for partition, possession and settling the account of estate left by his late Highness.

8. The defendants filed their written-statements taking a stand therein that inheritance under the Act of 1947 was under primogeniture rule and successor of the throne used to be the absolute successor of the personal property of the Nawab (Ruler). According to the defendants, the suit property belongs to Nawab (Ruler) which is his personal property and it cannot be partitioned according to Muslim Personal Law and certificate has been issued by Government of India on 10.01.1962 in favour of Sajida Sultan Begum as the sole successor of all the private properties as held by the erstwhile Nawab Obedullah Khan of Bhopal, cannot be partitioned and as such, the plaintiffs are not entitled to claim any partition over the same. The defendants have further taken a stand that the suits are not within the jurisdiction of Civil Court and those are liable to be dismissed in view of provisions of Order 7 Rule 11 of C.P.C. because no such relief has been claimed in the suits to declare the certificate dated 10.01.1962 issued by Government of India, as illegal and unlawful. According to the defendants, there was an agreement of merger which contained certain terms and conditions as to in what manner the property of Nawab of Bhopal will be managed and as to in what manner the right over the suit property can be claimed. The provision of Article 366(22) of Constitution of India was very specific and according to it, the personal property of Nawab was also a part of the agreement and it will go with the Ruler i.e. defendant Sajida Sultan.

9. The trial Court after considering the pleadings of the parties framed as many as six issues which are as under:-

"Issues:

1. Whether under the Agreement of Merger dated 30.04.1949, the Private properties belonging to the then Nawab shall be governed by succession under Muslim Law?
2. Whether on succession to the Throne by Sajida Sultan, the private property of the Nawab was also succeeded by her to the exclusion of all other heirs?
3. Whether the Government of India's certificate dated 10.01.1962 conferring succession of private properties to Nawab Sajida Sultan Begum as ruler is illegal?
4. Whether the suit as framed is not maintainable and deserves to be dismissed under Order 7 Rule 11 of the CPC?
5. Whether this Court has no jurisdiction to adjudicate the matter referred to in the present suit?
6. Relief and Cost."

10. Issue Nos. 4 and 5 were decided in favour of the plaintiffs. The findings in respect of said issues given by the trial Court are as follows:-

> "The Plaintiffs, by obtaining permission under Section 86, 87B of the CPC from the Government of India for filing the suit (Exhibit P-13) dated 01.06.1971 have filed these suits. Suits have been filed lawfully and deserve to be entertained and the Civil Court has jurisdiction to entertain and decide disputes arisen between the parties. Accordingly, Issues No. 4 and 5 are disposed of."

11. Since no cross appeal has been filed and even respondents have not opposed the said finding during the course of arguments, therefore, this Court is not required to give any finding or opinion thereof.

12. Indisputably, the present suits are in the nature of partition, possession and rendition of accounts *inter-se* family members. The present appeals are against the findings given by the trial Court in regard to Issue Nos. 1, 2, 3 and 6.

13. Learned counsel for the appellants has mainly contended that there are so many judgments of the Supreme Court so also of the High Courts to deal with the issue involved in the case and according to him, the trial Court on the erroneous assumption that private properties are

part of *Gaddi* (throne) and, therefore, automatically pass on to the successor to the throne whereas according to him, the private properties of the Nawab (ruler) has nothing to do with the succession to the *Gaddi*. According to counsel for the appellants, one person may succeed to the *Gaddi* whereas several heirs may succeed to the private properties of the erstwhile Nawab (ruler) as per the Personal Law of Succession. He has submitted that the *Gaddi* is an act of political authority and in view of the Merger Agreement, the government has ordered succession to a particular person whereas succession to private properties of erstwhile Nawab (ruler) will devolve as per the Personal Law of Succession. According to him, the personal property shall be devolved among the successors as per the provisions of Mohammedan Law. In support of his contentions, he has placed reliance upon the cases reported in **2019 SCC OnLine SC 947 (Talat Fatima Hasan through Constituted Attorney Sh. Syed Mehdi Hussani Vs. Nawab Syed Murtaza Ali Khan (D) through LRs and Others (Rampur Case), 1968 SCC OnLine AP 135 (Ahmadunnisa Begum Vs. Union of India by Secretary, Ministry of Home Affairs), (1969) 3 SCC 150 (Kunwar Shri Vir Rajendra Singh Vs. Union of India and Others) (Dholpur-1 case), (1995) 6 SCC 580 (Dr. Ranbeer Singh Vs. Asarfi Lal) (Dholpur-2 case), (1952) SCR 1020 (Vishweshwar Rao Vs. The State of M.P.), (1961) 1 SCR 779 (Sri Sudhansu Shekhar Singh Deo Vs. The State of Orissa and another), (1971) 1 SCC 85 (Madhav Rao Scindia and others Vs. Union of India) (Privy Purse case), (2008) 8 SCC 12 (Faqruddin (D) through LRs Vs. Tajuddin (D) through LRs), (1993) Suppl. 1 SCC 233 (Revathinnal Balagopala Varma Vs. H.H. Sri Padmanabha Dasa Rama Varma (since deceased) and Others), (Travancore Case)** and **(2008) 15 SCC 517 (N. Padmamma Vs. S. Ramakrishna Reddy).**

14. Primarily, the learned senior counsel appearing for the respondent(s) has dissuaded the applicability of the law relied upon at the behalf of the appellant in the case of **Talat Fatima Hasan** (supra)**.** According to the learned senior counsel, the said case has no applicability in the case at hand inasmuch as the facts of the said case and question considered therein by the Supreme Court are not similar to that of the case at hand. More precisely, he submitted that in the case at hand, there was an agreement of merger, which contained certain terms and conditions as to in what manner the property of Nawab of Bhopal will be managed and as to in what manner the rights over the said property can be claimed. In **Talat Fatima Hasan** (supra), the ruler was appointed by virtue of the property of Government of India in pursuance to the terms of Article 366(22) of the Constitution of India. The merger of State of Rampur into Union of India was signed by the Nawab on 15.05.1949 and Nawab died on 06.03.1963 intestate whereas in the present case, the Nawab of Bhopal became the ruler of State of Bhopal by virtue of the provisions of the Succession to the Throne of Bhopal Act of 1947 and thereafter merger agreement was executed. Learned senior counsel submitted that as per Article 366(1) of the Constitution of India, the terms and conditions of the merger agreement cannot be questioned in any court of law and that agreement is not justifiable in any court and therefore the provisions of any other Act or Statute is not applicable to deal with the property of Nawab, Bhopal and that will be governed strictly in terms of merger agreement. He submitted that in the case of **Talat Fatima Hasan** (supra), the point of consideration before the Supreme Court was, the properties of erstwhile ruler shall be governed by the personal law applicable to the ruler or it will go to the successor of ruler i.e. the next successor. He has also pointed out several

documents those are the letters and communications made by the officers of the Government of India to the plaintiff and it makes clear that the officers have apprised about their rights over the property of Nawab and as per the said communication, it becomes clear that being successors, they have no right over the property as per the personal law, but they have been given right to use the property by virtue of terms and conditions of the merger agreement and their possession was permissive possession. They have been apprised as to what allowances would be paid to them by the new ruler, which makes it clear that they were not the successors and were having no right over the property of ruler of Bhopal. Learned Senior counsel has preferred a comparative chart containing terms and conditions of the merger agreement between Rampur Merger Agreement and Bhopal Merger Agreement. He pointed out that in the Bhopal Merger Agreement, the Government of India has made a clause and agreed that the rights and privileges of the Nawab shall be continued to his successor and according to him successor does not represent the successor as per the personal rights but the successor represents the next ruler. He has also placed reliance on the decision of the Supreme Court in the case of **Dr. Karan Singh v. State of J&K and another (2004) 5 SCC 698**, which deals with the scope of Article 366 of the Constitution of India. He also relied upon the judgment of Supreme Court in the case of **Revathinnal Balagopala Varma v. His Highness Shri Padmanabha Dasa Bala Rama Varma (since deceased) and others (1993) Suppl. (1) Supreme Court Cases 233**, in which, the Supreme Court has observed that the devolution of the properties was from one monarch to his successor and such successor would be as absolutely entitled to use such property as his predecessor and he cannot become a limited holder. Meaning thereby, the successor

of monarch would have absolute rights over the said property. Ergo, learned senior counsel submitted that the case of **Talat Fatima Hasan** (supra) has no applicability to the case at hand.

15. Shri Sanjay Agrawal, learned Senior Advocate with Shri Shrish Agrawal, Advocate submitted that in the case at hand, as per the agreement executed between the Government of India and the-then ruler of State of Bhopal Nawab Hamidullah Khan, after his death, a notification was issued by the Government of India as per the provisions of Article 226 Clause 22 and appointed Sajida Sultan as next ruler of Bhopal and Sajida Sultan died on 05.09.1995. Shri Agrawal submitted that as per the terms of agreement especially Article VII the property of ruler devolved to the next ruler and according to him, the said agreement was executed between the Government of India and ruler of State of Bhopal. The terms thereof cannot be exchanged in view of Article 366 of the Constitution of India. He submitted that Article 366 has been repealed in the year 1971 and after the death of Nawab Sajida Sultan her property as per the terms of the agreement devolved on the successor of Nawab Sajida Sultan in view of the provisions of respective personal law. He submitted that the provisions of personal law would not be applicable for claiming any right by the successor of Nawab Hamidullah Khan because as per the terms of the agreement, the property of ruler would go to next ruler and the next ruler as per the notification issued by the Government of India was Nawab Sajida Sultan. He submitted that whatever claim is raised by the plaintiffs claiming right over the property of Sajida Sultan had no right over the said property because at the relevant point of time the personal law had no application and it had come into force only after the death of Nawab Sajida Sultan and even otherwise the successors of Sajida Sultan can claim the right over the

property of Nawab of Bhopal and nobody else. He submitted that case on which the plaintiffs-appellants are relying upon i.e. **Talat Fatima Hasan** (supra) has no applicability in the present case and the present case is not governed according to the law laid down by the Supreme Court because in the said case, the agreement which was questioned before the court, after the notification declaring the property of ruler would go to next ruler was declared to be illegal, that agreement did not contain such a clause whereas in the present case, the agreement contained Article VII which was not there in any of the agreements executed by the Government of India with the different States. Ergo, he submitted that the notification dated 10.01.1962 which was challenged before the trial court in civil suit and finding given by the trial court holding that the said notification was valid, does not call for any interference because it was the part of agreement and clause of agreement cannot be questioned in any of the courts even before the Supreme Court. Thus, Shri Agrawal submitted that the claim of the plaintiffs/appellant is misconceived and their right to claim the property would not arise because it is only available to the successors of last Nawab i.e. Sajida Sultan and obviously the appellants are not the successors of Nawab Sajida Sultan. He submitted that the appellants claiming themselves to be the successors of Nawab Hamidullah Khan and that suit was not maintainable claiming any right over the property of ruler of State of Bhopal i.e. last ruler Nawab Sajida Sultan. Therefore, the appeal is liable to be dismissed.

16. Shri Tuli, learned counsel appearing for the newly added respondent namely Safia Educational Society adopted the submissions made by Shri Sanjay Agrawal and also submitted that written-submissions will also be given to the court and if it is not given,

whatever written-submissions given by Shri Agrawal, can be treated to be the written submissions on his behalf as well.

17. I have heard the arguments advanced by counsel for the parties and perused the record.

18. Though, the trial Court without considering the other aspects of the matter has dismissed the suits relying upon the judgment reported in **AIR 1997 All 122 (Miss Talat Fatima Hasan Vs. His Highness Nawab Syed Murtaza Ali Khan Sahib Bahadur and others)** but failed to consider the fact that later on it has been overruled by the Supreme Court in a case reported in **(2020) 15 SCC 655 (Talat Fatima Hasan through Her Constituted Attorney Syed Mehdi Husain Vs. Syed Murtaza Ali Khan (Dead) by legal representatives and Others)**. In the existing facts and circumstances when the legal issue on which trial Court was relying upon has been reversed and the suits in question are of partition, therefore, in view of the provision of Order 14 Rule 23A of the CPC which reads as under:-

> "**23A. Remand in other cases**- Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23."

I am of the opinion that these cases can be remanded back to the trial Court for deciding it afresh.

19. The Supreme Court in a case reported in **(2021) 11 SCC 277 (Shivakumar and Others Vs. Sharanabasappa and Others)** has considered the power of remand of the appellate Court and observed as under:-

> "**26.4.1.** The decision cited by the learned counsel for the appellants in Mohan Kumar [Mohan Kumar v. State of M.P., (2017) 4 SCC 92 : (2017) 2 SCC (Civ) 368] is an apt illustration as to when the appellate court ought to exercise the power of remand. In the said case, the

> appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in respect of the land in question. The trial court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should acquire the land and pay the market value of the land to the appellant. Such part of the decree of the trial court was not challenged by the defendants but as against the part of the decision of the trial court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed [Mohan Kumar v. State of M.P., FA No. 3 of 1998, order dated 24-1-2005 (MP)] the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the appellant-plaintiff had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed that when the High Court held that the appellant was not able to prove his title to the suit land due to non-examination of his vendor, the proper course for the High Court was to remand the case to the trial court by affording an opportunity to the appellant to prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for retrial was made out particularly when the trial court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. Such cases where retrial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fill- up the lacuna in its case."

20. Further, the High Court in a case reported in **2013 (1) MPLJ 480 (Vipin Kumar and others Vs. Sarojini)** has also considered the power of appellate Court to remand the case and issued guidelines as to under what circumstances, it can be remanded. The guidelines formulated by the High Court read as under:-

> "**17**. It is made clear here that for future while directing remand by the lower Appellate Court certain guidelines are required to be observed while passing judgment and order directing remand. It is directed that

the lower Appellate Courts in the State shall observe the contingencies in which remand is permissible otherwise the appeals be decided on merit. The contingencies wherein remand can be directed is observed as thus:

"(1) If the suit has been decided on a preliminary issue and the decree is reversed by Appellate Court then while passing the order of remand the Appellate Court may direct to try the issue or issues after taking the evidence already on record or after the remand, if any, on restoring the suit to its original number.

(2) If an appeal is preferred against the judgment and decree passed by the trial Court other than the preliminary issue and Appellate Court reversed such finding in appeal and further found that re-trial is necessary then by recording such finding the power as specified in clause (1) may be exercised by the Court directing wholesale remand.

(3) If the Appellate Court found from the decree against which an appeal is preferred the trial Court has omitted to frame or try any issue or to determine the question of fact which appears essential to right decision of the suit on merit, then the Appellate Court may frame issues and refer the same for trial to the Court from whose decree the appeal is preferred directing to take additional evidence if required. The Appellate Court shall further direct that after trying the said issue the evidence be returned to it with a finding and reasons therefor. In such contingencies the time to return back the evidence and the finding ought to be fixed by the Appellate Court. Thereafter the Appellate Court after inviting objections may determine the appeal on merit.

(4) On production of the additional evidence and after taking them on record, if the Appellate Court is satisfied to take some witness to prove the document then the remand may be directed for taking such evidence or witness on record specifying the points for it. On taking additional evidence on record by all the times the remand is not necessary if the document is admissible in evidence and not objected by other side, the Court may pass the order on merit deciding the appeal.

(5) It is to be made clear here that if the evidence on record is sufficient to enable the Court to pronounce the judgment after re-settling the issue, the Appellate Court should not remand in routine and the appeals must be decided on merit.

(6) If the Appellate Court is of the opinion to direct for remand in any of the contingencies as specified hereinabove under clause (1) to (4), it is the duty of the Court to fix the date for appearance of the parties before the trial Court with a view to curtail the delay on directing such remand and if the remand in the above clause (3) findings be also called within the time specified."

21. Thus, in view of the aforesaid enunciation of law and considering the respective provision under which the matter can be remanded, I am of the opinion that since the trial Court without considering the other aspects of the matter had dismissed the suits, that too relying upon the judgment which has already been overruled by the Supreme Court, the matters need to be remanded back to the trial Court for deciding it afresh because these are the suits for partition and if ultimately, the trial Court comes to the conclusion that suits have to be allowed then share of the parties can be determined only by the trial Court while passing the preliminary decree and that can be further finalized by the trial Court itself after carrying out the necessary formalities of partition. Thus, in my opinion, the impugned judgment and decree deserve to be and are hereby set aside. The matters are remanded back to the trial Court for deciding it afresh and if so required, the trial Court can allow the parties to lead further evidence in view of the subsequent development and changed legal position. It is made clear that since the suits were initially filed in the year 1999, therefore, the trial Court shall make all possible efforts to conclude and decide it expeditiously, preferably within a period of one year.

22. With the aforesaid observation, both the appeals stand **allowed and disposed of.** No costs.

23. Applications i.e. I.A. Nos. 4181/2022 and 4182/2022 have been filed in both the appeals seeking recall of the order dated 09.03.2022 passed by the Coordinate Bench of this Court whereby the application filed under Order 1 Rule 10 read with Section 151 of CPC for adding the applicants as party in the pending litigation has been rejected by the Court assigning reasons therein. However, this Court has finally decided

both the appeals, remitting the back to the trial Court for deciding it afresh.

24. Vide order dated 21.08.2024 passed by this Court, I.A. Nos.7968/2021 and 14255/202024 filed in the respective appeals which got rejected by the Court granting liberty to move fresh application before the revenue authorities in pursuance of the order passed in the pending appeals.

25. Since both the appeals have been allowed, remitting the matter back to the trial Court for deciding it afresh, therefore, parties are at liberty to move an appropriate application before the trial Court concerned which shall be considered by the trial Court without getting influenced with the order passed by this Court during pendency of appeals.

26. With the aforesaid observations, pending applications, if any, stand disposed of directing the parties to raise their grievance before the trial Court concerned.

(SANJAY DWIVEDI)
JUDGE

rao/dm