

MADHYA PRADESH HIGH COURT

State of Madhya Pradesh

Vs.

Seth Gowardhandas

First Appeal No. 100 of 1983

(S.K. Jha, C.J. and Faizanuddin and K.M. Agarwal, JJ.)

17.10.1992

ORDER

Faizanuddin, J.

1. This appeal has been placed before this Full Bench on a reference by a Division Bench of this court consisting of Mr. Justice KM. Agarwal (who is also a member of this Full Bench) and Mr. Justice S.K. Chawla, disagreeing with the view taken by earlier two Division Benches of this Court in (*Land Acquisition Officer, Seoni v. Laxminarayan*)¹ and (*Smt. Ganabai v. State of Madhya Pradesh and another*)² with regard to the payment of Court fees on the memorandum of appeal presented under section 54 of the Land Acquisition Act, 1894 and the cross-objections in such appeals.

2. In order to highlight the points in controversy and to answer to the reference, it is necessary to state the material facts in brief which, are as follows:

The State Government through its Land Acquisition Officer, has acquired 3 acres of land of Survey Number 477 belonging to the claimant/respondent situated in village Udaipura for which the Collector, Raisen made an award of compensation payable to the respondent. The claimant/respondent, being dissatisfied with the award, made an application under section 18 of the Land Acquisition Act, 1894 (in brevity "L.A Act") for referring the matter to the Court for enhancement of the compensation. The learned District Judge, Raisen, made an award enhancing the amount of compensation at the rate of Rs. 20,000/- per acre, to be paid to the respondent. The appellant, State of Madhya Pradesh, being dissatisfied by the enhanced award made by the Civil Court, has preferred the present appeal under section 54 of the L.A. Act and ad valorem court fees has been paid on the memorandum of appeal on its valuation. The claimant/respondent has also preferred cross-objection under order 41, rule 22 of the

Civil Procedure Code (for brevity "the Code") claiming further enhancement of compensation at the rate of Rs. 22, 000/- per acre. The respondent has valued the cross-objection at Rs. 33,000/- but has not paid ad valorem court fees and has paid fixed court fees as prescribed under Article 11 of Schedule 2 of the Court Fees Act, 1870 (in brevity "the C.F. Act"). A preliminary controversy surfaced before the referring Division Bench, whether fixed court fees under Article 11 of Schedule 2 of the C.F. Act is payable on the memorandum of appeal filed under section 54 of the L.A. Act and the cross-objection in such appeals or ad valorem Court fees is payable under Article 1-A of Schedule 1 of the C.F. Act. On the strength of two division bench decisions of this court rendered in (*Land Acquisition Officer Seoni v. Laxminarain*)³ and reported in (*Smt. Ganabai v. State of M.P.*)⁴ it was canvassed on behalf of the claimant/respondent who has filed the cross-objection that only fixed Court fees under Article 11 of Schedule 2 of the Court Fees Act, 1870 is payable on the memorandum of appeal as well as on the cross-objection.

3. Learned Judges of the referring Division Bench did not feel inclined to agree and subscribe the view taken by the earlier two Division Benches in the cases referred to above and, therefore, made a reference to a larger bench to reconsider the decision rendered in the aforesaid two appeals. Both the learned Judges of the referring Bench, have given their separate reasons for disagreeing with the view taken by the earlier two Division Benches in the appeals referred to above. According to referring Bench, the two decisions rendered by the earlier two Division Benches of this court in F.A. No. 15 of 1984 and F.A. No. 35 of 1988, do not lay down the correct law that fixed Court fees is payable on memorandum of appeal filed under Section 54 of the L.A. Act. In the opinion of Brother Agarwal, J. the award made by the Civil Court has all the attributes of a decree and not an order, consequently ad valorem court fees is payable on the memorandum of appeal. While learned brother Chawla, J. agreed with brother Agarwal, J. to the extent that ad valorem Court fees is payable on memorandum of appeal filed under section 54 of the L.A. Act and the cross-objections but he expressed the view that an award made by the civil court is not a decree but an order and, therefore, whatever may be said about awards generally, at least with respect to limited field of land acquisition awards, it may have to be held that they are "orders" relating to compensation under any Act for the time being in force, for the acquisition of land for public purposes, in terms of language employed in section 8 of the C.F. Act and, therefore, appeals there from (including cross-objections) are liable to ad valorem Court fees on the difference

between the amount awarded and the amount claimed.

4. Sri S.L. Saxena, learned Additional Advocate-General contended that ad valorem Court fees is payable on appeals filed under section 54 of the L.A. Act, and the decisions in First Appeal No. 15 of 1984 as well as First Appeal No. 35 of 1988 do not lay down the correct law, while contrary to this, Shri N.M. Shah, learned counsel appearing for the respondent vehemently urged that only fixed Court fees under Article 11, Schedule 2 of the C. F. Act is payable. Thus the short but substantial question that arises for our consideration is whether ad valorem Court fee is chargeable under Article I-A of Schedule I of the Court Fees Act on memorandum of appeal (including cross-objection) filed under section 54 of the L.A. Act, regarding compensation in land acquisition cases or only fixed Court fees as prescribed under Article 11 of Schedule 2 of the C.F. Act is chargeable in such appeal (including cross-objections) and secondly whether the D.B. decision in First Appeal No. 15 of 1984 and First Appeal No. 35 of 1988 lay down the correct law. But there is no controversy on the point that memorandum of appeal and memorandum of cross-objection are one and same thing for purposes of computation of Court fees and that whichever provisions of the Court Fees Act is applicable to the memo, of appeal, the provisions would be attracted in case of cross objections also.

5. It may be seen that the Division Bench decision in the case of Laxminarain (supra) and which has been referred for reconsideration by this Full Bench rests on the earlier Full Bench decision of this court in *Shantilal v. Town Improvement Trust Ratlam* ⁵ which is also based on the decision of the Supreme Court in *Diwan Brothers v. Central Bank of India*, (AIR 1976 Supreme Court 1503). There is no gainsaying the fact that the observations in the aforesaid decisions do tend to buttress the stand taken by the learned counsel for the respondent, but as would be clear from the facts hereafter stated, they have no direct application to the facts of the instant case before us except the principles of law laid down therein on the questions emerging from the facts of those cases and interpretations of certain provisions of law. In the case of *Diwan Brothers* (supra) the question that arose before the apex court was with regard to the nature and meaning of an 'order' or 'decree' passed by a Tribunal constituted under Displaced Persons (Debts Adjustment) Act, 1951 and the payment of Court fees on memo of appeal against such order or a decree. In the case of *Diwan Brothers* (supra) the facts in brief were that the appellants of that case had made an application under section 13 of the Displaced Persons (Debts Adjustment) Act before the Tribunal

claiming certain amounts due from the respondents of that case. The Additional Civil Judge, who was assigned as the Tribunal under the- aforesaid Act, dismissed the claim by a decree. The appellants, therefore, filed an appeal before the Allahabad High Court with a fixed Court-fees on the memo of appeal on the plea that decision of the Tribunal did not amount to a decree as contemplated by section 2(2) of the Code, ad valorem Court fees was not payable and the appellants were entitled to pay Court fees as prescribed in Schedule 2, Article 11 of the C.F. Act. A learned single Judge of Allahabad High Court took the view that the appellants were liable to pay ad valorem Court fees under Schedule 1, Article 1 of the C.F. Act. This view was challenged before the Supreme Court. The apex court after considering the object and purpose of Displaced Persons (Debts Adjustment) Act and after analyzing various provisions of the said Act as well as an interpretation of Section 2(2) of the Code and Article 1 of Schedule 1 as well as Article 11 of Schedule 2 of the C.F. Act came to the conclusion as contained in paragraph 17 of the report which run as follows :

"Thus on a consideration of the authorities mentioned above the proposition may be summarized as follows :

Firstly, that under the definition of a 'decree' contained in section 2(2) of the Civil Procedure Code, 1908, three essential conditions are necessary

- (i) that the adjudication must be given in a suit;
- (ii) that the suit must start with a plaint and culminate an a decree;
- (iii) that the adjudication must be formal and final and must be given by a civil or revenue court.

In the proceeding under the Act we have already pointed out that as the Legislature has created a special tribunal to inquire into the claims of displaced debtors or creditors, the Tribunal cannot be called a Court in any sense of the term because the Legislature has made a clear distinction between a Tribunal and a Court. Secondly, as the proceedings before the Tribunal starts with an application and not with a plaint the other important ingredient of a decree is wholly wanting. Thirdly, the Legislature has itself made a clear-cut distinction between a suit and a proceeding and has described the claim before the Tribunal as a proceeding rather than as a suit. In these circumstances, therefore, none of the requirements of a decree are to be found in the decision given by the Tribunal even though the Legislature may have described the

decision as a decree. A mere description of the decision of the Tribunal as a decree does not make it a decree within the meaning of the Court Fees Act. The term "decree" appears to have been used by the Legislature to convey a sense of finality regarding the decision of the Tribunal more particularly since the adjudication of the claim, but for the Act, would have been by a civil court and then it would have been a "decree".

On the aforesaid conclusion their Lordships further took the view that the term "decree" used in Schedule 2, Article 11, is referable to decree as defined in section 2(2) of the Civil Procedure Code and as the decision of the Tribunal in the aforesaid case before the Supreme Court did not fulfill the requirement of a decree" as mentioned above, the said decision of the Tribunal was not accepted as a decree within the meaning of Schedule 2, Article 11 of the C.F. Act and, therefore, it was held that the memorandum of appeal filed by the appellants squarely fell within the ambit of Schedule 2, Article 11 of the Court Fees Act and as such ad valorem Court fees under Schedule 1, Article 1, was not livable.

6. On the same parity of reasoning the decision or order of award of compensation made by a Tribunal under section 78 of the M.P. Town Improvement Trust Act, 1960 cannot be regarded as decree as defined in section 2(2) of the Code as it also does not fulfil the requirements of a "decree" because the Tribunal constituted under the M.P. Town improvement Trust Act, cannot be called a Court in any sense of the term and none of the requirements of a decree are to be found in the decisions or orders given by the Tribunal. That being so the Full Bench decision of this Court rendered in the case of Shantilal (supra) holding that in an appeal against decision given under section 78 of the M.P. Town Improvement Trust Act, fixed Court fees as prescribed under Article 11 of Schedule 2 of the C.F. Act, is payable, also does not advance the case of respondent herein because in the instant case the appeal and cross-objection are filed against an award made by a civil court which partake the character of decree within the meaning of section 2(2) and the statement of the grounds of the award as a judgment within the meaning of section 2(9) of the Civil Procedure Code, as would be clear from the discussion that follows hereafter. But from the discussion in the foregoing paragraphs it is distinctly clear that the decision rendered by the Tribunals under the Displaced Persons (Debts Adjustment) Act, 1951 and M.P. Town Improvement Trust Act, 1960 are neither regarded as decisions by civil court non they can be said to be "decrees" within the meaning of section 2(2) of the Code.

7. Now adverting to the provisions of Land Acquisition Act, 1894, it may be noted that the Collector makes the award under section 11 of the LA. Act and against that award a reference is made under section 18 of the Act to the court by any person interested who has not accepted the award for determination of his objection on any of the items covered by the award. Thereafter against the reference an award is given by the court under section 26 of the L.A. Act, clause (d) of section 3 of the LA. Act defines the expression "Court" to mean a Principle Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special Judicial Officer within any special local limits to perform 'the function of the court under the Act. Thus according to the word "Court" used in section 18 of the Act, means a "Court" as defined in section 3(d) which is a court of reference. The court of reference is a court of special civil jurisdiction, the powers and duties of which are defined by the statute. The court of reference is, therefore, a court for all intent and purposes and not a Tribunal.

8. According to the provisions contained in section 53 of the LA. Act, the Civil Procedure Code has to be followed in all proceedings before the court of reference, save insofar as they may be inconsistent with the provisions of the LA. Act. Further section 141 of the Code contemplates that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all the proceedings in any court of civil jurisdiction. Admittedly a court of reference under the Land Acquisition Act is a Principal Civil Court of original jurisdiction. It has, therefore, to be assumed that the proceedings before the reference court are of the kind contemplated by section 141 of the Code. In *Phuman v. State of Punjab*,⁶ a Division Bench of Punjab High Court took the view that provisions of section 141 of the code replicable in proceedings on reference to the Court under the LA Act. Similar view appears to have been expressed by a Division Bench of Karnataka High Court in *Pullamma v. Additional Special Land Acquisition Officer, Bangalore*,⁷ It therefore, necessarily follows that the word 'Suit' in section 141 of the Code has been used in a comprehensive sense so as to include within its fold the appeals also which are nothing but a continuation of suit in the higher court. Thus there can be no doubt that the reference court is a Principal Civil Court of original jurisdiction and in reference proceedings under the Act the procedure as provided in the Code has to be followed insofar as it is not inconsistent with the provisions of the LA Act.

9. Having held that the reference Court is a civil court of original jurisdiction, we now

turn to examine the nature of the application of reference of the claimant as one of the three essential conditions to constitute a decree as contained in section 2(2) of the Code, in view of the decision of Supreme Court in *Diwan Brothers* (supra). Section 26 of the Code envisages that every suit shall be instituted by the presentation of a plaint or in such other manner as may be presented. Order 4, Rule 1 of the Code prescribes that every suit shall be instituted by presenting a plaint to the court of such officer as it appoints in this behalf and rule 2 of Order 4 of the Code further provides that every plaint shall comply with the rules contained in order 6 and 7 of the code, so far as they are applicable. The sum and substance of all these aforesaid provisions is that plaint is a memorial tendered to a court in which the person who claims any relief sets forth his cause of action. It corresponds to a statement, the object of which is to state the grounds upon which the person seeks the assistance of the court for grant of the relief. The application of reference made by the claimant and on which reference is made by the Collector conforms to the aforesaid requirement- of a plaint and the same having the character of a plaint, is in the nature of a plaint, the claimant being in position of the plaintiff and the Collector as a defendant. The proceedings of reference under the LA. Act are thus entirely assimilated to those of ordinary civil suits. In this connection a reference may be made of a decision of Gujarat High Court in *A. Abbas Bhai v. Collector Panch Mahals* ⁸ in which Bhagwati, J. (as he then was) observed that the reference made under section 18 of the LA. Act is not different from an ordinary civil proceedings in which the applicant who is in the position of the plaintiff object to the amount of compensation offered in the award of the Collector and claims additional compensation.

10. This brings us to the consideration of next essential condition whether the award is a formal and final adjudication given by the civil court which amounts to a "decree" within the meaning of section 2(2) of the Code. In this regard a reference to the of section 26 of the LA. Act, may be made with advantage which reads as under:

"26 Form of award - (1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause

(2) and section 2, clause (9) respectively, of the Civil Procedure Code, 1908."

11. In tracing out the legislative history with regard to section 26 of the L.A. Act reproduced above, it may be pointed that originally sub-section (2) of section 26 reproduced above did not exist in the statute book at all and section 26 did not contemplate an award for compensation being enforced against the Collector by execution as it was not regarded as a decree or order capable of execution under the Civil Procedure Code. The High Courts including the Privy Council took the view that an award under the L.A. Act was not a decree and there is no general law which enables a civil court to enforce such a statutory liability when imposed upon a Collector by means of execution proceedings. Thus the awards could not be executed as a decree or order under the Code. To remove this anomaly created by various decisions of the courts and to place awards made by courts beyond all doubts in the same category as "decree", sub-section (2) of section 26 was added by amending Act No. XIX of 1921.

12. A plain reading of sub-section (1) of section 26 of the L.A. Act will go to show that an award has to be in writing signed by the Judge specifying the amounts awarded together with the grounds of awarding each of the said amounts under various heads. Further, sub-section (2) of section 26 distinctly and emphatically in quite unambiguous terms lays down that the award made by the Judge shall be deemed to be a "decree" within the meaning of section 2(2) of the Code and the statement of the grounds of every such award a judgment within the meaning of section 2(9) of the Civil Procedure Code. Thus under Section 26, the award made by the court contains both a decree as well as a judgment. In other words by the Amending Act XIX of 1921 with the introduction of the provisions of sub-section (2) in section 26, the awards of Courts made in land acquisition cases are placed on the same footing, and category as decrees or in any case an order of the civil court having the force of a decree, and the statement of the grounds or reasons for such awards are judgments within the meaning of Civil Procedure Code.

13. From the above discussion it is now clear that the reference court is a Principal civil court of Original jurisdiction and the legislature has thus made a clear distinction between a Tribunal and a Court. Secondly, the application of reference made by a claimant and on which reference is made by the Collector is in the nature of a plaint and has the characteristic of a suit which is yet another important ingredient of a

decree. Thirdly, the award made by the civil court is the formal and final adjudication which is deemed to be a decree and the statement of the grounds of award a judgment within the meaning of sections 2(2) and 2(9) of the Code, respectively. Thus all the essential conditions of a decree are manifestly present in the award as laid down by their Lordships of the Supreme Court in the case of Diwan Brothers (supra).

14. As corollary to the aforesaid discussion the question arises that if the award of the civil court made in land acquisition cases is a decree within the meaning of Section 2(2) of the code, whether the court fees payable on the memorandum of appeal against such award would be one as prescribed under Article 1A of Schedule 1, that is ad valorem fees or fixed court-fees prescribed under Article 11 of Schedule 2 of the C.F. Act as claimed by the respondent. For ready reference Article 11 of Schedule 2 of C.F. Act is reproduced hereunder :

"Article 11, Schedule 2 of C.F. Act –

Number		Proper fee
11. Memorandum of appeal when the appeal is not from decree or an order having the force of a decree.	(a) When presented to the High Court., (b) When presented to the Civil Court other than the High Court	Seven rupees and fifty Paise three rupees.

This Article 11 itself eloquently speaks about its applicability. It applies when the appeal is not from a decree or an order having the force of decree. As held by Supreme Court in Diwan Brothers case (supra), in order to attract application of Article 11, the following conditions must be fulfilled-

- (i) that the document sought to be stamped must be a memorandum of appeal;
- (ii) that the appeal should be presented to the High Court; and
- (iii) that the appeal should not be from a decree or an order having the force of a decree.

The third condition of the Article is couched in a negative form implying that this provision would have no application to appeals against decrees. But we have found that the award made by the civil court partake the character of a decree under the deeming provisions of sub-section (2) of section 26 of the L. A. Act. Consequently

Article 11 of Schedule 2 is not attracted at all and has no application to appeals against an award made by the civil court. It is Article 1A of Schedule 1 of the C.F. Act which is all racted and, therefore, ad valorem court fee is livable on the memorandum of appeal against an award.

15. The view that we have taken above is further strengthened by the provisions contained in section 54 of the LA. Act which provide that subject to the provisions of the Code applicable to appeals from original decrees, an appeal from an award or any part thereof, in any proceedings, under the L.A. Act shall lie only to the High Court and from any decree of the High Court passed on such appeals, an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code and in order 45 thereof. section 54 thus in clear terms provides that the procedure applicable to appeals under the Code from original decrees shall also apply to appeals against an award made under LA. Act, treating the award as if it is a decree of a court and, in our opinion rightly so, in view of the amended provisions of section 26(2) of the Act. Again the order passed by the High Court in appeal against the award is also regarded as a decree which is further appealable to Supreme Court. For these reasons also ad valorem court fees under Article 1A, Schedule 1 of the C.F. Act would be payable.

16. Here it may not be out of place to mention that a Division Bench of this Court in *Chhoglal v. Uttam Singh*⁹ took the view that when appeal is preferred against an award under section 54 of the L.A. Act, it is an appeal against what in law is a decree of a court and, therefore, the charging provision under section 4 read with Article 1, Schedule I of the C.F. Act applies and court fees is to be paid ad valorem. Again in a very recent decision of a Division Bench of this Court in *Gwalior Development Authority v. Mst. Khumania*,¹⁰ similar view has been reiterated. It has been held that on memorandum of appeal against award, ad valorem court fees is payable on quantum under dispute in appeal and fixed court fees under Schedule 2, Article 11(a) is not proper.

17. The question of valuation of appeal against an award in land acquisition cases and payment of court fees on memorandum of appeal against such award is further fortified by the provisions of section 8 of the Court Fees Act. Section 8 of the C.F. Act reads as under :

"8. Fee on memorandum of appeal against order relating to compensation

The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the, amount awarded and the amount claimed by the appellant." A perusal of section 8 of the C.F. Act quoted above would reveal that it is not in itself a charging section as it does not by itself impose any court fees but it does provide a salutary rule for compensation of the fee payable under the C.F. Act in a certain class of cases with which it deals. It clearly lays down the rule that the amount of fee payable on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the two sums, that is, the difference between the amount awarded and the amount claimed by the appellant in appeal in case of claim of difference between the amount awarded and the amount claimed by the appellant, the amount is calculable and determinable accurately and, therefore, it can also not be said that the valuation of appeal is incapable of calculation. The words and language of section 8 of the C.F. Act are very comprehensive and wide enough to cover memorandum of appeals against all orders relating to compensation under any Act for time being in force for acquisition of land for public purposes. In the matter of appeals relating to award of compensation under the LA. Act by parties claiming compensation money, section 8 of the C.F. Act, being a special provision, overrides the general provisions with regard to computation of fee. In the present case before us the respondent claims a definite sum as compensation and, therefore, the amount of fee payable on the cross-objection has to be computed on the amount so claimed as the difference between the amount awarded and the amount claimed in cross objection is fully determined and that being so, ad valorem court-fees under Article 1A of Schedule I, has to be paid on the memorandum of appeal.

18. In the aforementioned context a reference of a decision of Calcutta High Court In Re Ananda Lal AIR 1932 Calcutta 346, may be also made with advantage, in which it was held as under at page 349:

"Section 8 standing in the text of the Act proceeds upon the assumption that otherwise in the Act there is a charge which is an ad valorem charge and is not fixed charge; and the only way in which it can be said that there is a charge has

to be computed is that the charge is imposed by Article 1, Schedule 1. The provision of section 8 involving as they do that the fee in the class of cases dealt with is ad valorem fee are themselves sufficient to exclude any question of Article 11, Schedule 2, being made applicable to such cases. Section 8 shows one perfectly clearly that an appeal regarding compensation in a land acquisition cases is not under Article 11, Schedule 2, because it is not a fixed fee at all".

This decision of Calcutta High Court was heavily relied on by their Lordships of Supreme Court in *C.G. Ghanshyamdas v. Collector of Madras*,¹² and while interpreting section 51 of Tamil Nadu Court-Fees Act of (14 of 1955) which is more or less couched in language similar to that of section 8 of the Court Fees Act, 1870, the Supreme Court 14 paragraph 18 of the report observed as under at page 188

"The "order" referred to in section 51 of the T.N. Court Fees Act 14 of 1955 need not be an "order" of a civil court as defined in section 2(14) of the Civil Procedure Code. It can be of any statutory authority. But it must determine compensation for a property acquired under a law of acquisition of property for public purpose. The award made by the Arbitrator under section 8 of the Requisitioning Act determining compensation for that property under requisition satisfies these tests. Ad valorem court-fee is, therefore, payable on appeal against such award as per section 51 of T.N. Court fees Act 14 of 1955.":

19. As a result of the above discussion, we are of the opinion that in the matter of appeals and cross-objection relating to award of compensation under to Land Acquisition Act, the amount of court-fees has to be computed according to the difference between the amount awarded and the amount claimed by the appellant as per mandate of section 8 of C.F. Act, on which court fees, as prescribed under Article 1A of Schedule I of the C.F. Act has to be paid and not a fixed court-fees as prescribed under Article II, Schedule 2.

20. In the facts and circumstances stated and the view that we have taken with regard to payment of court-fees on memorandum of appeal and cross-objection against award in land acquisition cases, it has a be held that the Division Bench decision in First Appeal No. 15 of 1984 in the case of Laxminarayan (supra) does not lay down

the correct law. Similarly be Division Bench decision in First Appeal No. 35 of 1988 in the case of Gangabai (supra) which is based on the decision in the case of Laxminarain, AIR 1992 Madhya Pradesh 140) (supra) also does not lay down be correct law. In fact the question in issue does not seem to be seriously agitated in First Appeal No. 35 of 1988 and the same was decided merely on the basis of decision rendered in Laxmi Narayan's case (supra) without considering its correctness or otherwise.

21. In view of this decision the appeal and cross-objection now be placed before the appropriate Division Bench for its final disposal in accordance with law in the light of the opinion hereinabove rendered by us. The costs of these proceedings shall abide by the ultimate result of the appeal and cross-objection on merits.

Order accordingly.

Cases Referred.

1. first Appeal No 15 of 1984
2. (AIR 1992 Madhya Pradesh 140)First Appeal No. 35 of 1988
3. First Appeal No. 15 of 1984 decided on. 7.8.1991
4. 1991(2) MPJR 203, as well as First Appeal No. 35 of 1988 decided on 24.4.1991
5. (AIR 1978 Mad Pra 8)
6. (1963 ILR 442)
7. (AIR 1977 Kar 9)
8. (AIR 1967 Guj 118)
9. (1961 MPLJ 953)
10. (1991(2) MPJR 203)
11. AIR 1987 SC 180