IN THE COURT OF SH. PITAMBER DUTT:
PRINCIPAL DISTRICT & SESSIONS JUDGE (NEW DELHI),
PATIALA HOUSE COURTS : NEW DELHI

In the matter of:

CS no. 468/2022 (Old no. 219/1972)
CNR No.DLND01-009339-2022

Sh. Saiyid Sirajul Hasan
S/o Late Professor (Dr.) Saiyid Nurul Hasan and,
Late Smt. Khurshid Laqa Begum
R/o 638, 4th Cross, 3rd Block,
Koramangla, Bengaluru – 560034
Karnataka.

Versus

1. Sh. Syed Murtaza Ali Khan
Bahadur of Rampur (Deceased)
through Legal Heirs:

(i) Smt. Rafat Zamani Begum, Mother (Deceased)
(Defendant no. 4) through legal heirs:
[Defendant nos. 3 (i) to (iv), 10, 11, 12 & 13 (i) to (iv)]

(ii) Smt. Aftab Zamani Begum, Wife (Deceased)
(Defendant no.2), through legal heirs:
[Defendant nos. 1 (iii) & 1 (iv)]

(iii) Sh. Mohammad Ali Khan, Son,
C/o Smt. Nighat Abedi,
28, Nizamuddin East,
Delhi – 110013.

(iv) Smt. Nighat Abdi alias Smt. Nighat Ali Khan, Daughter
W/o Sh. Intekhab Abdi,
R/o 28, Nizamuddin East, Delhi – 110013.

2. Smt. Aftab Zamani Begum, Wife of
Defendant no. 1 Sh. Syed Murtaza
Ali Khan Bahadur of Rampur, (Deceased)
through legal heirs: [Defendant nos. 1 (iii) & 1 (iv)]

3. Sh. Syed Zulfiquar Ali Khan (Deceased)
Son of the Late His Highness
Nawab Sir Saiyid Raza Ali Khan of Rampur,
through legal heirs:

(i) Begum Mehtab Zamani Ali Khan alias Begum Noor Bano,
Wife of Late Shri Syed Zulfiquar Ali Khan
R/o "Rampur House",
19-B Friends Colony (West)
New Delhi – 110065.

(ii) Mrs. Saman Ali Khan alias Mrs. Saman Khan,
Daughter of Late Shri Syed Zulfiquar Ali Khan and
Wife of Late Mr. Irfan Khan,
R/o 10, Devdut, Bandstand, Bandra
Mumbai – 400050, Maharashtra.

(iii) Mrs. Saba Durrez Ahmed,
Daughter of Late Shri Syed Zulfiquar Ali Khan
Wife of Mr. Justice Badar Durrez Ahmed (Retd.)
R/o A9/37, Ground Floor, Vasant Marg, Block -A,
Vasant Vihar, New Delhi – 110057.

(iv) Mr. Kazim Ali Khan alias Navaid Mian,
Son of Late Sh. Syed Zulfiquar Ali Khan,
R/o I-5, Ground Floor, Maharani Bagh,
New Delhi – 110065.

4. Smt. Rafat Zamani Begum (Deceased)
Widow of Late His Highness Nawab Sir
Saiyid Raza Ali Khan of Rampur, through legal heirs:
[Defendant nos. 3 (i) to (iv), 10, 11, 12 & 13 (i) to (iv)]

5. Mrs. Gisela Ledschbor alias Mrs. Gisela Maria Ali Khan,
W/o Late Shri Sayed Abid Ali Khan,
R/o Wilhelmstrabe 62, D-53721,
Seiburg, Germany.

6. Mr. Raza Ledschbor alias Sh. Syed Raza Andrias Ali Khan,
Son of Late Sh. Syed Abid Ali Khan,
R/o Eppendorfer Strasse 15, D-53797,
Lohmar, Germany.

7. Mr. Nadeem Ledschbor alias Sh. Syed Nadim Ali Khan
Son of Late Sh. Syed Abid Ali Khan
R/o Am Pleiser Wald 44, D-53757,
Sankt Augustin, Germany.

8. Professor (Dr.) Saiyid Narul Hasan (Deceased)
Husband of Late Smt. Khurshid Laqa Begum,
through legal heirs: [Plaintiff & Defendant no.9]

9. Smt. Talat Fatima Hasan
Daughter of late Professor (Dr.) Saiyid Nurul Hasan and Late Smt. Khurshid Laqa Begum &
Wife of Mr. Kamil Hasan,
R/o 12182, Parker Ranch Road, Saratoga,
California – 95070, U.S.A.

10. Smt. Birjees Laqa Begum,
Wife of Late Dr. Saiyid Zahoor Qasim,
R/o A-15, Defence Colony, New Delhi – 110024.

11. Smt. Akhtar Laqa Begum,
Wife of Late Sahibzada Abdul Wasey Khan,
R/o 19-A, Clyded Road, Lucknow – 226001,
Uttar Pradesh.

12. Smt. Naheed Laqa Begum alias Smt. Naheed Mehta
Wife of Late Sh. Sudershan Lal Mehta,
R/o B-29, 2nd Floor, West End,
Chanakyapuri, New Delhi – 110021.

13. Smt. Qamar Laqa Begum (Deceased)
Daughter of Late His Highness Nawab Sir
Saiyid Raza Ali Khan, through legal heirs:

(i) Mrs. Rahab Ali Soni
Daughter of Late Smt. Qamar Laqa Begum,
R/o 3C Shreeniket, 11 Ashoka Road,
Alipore, Kolkata – 700027, West Bengal.

(ii) Ms. Sameera Bahadur,
D/o Late Smt. Qamar Laqa Begum,
R/o "Lal Kothi" Sinha Library Road,
Opposite Bihar Board Office, Fraser Road,
P.S. Kotwali, District Patna,
Patna – 800001, Bihar.

(iii) Mr. Samir Ali Khan (Maternal Grandson),
Son of Late Justice Seema Ali Khan,
R/o B-61, 2nd Floor, Defence Colony,
New Delhi – 110024.

(iv) Mrs. Amna Ali Khan (Maternal Grand-daughter)
Daughter of Late Justice Seema Ali Khan
C/o Mr. Samir Ali Khan,
B-61, 2nd Floor, Defence Colony,
New Delhi – 110024

14. Smt. Mehrunnissa Begum (Deceased)
Wife of Late Air Marshal Abdul Rahim Khan,
through her legal heirs:

(i) Mr. Zain Naqi,
Son of Late Smt. Mehrunnissa Begum
R/o 808, Brickell Key Drive,
Apartment, 3604, Miami,
Florida – 33131, USA.

(ii) Mrs. Zeba Husain

D/o Late Smt. Mehrunnissa Begum,
R/o 401, North Wing,
Rohtas Golflink Apartments,
98, Park Road, Lucknow – 226001,
Uttar Pradesh.

Date of Institution	**:**	**23.05.1972**
Arguments heard on	**:**	**15.04.2026**
Date of Judgment	**:**	**28.04.2026**

JUDGMENT

1. Vide this judgment, I shall decide the suit filed by the plaintiff against the defendants for partition of movable property i.e. jewelery, mentioned in exhibits 1, 2 and 3, annexed with the plaint. The brief facts necessitated in filing of the present suit, as narrated by the plaintiff, are given as under:-

2. **Brief Facts**

The plaintiff has averred that Late His Highness Major General Sir Saiyid Ali Khan Bahadur (hereinafter referred to as "Late Nawab"), was the ruler of erstwhile Rampur State in Uttar Pradesh, who transferred the entire administration of the State of Rampur to the Government of India w.e.f. 01.07.1949 vide an agreement dated 15.05.1949. Article 4 of the said agreement provided that late Nawab shall be entitled to full ownership rights qua all private properties belonging to him on the date of said agreement and an inventory of all properties movable and immovable, held by the Late Nawab was prepared.

3. The plaintiff has further averred that Late Nawab died intestate on 06.03.1966, leaving behind his private properties, both movable and immovable, of considerable value. Late Nawab was a private citizen, at the time of his demise and enjoying same status in law or otherwise as by all other citizens of India. Late Nawab was a Muslim, belonging to Shia sect therefore, he was governed by Muslim Shia law and after his death, all his private properties, both movable and immovable has devolved upon his heirs i.e. plaintiff and defendants, as per Muslim Shia Law, read with the provisions of Muslim Personal Law (Shariat) Application Act 26 of 1937.

4. The plaintiff has further averred that Sh. Abid Ali Khan, son of late Nawab, died on 08.07.1968, leaving behind defendant no. 4, his mother, defendant no. 5, his widow and defendant no. 6 and 7 as his two minor sons as his heirs. Smt. Khurshid Laqa Begum, one of the daughters of the late Nawab died on 16.06.1967, leaving behind her heirs Smt. Rafat Zamani Begum (Defendant no. 4) her mother, Prof. S. Nurul Hasan (Defendant no. 8), her husband, plaintiff Saiyid Sirajul Hasan, her son and Talat Fatima Hasan (Defendant no. 9), her daughter. The estate left by Late Nawab is thus owned and possessed by plaintiff, defendant no. 1 and 3 to 14.

5. The plaintiff has further averred that defendant no. 1 was the eldest son of late Nawab and was accorded recognition

as successor to the Gaddi of State of Rampur w.e.f. 07.03.1966, vide order dated 01.04.1966 of the President of India under Article 366 (22) of the Constitution of India, issued through Ministry of Home Affairs, accordingly, he was paid a privy purse annually until coming into force 26th Amendment of Constitution of India (Twenty Sixth Amendment) Act, 1971.

6. The plaintiff has further averred that at the time of issuing the aforesaid order dated 01.04.1966, recognizing defendant no. 1 as the Ruler in succession to the late Nawab, the Government of India also issued, without any authority of law, a certificate purporting to convey, inter alia, that defendant no. 1 as sole successor of all private properties movable and immovable of late Nawab.

7. The aforesaid certificate recognizing the defendant no. 1 as sole successor to the private properties of late Nawab was challenged by defendant no. 3 Nawabzada Zulfiqar Ali Khan, before the Hon'ble Delhi High Court by filing a writ petition being C.W. No. 435 of 1969, titled "Nawabzada Zulfiqar Ali Khan Vs Union of India. Three other writ petitions no(s). 547, 548 and 549 were also filed in the Hon'ble Delhi High Court by defendants no. 11, 12 and 13, challenging the said certificate.

8. The plaintiff has further averred that a Division Bench

of Hon'ble Delhi High Court vide order dated 18.12.1969, quashed the said certificate, recognizing defendant no. 1 as sole successor to the private properties of the late Nawab, against which defendant no. 1 filed an appeal before the Hon'ble Supreme Court of India, which was pending.

9. The plaintiff has further averred that he recently learnt that in the course of certain investigations carried out by some authorities of Government of India in relation to the suspected contraventions of Customs Act, 1962 and Foreign Exchange Regulations Act, 1947, Government discovered, 66 items of jewelry belonging to defendants no. 1 and 2 and late Nawab, which were deposited by defendants no. 1 and 2 with State Bank of India, New Delhi.

10. The plaintiff has further averred that above jewelries were the private property of late Nawab at the time of his death, therefore, plaintiff is entitled to his share in the said property under the provision of Mahomedan Law applicable to Shia Sect.

11. The plaintiff has further averred that in the course of certain other governmental investigations, four items of jewelry were discovered during a search of a safe deposit locker held in a Bank in Bombay in the name of a firm, which were claimed by the said firm as of defendant no. 2, having valued at

approximately Rs. 10 Lakhs.

12. The plaintiff has further claimed that though defendant no. 2 claimed that these four items were belonging to her, but in fact, these four items of jewelry formed part of private properties of late Nawab at the time of his death, therefore, plaintiff has his share in these four items in accordance with the principles of Mohamedan Law applicable to Shia Sect.

13. The plaintiff has further averred that he also learnt that seven items of jewelry, which are stated to be "dynastic jewelry" (so-called "heirlooms") together valued at approximately Rs. 85 Lakhs, listed in Exhibit 3 hereto were left by the Late Nawab and have been illegally appropriated by defendant no. 1 whereas these jewelry should have been devolved upon the legal heirs of late Nawab in accordance with the provisions of Muslim Law. He further averred that defendant no. 1 appropriated the considerable property including the property listed in exhibits 1, 2 and 3 left by the late Nawab, which devolved upon the legal heirs of the late Nawab in accordance with the provisions of Muslim Law.

14. The plaintiff has further averred that defendant no. 1 has also purported to transfer possession of some of the property and jewelry including the jewelry listed in exhibits 1 (part) and in exhibits 2 to defendant no. 2 illegally. He further

averred that despite requests made by the various heirs of the late Nawab including of the plaintiff herein, defendant no. 1 has refused to partition the said properties of late Nawab among his legal heirs.

15. The plaintiff has further averred that he is legally entitled to claim partition of the properties left by the late Nawab and has filed the present suit for partition restricted to the properties listed in exhibits 1 and 3 which are located within the jurisdiction of this Court and properties in exhibit no. 2, which are located in Bombay.

16. The plaintiff has further averred that he filed an application to the Government of India for seeking permission to file this suit against defendant no. 1 and Ministry of Home Affairs was pleased to grant the required certificate on 28.10.1971 in this regard. On the basis of above averments, present suit has been filed by the plaintiff for seeking partition of jewelry of late Nawab as mentioned in lists exhibits 1 to 3, annexed with the plaint.

17. Pursuant to the notice, defendants no. 1, 2, 6 and 7 have filed their separate written statements.

18. Defendant no. 1 in his written statement has not disputed that late Nawab died intestate on 06.03.1966. He also

not denied that late Nawab was a Muslim, belonging to Shia sect. He however, averred that all the movable and immovable properties of late Nawab vested in him, being the eldest son, who was recognized as Ruler of the Rampur State by the central government as per certificate dated 01.04.1966. He further averred that estate of late Nawab vested in him to the exclusion of other persons and he alone was recognized as the person entitled to inherit all the properties movable and immovable left by the late Nawab.

19. The defendant no. 1 has further averred that he was accorded recognition by the Government of India as successor to the Gaddi of the estate of Rampur and on his such recognition, all the movable and immovable properties, which were the private properties of the late Nawab of Rampur vested in him and he became the absolute owner thereof to the exclusion of any other heir of the late Nawab.

20. The defendant no. 1 has not denied that certificate issued by the Government of India was quashed by the Delhi High Court but stated that appeals against the said order of the Delhi High Court was filed in the Supreme Court of India, which have been admitted. It is further stated that the property once vested in defendant no. 1, then he could not be divested thereof by any subsequent action. He further averred that defendant no. 4 was flying to Pakistan with a lot of jewelry and

defendant no. 2 informed the officials concerned and all the jewelry was recovered from the possession of defendant no. 4 in the plane, which she had boarded for Pakistan.

21. The defendant no. 1 has further averred that jewelry recovered from 2, Sardar Patel Marg, New Delhi, shows that these jewelries were belonging to defendant no. 1 and defendant no. 2 because both of these defendants had been turned out from Rampur State about 15 years before the death of late Nawab and reached Rampur after his death. It is further averred that late Nawab of Rampur had made adequate arrangements for the other heirs by creating a Trust known as *"Raza Trust'* and gave them all valuable movable and immovable properties which some of them are retaining and some of them have disposed of. It is further averred that four items of jewelry mentioned in the list are the personal properties of defendant no.1 and defendant no. 2, with which no other heir of the late Nawab has anything to do.

22. The defendant no. 1 has further averred that no request was ever made to him by any of the heirs of the late Nawab to partition the jewelry as they knew it fully well that they have no share in the same. It is further averred that all jewelries mentioned in three lists attached to the plaint are personal properties of defendant no. 1 and 2. It is further averred that similar suit for partition of the movable and immovable

properties left by the late Nawab of Rampur has been filed by the sister of the plaintiff in the Court of District Judge, Rampur being suit no. 4 of 1972. All other averments have been denied. It is prayed that suit may be dismissed.

23. Defendant no. 2 though has filed separate written statement but raised similar plea in her written statement, as averred by defendant no. 1.

24. Defendants no. 6 and 7 have also filed their written statement supporting the claim of the plaintiff.

25. The plaintiff has filed replication to the written statement of defendants no. 1, 2, 6 and 7, thereby controverted the averments made in the written statement and reiterated the averments made in the plaint.

26. After the death of defendant no. 1 on 07.02.1982, his LRs were brought on record, who filed additional written statement, which was taken on record by the Hon'ble High Court, vide order dated 05.08.1991. The LRs of defendant no. 1 have adopted the written statement filed by defendant no. 1 on 18.08.1975 but raised few additional pleas.

27. The LRs of defendant no. 1 have averred that as per the customs of Rampur Royal Nawab Family for at least more than 130 years, the oldest surviving male issue of the Nawab

succeeds the Gaddi and to the private properties of the Nawab. It is averred that ancestors of defendants no. 1 (iii) were believing and practicing Muslims, since the succession to the Gaddi and properties held by the Ruler (Nawab) has always been as per the rule and customs of Primogeniture and not by Shariat Law and there has never so far been a single exception to the said rule of succession.

28. It is further averred that on the death of late Nawab on 06.03.1966, the private properties were mutated in the name of defendant no. 1 in the revenue records of Rampur, due to customs and rules of primogeniture, late Nawab made ample provisions for his children and wife. He created a trust known as Raza Trust in the sum of Rs. 25 Lakhs, with the concurrence of the Government of India, at the time of the merger for the benefit of his two sons and five daughters except the defendant no.1, which was accepted by the Government of India.

29. It is further averred that out of the said trust, each son of late Nawab, got the income derived from Rs. 5 Lakhs, while each daughter got the income derived from Rs. 3 Lakhs. The corpus would be paid to the heirs of all the sons and daughters. Late Nawab also made an allowance of Rs. 5 Lakhs for the marriage of his daughters. It is further averred that after the death of late Nawab, there was some dispute between defendant no. 1 and his mother Begum Rafat Zamani,

defendant no. 4 with regard to the heirlooms and the jewelry and said Begum handed over the dynastic heirlooms and agreed that she would not claim anything including the dower debt from defendant no. 1 or from his properties or from his heirs or their properties.

30. It is further averred that since the gaddi of the Nawab of Rampur was impartible and descended from one single person i.e. one Nawab to another single heir, the next Nawab by the ancient customs and rule of primogeniture. It is further averred that there could be no question of applying the Muslim Personal Law to the succession to an impartible estate, which from its very nature was bound to descent to a single heir only, because the application of Muslim Personal Law to an impartible estate would destroy its impartible nature and would divide it into several shares.

31. It is further averred that the Muslim personal law of succession did not apply where family customs (including customs of primogeniture) governed succession because custom oversides such personal law and it has always been recognized that custom of premogeniture and not personal law applied to the properties of chiefs and rulers and also ex-chiefs and ex-rulers during the British period as well as prior to and after the British Rule in India.

32. It is further averred that Sh. S.K. Kapoor, General Attorney of the defendant no. 1 (iii), Syed Mohammed Ali Khan and was authorized to sign and verify the written statement on behalf of defendant no. 1 (iii).

33. The plaintiff has filed replication to the written statement filed by defendant no. 1 (iii), thereby controverted the averments made in the written statement and reiterated the averments made in the plaint.

34. On the basis of the pleadings of the parties, the Hon'ble High Court, vide order dated 24.08.1978, framed the following issues for adjudication:-

Issues

1. Whether the properties mentioned in the schedule annexed to the plaint were the properties of Late Major General Sir Saiyed Raza Ali Khan Bahadur at the time of his death? (OPP.)

2. If issue no. 1 is proved, what are the respective shares of the parties to the suit?

3. Whether the suit is within time?

4. Relief.

35. In order to prove his case, plaintiff has examined PW – 1 Sh. Chander Bhan Singh, Inspector, Estate Duty Office, who has proved the return of the estate duty filed by Nawab Syed Murtaza Ali Khan on the death of his father Nawab Raza Ali Khan of Rampur as Ex.PW – 1/1.

36. During cross-examination, PW – 1 deposed that he has no personal knowledge about the contents of this return and he has simply brought it from his official record. He further deposed that he did not deal with said file but from the record he can give answer which may be put to him. He further deposed that the assessment is still pending. He further deposed that he has no information to show that parties dealt with the heirloom jewelry.

37. The plaintiff has also examined PW-2 Sh. Narinder Singh Manocha, Desk Officer, Ministry of Home Affairs, Government of India, New Delhi, who brough letter dated 27.05.1966, written by Syed Murtaza Ali Khan Nawab of Rampur to Her Highness Nawab Rafatzamani Begum Sahiba of Rampur as Ex.PW-2/1.

38. The plaintiff has examined himself as PW – 3 and briefly deposed in his examination in chief that he is claiming share in the jewelry mentioned in lists Ex.PW-3/1 to Ex. PW-3/3. He further deposed that his mother's name was Khurshid Laqa Begum. He further deposed that she was the eldest daughter of Nawab Raza Ali Khan, she expired on 16.06.1967. He further deposed that he used to regularly visit his grandmother's house in Delhi at 19-B, Friends Colony. **He further deposed that around July 1969 on one such visit, he was present there when his aunts (sisters of is late mother) and his**

uncle (brother of his mother viz., Zulfikar Ali Khan, Nawabzada) were discussing the inheritance of his grand father and were talking about attempts to have a settlement with Nawab Murtaza Ali Khan. He further deposed that during this discussion, he learnt that he as the heir of his mother also had a share in the properties of late Nawab Raza Ali Khan, who had died in March, 1966. **He further deposed that since his aunts and uncle were trying to reach a settlement with his uncle Nawab Murtaza Ali Khan, he requested them to ask him on his behalf also if he would be willing to let him have the share due to him and they subsequently told him that he had refused to do so.** He further deposed that at that time he was a student at Aligarh University, being very busy with his studies and was not aware of the full details of his grand father's property and waited till such time this information became available to him. **He further averred that in the year 1970-71, question were asked in the parliament about the jewelry belonging to his late grandfather Nawab Raza Ali Khan. He further deposed that government inquiries had been conducted, which revealed that a substantial amount of jewelry existed.** He further deposed that this information became available through questions which were asked in the Parliament and when he got this information, he filed the suit.

39. During cross-examination PW–3 deposed that he may have seen the jewelry in question but he cannot certainly

identify it. He learnt about the existence of jewelry from his late mother, who told him that there was jewelry in existence which belonged to her parents. He further deposed that he had seen Nawab Murtaza Ali Khan many a times and also his wife Begum Aftab Zamani, who used to live at 2, Sardar Patel Road, New Delhi and he had visited their house. He further deposed that he is not aware whether Nawab Murtaza Ali Khan was recognized as heir apparent by his father. He also does not know whether a ceremony recognizing him as such was performed. He knew about the existence of a trust known as Raza Trust. He does not know the purpose of that trust neither he knew that the valuation of said trust was Rs.25 Lakhs. He has not denied that he is the beneficiary of said trust. He further deposed that the eldest son used to succeed to the Gaddi of Rampur before rulers were de-recognized.

40. The plaintiff has also examined PW – 4 Begum Rafat Zamani Ali Khan W/o Late Nawab Raza Ali Khan Bahadur of Rampur (defendant no. 4), who deposed during her examination in chief that at the time of death of her husband, he left some heirloom jewelry and some other jewelry. She further deposed that in May 1966 after her husband's death the heirloom jewelry , which was lying in the Bank, was given over by her to late Nawab Murtaza Ali Khan. She further deposed that when she handed over the heirloom jewelry to her son, he have her a letter and receipt which she produced, list of

which is marked as Mark A. She further deposed that jewelry besides heirloom jewelry was kept in the “Poshak Khana”, “Poshak” is an elaborate cupboard cum table located in a room in the Rampur Palace (Khas Bagh Palace at Rampur). She was asked some questions by a letter by the Wealth Tax Officer after her husband’s death regarding jewelry. She produced the letter dated 01.01.1970 (marked B) with enclosure Annexures ‘A’ and ‘B’ (objected to) She further deposed that she replied to this letter by her letter dated January 2019, 1970. She produced the office copy of letter (Mark C) (objected to). She further deposed that immediately after her husband’s death she gave the keys of the whole Khas Bagh Palace to her son late Nawab Murtaza Ali Khan, defendant no. 1. She had seen the list of seven items which carries the title (exhibit 3). She recognized the same as description of the heirloom jewelry, Mark D. She examined the list Ex.2. After seeing the same, she recognize the items, the first being a string of emerald and pearls, the second earring, the third bracelets and fourth packets of diamonds. **The items 1, 2 and 3 mentioned in the list titled Ex.2 were given by her late husband to her daughter in law Begum Aftab Zamani Ali Khan at the time of her “Muh Dikhai”, upon her wedding.** Item no. 4 in the list titled Ex. 2 the packets of diamonds, were always kept in the “Poshak Khana”, Mark E. She was shown a list Ex. 1. The contents of list Ex. 1 were read out by the Commissioner and explained to the witness. She admitted the list to be correct. She deposed

that all these items belonged to her late husband. The list was marked as Mark F. She further deposed that out of the "Honours" mentioned in the list some belonged to her father-in-law Nawab Hamid Ali Khan and some to her late husband. She further deposed that the honours mentioned in this list are replicas of the originals. She further deposed that the replicas were always made with diamonds and emeralds and other precious metals and stones. She further deposed that the replicas were retained in the family. She further deposed that the originals were always returned to the Crown after the death of the recipient. She further deposed that this of course, did not apply to the Rampur State Honours titled "Nishani Iqbal".

41. During cross-examination PW – 4 deposed that the pet name of late Nawab Murtaza Ali Khan, her son, was 'Bachan'. She was shown document marked A. After seeing the same, she stated that she identify the signatures of her son 'Bachan' on the said document Ex.P-1. She also identified signature of her son 'Bachan' on the enclosure Ex.P-1/A. She admitted that her late son and his wife Begum Aftab Zamani Ali khan had been living at 2, Sardar Patel Marg, New Delhi, also known as Rampur House. She further deposed that she was told that there was a raid in 1968 by the Income Tax Authorities at 2, Sardar Patel Marg, New Delhi, with regard to the items mentioned in list F, these were in the 'Poshak' during her husband's life-time. She does not know what happened to them thereafter. **She**

further deposed that out of the items mentioned in List E, the first three items were given by her late husband to her daughter-in-law on her wedding as 'Muh Dikhai'. She further deposed that there three items after having been given to her daughter-in-law were kept by her and were not kept in the 'Poshak'. She further deposed that she does not know where these items were kept after her husband's death as she had handed over the keys of the palace to her son. She further deposed that it is customary that when the Nawab of Rampur dies and someone else becomes the Nawab, the keys are handed over to him. She further deposed that although everyone started calling my son the Nawab after the death of her husband, the official recognition of this came a few days later. She further deposed that the keys of the palace were handed over to her late son immediately upon the death of her husband. She further deposed that after 1953 / 1954, when her son stayed in Rampur, he lived in "Aiwane – e – Rafat", which is an annexe to the Rampur Palace. She further deposed that all these areas were under the same roof. He used to live in the "Aiwan-e-Rafat". She further deposed that after her son got married, it was made available to them and she stayed in another room of the place with her husband. Her son late Nawab Murtaza Ali Khan was present in the Palace when her husband died. She further deposed that although there have been some differences of opinion between her and her daughter in law, Begum Aftab Zamani Ali Khan nevertheless they had

regular family relations, she visited her regularly and so did her children and she also used to visit them. **She further deposed that the heirloom jewelry was kept in the Bank from 1953 or 1954. She further deposed that same was kept in the same State Bank until 1966 and thereafter she does not know what happened after she handed over it to her son 'Bachan'. She further deposed that the heirloom jewelry could be used by the Nawab himself or with his permission by the Junior members of the family.** She further deposed that she has no knowledge whether her son late Nawab Murtaza Ali Khan ever used the heirloom jewelry. She admitted that in the list Mark F there were various items which ladies would use. She does not know whether after her husband's death Begum Aftab Zamani Ali Khan used these items. She further deposed that she did not saw anybody using these items after the death of her husband.

42. Defendant no. 2 Begum Aftab Zamani has examined herself as DW – 1 and deposed during her examination in chief that she was in possession of heirloom jewelry. She further deposed that besides heirloom jewelry, rest of the jewelry is hers. She further deposed that heirloom jewelry is her property but she would give the same to her son Murad. She further deposed that same was in the State Bank in the name of her husband. She further deposed that her husband got the jewelry mentioned in Ex.1, when he became the ruler. She further deposed that said jewelry was kept in State Bank of India,

Delhi. She further deposed that she filed another suit for partition of moveable and immovable property situated in Rampur.

43. During cross-examination, DW – 1 has admitted that in 1969 some government officials inspected some jewelry at Sardar Patel Marg – 2. She denied that some inquiries were made from her and from the Nawab. **She admitted that the letter dated 09.08.1968, must have been written by her late husband had herself to the WTO. She further deposed that she is not denying the contents of said letter.** She further deposed that she does not remember having signed any list, which is annexed with the said letter mark E. She does not remember what they got signed from her at that time. She denied that all the jewelry in the two lists attached to letter mark E belongs to her father in law. She denied that the jewelry listed in Ex. 1 and Ex. 2 to the plaint belong to her father in law. She denied that the Hon'ble Supreme Court of India struck down a certificate of the Central Government recognizing her late husband as the successor to the properties of her father in law. She further deposed that her late husband died on 09.02.1982. She further deposed that the question of inheritence by her daughter Smt. Naqat Ali Khan from her father and other questions relating to inheritance of her husband's property are all under dispute. She further deposed that her husband owned a house at 148, Sunder Nagar. She further deposed that they have to see who are the

owners of the house after her husband's death. She further deposed that her husband did not leave a Will. She did not know whether her daughter gets a share in their house in at 148, Sunder Nagar. She further deposed that she cannot remember when she saw them first time she saw them many times because they are hers. She does not remember if these packets at item no. 4 of Ex. 2 were found in a box with the name late Nawab Raza Ali Khan long after his death. She further deposed that the property like this was kept in boxes which were labeled under the name of Nawab Rampur but they knew which box is their's. She further deposed that during her father in law's lifetime, she used to keep her wearing jewelry in her own. She denied that the box, in which the packets mentioned as item no. 4 in Ex.2 were found in a box together with the items of jewelry etc, which belong to her late father in law. **She denied that items no. 1 to 3 in the said list were found in a box together with item of jewelry etc, belonging to her late father in law.** She denied that her statement today is inconsistent with the contents of letter marked E dated 19.08.1969. She denied that anyone other than her husband or herself had any rights to the items listed in Ex.1 to 3 of the plaint. She denied that the relations between her and her mother in law have been reasonably cordial most of the time. Her relations with her father in law were very cordial. The jewelry mentioned in Ex. 1, 2 attached to the plaint was given to her by her father in law, the then ruler. She further averred that her

late father did not give the said jewelry to her out of any love or affection but on account of official. She denied that there was no custom whereby the ruler will give jewelry of this kind mentioned in Ex. 1 and 2 to his daughter in law. She further deposed that she declared the jewelry in Ex. 1 and 2 in her wealth tax return.

44. Ld. Counsel for the plaintiff has contended that private property left behind by the late Nawab, who was professing Muslim religion, would devolve upon the legal heirs of late Nawab as per Muslim Personal Law applicable to Shia sect in India. He further contended that though items no. 1 to 3, in list Ex. PW-3/2, were given in Muh Dikhai to Defendant no. 2, Begum Aftab Zamani , daughter in law of late Nawab but same were recovered from the trunk in the possession of late Nawab after his death, which makes it amply clear that possession of those items were with the late Nawab and was never delivered to defendant no. 2. He further contended that delivering the possession of property is essential for a valid gift as per the Muslim Law. He further contended that the Hon'ble Supreme Court of India, in ***"Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (2020) 15 SCC 655,*** which was pertaining to the immovable and movable property of late Nawab of Rampur, has held that ***succession to the private property of late Nawab would automatically be succeeded by the heirs of late Nawab on his death as per Muslim personal law as applicable to Shias***

and not according to any rule of primogeniture. He further contended that the above judgment unequivocally establishes that concept of 'Gaddi' is distinct and independent from that of private property. In support of his claim, Ld. Counsel of plaintiff has relied upon judgments delivered by ***Hon'ble Supreme Court of India in Civil Appeal no. 1773/2002 titled "Talat Fatima Hasan Through her Constituted Attorney Sh. Syed Mehdi Husain Vs Nawab Syed Murtaza Ali Khan (D) by LRs & Ors", date of decision 31.07.2019; "Rajkumari Amrit Kaur Vs Maharani Deepinder Kaur & Ors" 2020 SCC Online P&H 680; "Maharani Deepinder Kaur (since deceased) Through Legal Representatives & Ors Vs Rajkumari Amrit Kaur & Ors" (2022) 9 Supreme Court Cases 658.***

45. Ld. Counsel for defendants no. 1 (iii) and (iv) has contended that the suit is barred by limitation. He further contended that the burden of proof to prove that the suit property belonged to late Nawab Raza Ali Khan at the time of his death and that suit property was available for partition in accordance with the shariat is on the plaintiff, which he has failed to prove. He further contended that entire evidence led by the plaintiff qua the ownership of jewelry is hearsay. He further contended that items no. 1 to 3 in list marked Ex. 2 are admittedly the property of defendant no. 2 and thus same cannot be the subject matter of the present partition proceedings and items no. 1 to 7 in the list marked Ex.3 to the

plaint, would devolve only upon defendant no. 1 upon the death of late Nawab, as per the law of primogeniture, as held by the Hon'ble Supreme Court of India in ***"Sri Marthanda Varma (D) through LRs & Anr Vs State of Kerala & Ors" 2022 (1) SCC 226***. He further contended that the judgment relied upon by plaintiff of the Hon'ble Supreme Court of India in ***"Talat Fatima Hasan Vs Nawab Syed Murtaza Ali Khan & Ors"***, is not applicable to the present case as the suit property in the said case was clearly different and that judgment also does not deal with heirloom jewelry. He further contended that the suit property was uninterruptedly and continuously with the defendants without any objection from anyone including PW – 4 and deposition given by PW – 4 against defendants no. 1 and 2 was given out of hostility. He further contended that presumption of plaintiff that all the jewelry found with defendant no. 1 and 2 must be the jewelry of late Nawab Raza Ali Khan is wholly misplaced and based on an abject lack of evidence, which is also contradicted by PW – 4. It is prayed that suit may be dismissed.

46. Ld. Counsel for defendant no. 3 (iii) has contended that the plea raised by plaintiff that the jewelry Ex.3 constitutes heirloom and hence attached to the Gaddi and must devolve exclusively upon defendant no. 1 (iii) by the rule of primogeniture is wholly misconceived, inapplicable to the present case and has no foundational or factual basis. He

further contended that the said jewelry was the personal property of late Nawab and he never declared the same to be heirloom even for the purpose of seeking exemption under the Weath Tax Act, 1957. He further contended that the jewelryu listed in Ex. 3 cannot be regarded as attached to the Gaddi in view of the binding decision in Talat Fatima (Supra) and the reliance placed by defendant no. 1 (iii) on the observations made in Marthanda Verma (Supra) is entirely misplaced and beyond pleadings, without any factual basis and thus inapplicable to the present case. He further contended that the pleadings made by defendant no. 1 and defendant no. 1 (iii), in their written statements, are irreconcilable and are mutually destructive and cannot be sustained. He further contended that the observations made in Marthanda Varma (Supra) are in conflict with binding decision of larger bench (including two constitution bench judgments) along with Talat Fatima (Supra) and Deepinder Kaur (Supra), and therefore same cannot be relied upon. He further contended that the jewelry Ex.3 being private property of the late Nawab must devolve to his heirs in as per Muslim Personal Law as applicable to Shias.

47. Ld. Counsel for the plaintiff argued in rebuttal that the decision relied upon by the defendants of the judgment of the Hon'ble Supreme Court in case of ***"Marthanda Verma (D) through LRs Vs State of Kerala & Ors (2021) 1 SCC 225***, is not applicable in the present case as that case was a case of

Shebaitship and not of succession to the private property of a covenanting ruler, unlike the present suit. . He further contended that the judgment titled " Marthandda Verma (D) through LRs Vs State of Kerala & Ors" (supra), rendered on the basis of Travencore – Cochin Hindu Religious Institutions Act, 1950, which was applicable only to certain religious institutions covered by the said Act. The issues raised in the present suit had been settled in Talat Fatima Hasan (Supra) and are completely distinct and separate from the decision made by Hon'ble Supreme Court of India in Marthand Verma (Supra). He further contended that the passing observations in para 123 & 124 in Marthand Verma (Supra) is peculiar to the facts of the case, which is evident from para 67 where the Hon'ble Supreme Court framed 5 questions for deciding the status and entitlement of appellant no. 1 therein including his relationship vis a vis the temple; where Hon'ble Supreme Court of India framed five questions for deciding the status of entitlement. He further contended that Marthanda Verma (Supra) is a two Judge Bench case, which did not consider Talat Fatima Hasan (Supra) and thus same cannot be seen as overriding the decision in Talat Fatima Hasan (Supra), which is a three Judge Bench case and is binding upon the parties as it relates to all matters of succession of private properties of late Nawab. He further contended that defendants no. 1 and 2 neither contended nor proved that heirloom jewelry is different from other jewelries of late Nawab and thus impartible.

48. I have heard Ld. Counsel for the plaintiff, Ld. Counsels for the defendants no. 1 (iii) & (iv) and defendant no. 3 (iii), perused the pleadings, evidence and other material placed on record. My issue-wise finding is as under:-

Issue no. 1. Whether the properties mentioned in the schedule annexed to the plaint were the properties of Late Major General Sir Saiyed Raza Ali Khan Bahadur at the time of his death? (OPP.)

The plaintiff has filed the present suit for seeking partition of movable property i.e. 66 items of jewelry mentioned in list Ex.P-1, 4 items of jewelry mentioned in list Ex.P-2 and 7 items of heirloom jewelry mentioned in list Ex.P-3, which were exhibited as Ex. PW-3/1 to Ex.PW-3/3 in the testimony of plaintiff, recorded by the Local Commissioner on 16.07.1987. The jewelry articles mentioned in these three lists are respectively reproduced herein below:-

Exhibit P-1 (Also Exhibited as Ex.PW-3/1)

Details of 66 items or jewellery found at the house of defendants no. 1 and 2 at no. 2 Sardar Patel Marg, New Delhi, presently lying in the State Bank of India, Parliament Street, New Delhi.

S.No.	Particulars	Type
1.	One Agate Cigar – Holder with Rampur Insignia in gold set with diamond and cigar	

	-end frill of same.	
2.	One red velvet cap with stitched-real-pearls	Wearing Apparel
3.	One Pendant with Watch (Beetle Shape) set with rose-cut diamonds on gold.	
4.	One Campass in 18 Carat gold with chain	
5.	One Necklace with brilliant and rose-cut diamonds and with coral beads.	
6.	One Achkan-collar-petti (triangular) studded with real pearls, ruby beads, rose-cut diamonds on gold embroidery	Wearing Apparel
7.	One white cap with emerald beads on gold embroidery	Wearing Apparel
8.	One dark-red velvet-cap with real pearls, flat-cut-diamonds cut-rubies and emeralds on gold embroidery	Wearing Apparel
9.	One white cap with coral, gomed, turguories stones on gold zari embroidery.	Wearing Apparel
10.	One gold (broach) (embossed) profile of Queen Victoria) Honour Set with cut-diamonds, (Yellow and White).	Honours
11.	One Medallian (Victoria-cross Shape) of gold (pendant) studded brilliant-cut diamonds.	Honours
12.	One circular Rampur-Monogram (Broach) with Arabic (Prayer) inscription) Nishane Iqbal) set with brilliant-cut-diamonds.	Honours
13.	One circular-Rampur-Honour (smaller size with crown-head) with Arabic prayer inscription (pendant) studded with cut-diamonds.	Honours
14.	One circular (broach) with star with brilliant cut diamonds (inscription “Heaven’s light pir guide)”. - all set is studded.	Honours
15.	One circular (big broach), inscription (as in	Honours

	no. 14) with star and all studded with cut diamonds.	
16.	Two identical (one with green the other with brown background for inscription) with white embossed profile of Queen Victoria bearing the legent "Heaven's light our guide", studded with cut-diamonds.	Honours
17.	-do-	Honours
18.	One octoganal star (with Victoria-Cross Shape inside) studded with cut diamonds.	Honours
19.	One roundish-five-part (pendant) with crown-head and Queen Victoria's profile in gold, set cut with rubies, emeralds and diamonds.	Honours
20.	One pair white metal bangles set with pearls buttons and single cut diamonds.	Her HIghness
21.	One pair earring set with flat cut diamonds pearls, corals etc.	Her HIghness
22.	One Armlet-gold enameled set with flat-cut diamonds (Parab).	Her Highness (Mother of H.H.)
23.	One Piece Piazeb enameled-gold set with flat cut diamonds (Parab) and pearls.	Her Highness (Aunt of H.H.)
24.	One set of 7 large and 6 small buttons of sherwani (identical design) set with diamonds etc.	
25.	One set of 14 pieces of buttons with single-cut and double-cut diamonds studding.	
26.	One set of 6 pieces of buttons of pearls sheel set with one ruby (small) each.	
27.	One set of 7 large & 6 small pieces of buttons (identical design) set with flat-cut rose-diamond and cut-rubies.	
28.	One cultured-pearl necklace.	Her Highness
29.	One white-metal necklace set with cultured	Her Highness

	pearls and synthetic stones.	
30.	One Carat gold cigarette case.	
31.	One universal wrist-watch with rolled-gold strap.	
32.	One 9 carat gold (0.375) cigarette case.	
33.	One Pocket-Watch 18-Carat gold (made by Thos. Russel & Co.)	
34.	One gold tikka set with brilliant cut-diamonds and pearls.	
35.	One pair cuff-links set with one diamond each.	
36.	One button set with diamonds and rubies	
37.	4 pieces buttons (2 large) set with diamonds and sapphire.	
38.	Gold bangles 20 pieces; 2 pieces bracelets	
39.	One piece bracelet set with amethyst and diamonds.	
40.	One bracelet set with diamond-bagnettes and emeralds on gold.	
41.	One pair gold-earrings.	
42.	One single-string bluish pearls necklace.	
43.	One gold enameled necklace.	
44.	One small gold ghungroo (bracelet)	
45.	One pocket watch set with diamonds on gold.	
46.	One gold (bracelet) strap.	
47.	One 0.375 gold cigarette case set with diamonds-bagnettes and single cut-diamond and very small rubies.	
48.	One part enameled-gold bracelet set with flat-cut diamonds.	
49.	One gold strap set with brilliant cut rubies and diamonds.	

50.	One white-metal bracelet set with small single cut diamonds around white sapphires big stones.	
51.	One pair gold Jhumkas set with white synthetic stones and cultured pearls.	
52.	One pair white metal bangles set with white stone (not diamonds)	
53.	One piece bangle (white metal) set with cut rubies.	
54.	One piece bangle (white metal) set with cut emeralds.	
55.	One Nag-ring set with diamonds on gold.	
56.	One tie-pin set with 7 pieces of diamonds.	
57.	Two pieces Jhumka-strings studded with diamonds and pearls.	
58.	One gold chain.	
59.	One pair Jhumka set with rose-cut diamonds and pearls.	
60.	One ring set with diamonds (round shape)	
61.	One ring set with one emerald and small diamonds.	
62.	One ring with diamond bagnettes with ruby in centre (inscribed with “Allah”).	
63.	One ring set with small diamonds and two square-cut rubies.	
64.	One key-chain in black silk pendant with small diamonds.	
65.	One piece diamond nose-pin.	
66.	One piece diamond nose pin (smaller)	66

<u>Exhibit P- 2 (Ex.PW-3/2)</u>

Details of 4 items of jewelry discovered at Bombay in a Bank

Deposit Locket, presently lying in a Bank in Bombay.

S.no.	Particulars
1.	One single string consisting of 14 emerald engraved beads and 14 pearls.
2.	One pair of earrings with two emerald drops with diamonds.
3.	One pair of bracelets with two square emeralds in centre surrounds with diamonds.
4.	Six flat diamond packets (i) 87 pieces carat 131.28 (ii) 247 pieces carat 124.55 (iii) Ct. 82.40 (iv) Ct. 154.35 (v) Six pieces ct. 14.50 (vi) Ct. 52.85

Exhibit P– 3 (Ex. PW-3/3)

Details of 7 items of so-called heirloom jewelry presently lying in the State Bank of India, New Delhi.

S.No.	Particulars
1.	One big diamond necklace.
2.	One No. 2 diamond necklace
3.	Two emerald necklaces.
4.	One crown with diamond and pearls.
5.	One emerald diamond and ruby sword cover
6.	One diamond gold gilt sword.
7.	One gold and diamond belt with two side pieces of gold

49. The plaintiff has claimed that Late Nawab was the ruler of erstwhile Rampur State in Uttar Pradesh. Late Nawab vide agreement dated 15.05.1949, transferred the entire

administration of State of Rampur to the Government of India w.e.f. 01.07.1949. As per Article 4 of the said agreement, Late Nawab was entitled to full ownership rights of all the private properties belonging to him on the date of said agreement and an inventory of all properties movable and immovable, held by Late Nawab was prepared. It is further claimed that the Nawab died intestate on 06.03.1966, leaving behind his private properties i.e. jewelry mentioned in Ex. PW – 3/1 to Ex.PW-3/3 at the time of his death.

50. It is claimed that Late Nawab was professing Muslim religion and was belonging to Shia Sect, thus after his death, his private properties, both movable and immovable, devolved upon his heirs i.e. plaintiff and defendants as per Muslim Shia Law.

51. The plaintiff has thus claimed that he being one of the legal heirs of late Nawab is entitled for a share in the jewelery left by late Nawab but defendant no. 1 i.e. the eldest son of late Nawab, who was recognized as successor of the Gaddi of Rampur w.e.f. 07.03.1966, after the demise of late Nawab, refused to partition the said property amongst the LRs, due to which, the present suit has been filed.

52. Defendants no. 3 to 14 have not disputed the claim put forth by the plaintiff. They also claimed that jewelry left behind by late Nawab are required to be divided amongst all his LRs

as per their personal law.

53. Defendants no. 1 and 2 have disputed the claim of the plaintiff. As per defendants no. 1 and 2, after the demise of late Nawab, defendant no. 1 was recognized as successor of the gaddi by the Government of India and on such recognition, all the immovable and movable properties, which were private properties of late Nawab vested in defendant no. 1, who became the absolute owner thereof to the exclusion of other LR of late Nawab.

54. Defendants no. 1 and 2 have further claimed that jewelry mentioned in these three lists are the personal properties of defendants no. 1 and 2, therefore, neither plaintiff nor any other defendant are entitled to any share, nor any such demand was ever made on their behalf. It is also claimed by the LR of defendant no. 1 that the ancestors of defendant no. 1 (iii) were believing and practicing Muslims and succession to the Gaddi and properties held by the Ruler (Nawab) has always been according to the rule and customs of primogeniture and not by Shariat Law and there has never so far been a single exception to the said rule of succession.

55. An examination of the pleadings and evidence led on record shows that it is not in dispute that late Nawab H.S. Major General Sir Saiyid Ali Khan Bahadur was the ruler of

erstwhile Rampur state in U.P. It is also not in dispute that late Nawab entered into an agreement dated 15.05.1949 with the Government of India, vide which he transferred the entire administration of the state of Rampur to the Government of India w.e.f. 01.07.1949.

56. It is also not in dispute that as per Article 4 of the said agreement, late Nawab was entitled for full ownership right in all his private properties, belonging to him on the date of said agreement and an inventory of all properties movable and immovable, held by the late Nawab was prepared and submitted to the Government of India. It is also not in dispute that late Nawab died intestate on 06.03.1966.

57. The plaintiff and defendants no. 3 to 14 have claimed that after the demise of late Nawab on 06.03.1966, his private property i.e. jewelry mentioned in Ex.PW – 3/1 to Ex.PW-3/3, would devolve upon all the LRs of late Nawab, as per Muslim Personal Law, applicable to Shia sect. Whereas as per defendants no. 1 and 2 and their LRs, the private properties left by late Nawab, has devolved exclusively upon defendant no. 1 on his recognition as ruler to State of Rampur by the Central Government by way of customs of primogeniture and not by way of Shariat law.

58. Before filing the present suit, LRs of late Nawab had

filed a suit for partition of immovable and movable property situated in Rampur, before District Judge, Rampur in the year 1970, which was withdrawn with the liberty to file afresh on 07.01.1972, thereafter a fresh suit was filed in the year 1972 before the District Judge Rampur which was later on withdrawn by the Hon'ble High Court of Allahabad and tried the same on its own and dismissed the said suit on 31.07.1996, which was assailed before the Hon'ble Supreme Court of India by filing a ***Civil Appeal no. 1773/2002, titled "Talat Fatima Hasan Through her Constituted Attorney Sh. Syed Mehdi Husain Vs Nawab Syed Murtaza Ali Khan (D) by LRs & Ors."***.

59. The said appeal was decided by the Hon'ble Supreme Court of India vide order dated 31.07.2019. While allowing the said appeal, the Hon'ble Supreme Court of India has dealt with the issue as to whether the private property held by late Nawab after his demise would devolve by way of customs of primogeniture or as per Muslim Personal Law, applicable to Shia Sect in India. Para(s) 37, 38, 39 and 40 are relevant qua this issue, which are reproduced as under:-

> ***37. It was contended by Mr. Ganguli that there could be no Gaddi without a property and the properties which were declared to be the private properties were, in fact, attached to the Gaddi and the properties***

would be of the ruler so declared. We find no force in this submission. These were rulers without any subjects. These were rulers without any territory. These were so called rulers enjoying certain privileges and privy purses. They had been given the choice of declaring certain properties to be their private properties and these private properties could not be said to be attached to the Gaddi. When they were actual sovereigns, their entire State was attached to the Gaddi and not any particular property. There are no specific properties which can be attached to the Gaddi. It has to be the entire 'State' or nothing. Since, we have held that they were rulers only as a matter of courtesy, to protect their erstwhile titles, the properties which were declared to be their personal properties had to be treated as their personal properties and could not be treated as properties attached to the Gaddi.

38. Mr. Chandra has drawn our attention to the Rajpal Hindi Shabdkosh7 in which Gaddi has been given various meanings

including small mattress, seat of an exalted person, title of a ruler. In the Oxford Hindi–English Dictionary, the meanings given are cushion, throne, royal seat, etc. Property is not mentioned as one of the attributes of a Gaddi.

39. A Gaddi or rulership and private property have two different connotations even in the merger agreement/instrument of accession. In Article 2 of the agreement, it is clearly mentioned that Nawab would continue to enjoy the same personal rights, privileges, immunities and dignities and other titles which he would have enjoyed prior to the agreement. Conspicuously, the word 'property' or 'personal property' is missing. Article 2 deals only with personal rights, privileges, dignities, etc. Article 3 deals with privy purse which would also be a part of the rulership or Gaddi. Article 6 which deals with succession, guarantees the succession according to law and custom to the Gaddi of the State and to the Nawab's personal rights, privileges, immunities, dignities and title. Gaddi would be the

'throne' or 'title' of Nawab in the context in which it has been used and the personal rights, privileges, immunities, dignities and titles will be those referred to in Article 2. The word 'property' is also conspicuously absent in Article 6.

40. Article 4 states that the Nawab shall be entitled to full ownership, use and enjoyment of all private properties as distinct from State properties. Such properties must belong to him as on the date of agreement. In our view, Article 6 does not relate to the properties mentioned in Article 4 and the private properties would remain the private properties of the Nawab as a common citizen of the country as held in various authorities referred to above. We have, therefore, no hesitation in holding that on the death of the ruler, Nawab Raza Ali Khan in the year 1966, succession to his private properties was governed by personal laws.

60. The above authoritative pronouncement made by the Hon'ble Supreme Court of India in a suit filed by the LR of late Nawab, with respect to his private properties in terms of the

merger agreement, makes it amply clear that the succession of the private properties left by late Nawab on his demise, would be governed by the Muslim Personal Law, applicable to Shia sect and not by the custom of primogeniture.

61. Once the Hon'ble Supreme Court of India in a suit between the parties has held that the private properties left by late Nawab, would devolve on his death upon his LRs, as per the personal law applicable to late Nawab and not by way of custom of primogeniture, then the plea of defendant no. 1 that he held the property left by late Nawab after his death to the exclusion of all other LRs of the late Nawab by applying the principle of primogeniture cannot be accepted.

62. The private property left by late Nawab on his demise has thus devolved upon all his LRs as per the personal law applicable to the Muslims as held by the Hon'ble Supreme Court of India in ***"Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (Supra).***

63. Defendants no. 1 (iii) and (iv) have claimed that, due to customs and rules of primogeniture the late Nawab made ample provisions for his children and wife and created a trust known as Raza Trust in the sum of Rs. 25 Lakhs, with the concurrence of the Government of India, at the time of the merger of the benefit of his two sons and five daughters except the defendant

no.1, which was accepted by the Government of India and out of the said trust, each son of late Nawab, gets the income derived from Rs. 5 Lakhs, while each daughter gets the income derived from Rs. 3 Lakhs. The corpus will be paid to the heirs of all the sons and daughters. On that basis, it is claimed that as due share has already been given by late Nawab to all his sons and daughter except defendant no. 1, therefore, they are not entitled for the partition.

64. The said plea taken by defendant no. 1 (iii) in his written statement cannot be accepted for the simple reason that said written statement was filed by defendant no. 1 (iii) through his attorney Sh. S.K. Kapoor, however, no such attorney has been placed on record. The said written statement does not even bear signature of defendant no. 1 (iii) and only bears signature of the attorney, without any such attorney being placed on record.

65. The defendant no. 1 (iii) has also not been examined in the instant case in order to prove the said plea taken in the said written statement.

66. Even otherwise, similar plea regarding creation of Raza Trust for the benefit other LRs of Nawab was also taken by contesting defendants. In ***"Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (Supra)*** as well. The Hon'ble Supreme

Court of India has dealt with the said plea in para 43 and 44 of the said judgment, which are reproduced as under:-

43. Another argument raised on behalf of the contesting defendants is that Nawab Raza Ali Khan, knowing that his succession was governed by the rule of primogeniture, had created a trust named 'The Raza Trust' for the welfare of his family members other than defendant no. 1. He had also made various other grants and gifts in favour of his children whereas the elder son was deprived of such benefits. It is contended that the plaintiff and the other defendants supporting the plaintiff had taken benefit of the said Trust and gifts and, therefore, cannot challenge the entitlement of defendant no. 1. This argument cannot be accepted. We have only to decide what was the legal entitlement of the legal heirs and in what manner the succession to the estate of late Nawab Raza Ali Khan was to be governed. We may also mention that the Trust, which

has been referred to by the contesting defendants, was created in the year 1944, much before the Nawab ceded his property to the Dominion of India. At that time, there was no doubt that succession to the properties of the State of Rampur would be governed by the rule of primogeniture. Even after Nawab ceased to be the ruler, he gifted a number of extensive properties to the defendant no. 1 during his lifetime including a property known as Rafat Club in Rampur, which the defendant no. 1 sold to the State of U.P. in 1961. The erstwhile Nawab also gifted a property known as Kothi Bareilly and a house in Delhi to defendant no. 1. Both the Division Bench and the learned Single Judge held that these properties gifted by the erstwhile Nawab to the defendant no. 1 were given to him only to maintain his status as the ruler and, therefore, could not be taken into consideration while deciding the issue of succession of the

erstwhile Nawab of Rampur.

44. We find a contradiction in the findings of the High Court in this regard. On the one hand, it is said that the plaintiff and the other family members cannot urge that the estate of the Nawab should be governed by personal law because they have derived benefits from the Raza Trust and gifts in their life time and, on the other hand, when it comes to the defendant no. 1, it is said that the gifts were made only with a view that defendant no. 1 should be able to maintain his status as the prospective heir. If he was to get all the properties of the Nawab, then why gifts would have to be made in his favour in his life time. Therefore, this contention is rejected.

67. In view of the above observation made by Hon'ble Supreme Court of India, the plea taken by defendant no. 1 (iii) in his written statement that plaintiff and defendant no. 3 to 14 are not entitled for any share in the private property of late Nawab is not acceptable.

The claim of the plaintiff regarding 66 items mentioned in Ex.PW-3/1, found at the house of defendants no. 1 and 2 and presently lying in State Bank of India, Parliament Street, New Delhi.

68. The plaintiff has claimed that these 66 items of jewelries were belonging to late Nawab as his private property at the time of his death, therefore, plaintiff is entitled to his share in these jewelries being the LR of late Nawab as per the provisions of Mohammedan Law applicable to Shia sect.

69. This claim of the plaintiff has been supported by defendants no. 3 to 14 as well.

70. Defendants no. 1 and 2 have claimed that jewelries mentioned in the list Ex. PW-3/1 are the personal properties of defendants no. 1 and 2, thus neither the plaintiff nor any other defendants have any right in these jewelries.

71. The plaintiff has claimed that 66 items of jewelries mentioned in list Ex.PW-3/1 were the private properties of late Nawab, which he left at the time of his death, therefore, these jewelries devolve upon his legal heirs after his death as per Muslim personal law, applicable to Shia sect in India.

72. The plaintiff has placed on record letter dated 15.05.1949 of Sh. V.P. Menon along with list of properties

declared by late Nawab as his private property. In the said list at page no. 79, there is a reference of jewelry gold, silver plates and cutlery and crockery in possession of the Nawab. Though, there is a reference of jewelry, gold and silver plates and cutlery and crockery, in the said list. However, that list is not exhaustive and articles mentioned in the list Ex. PW – 3/1 are not mentioned specifically in the list of private properties declared by late Nawab to the Central Government.

73. In order to prove that these 66 jewelry items were the private properties of late Nawab, plaintiff has examined himself as PW- 3, however, he could not produce any material to show that these 66 items of jewelry were the private properties of late Nawab at the time of his death.

74. The deposition of plaintiff is based upon the information received by him from his late mother that there were jewelries in existence, which belonged to her parents. No concrete proof has been produced by the plaintiff to show that these 66 items were belonging to late Nawab.

75. The plaintiff has also examined defendant no. 4 Smt. Rafat Zamani Begum, widow of late Nawab as PW – 4. During her examination in chief, PW – 4 has briefly deposed that all these items belonged to her late husband, out which, some belonged to her father in law and some to her late husband. She

further deposed that honors mentioned in this list are replicas of the originals. The replicas were always made with diamonds and emeralds and other precious metals and stones. She further deposed that the replicas were retained in the family and the originals were returned to the crown after the death of the recipient. She further deposed that this of course did not apply to the Rampur State Honours titled 'Nishani Iqbal'.

76. PW – 4 was duly cross-examined but her testimony that items mentioned in the list Ex.PW-3/1 was belonging to her late husband and her father in law has not been disputed. No cross-examination of PW – 4 was carried out in this regard nor even any suggestion was given to her that these jewelries were not the private property of late Nawab but owned by defendants no. 1 and 2 to the exclusion of all other LRs.

77. The defendants no. 1 and 2 have claimed that jewelry items mentioned in list Ex.PW-3/1 are their personal properties to the exclusion of all other legal heirs. However, they have not placed on record even an iota of proof to show that these jewelry items are their personal properties.

78. Defendants no. 1 and 2 have claimed that these jewelry items are their personal property, on the ground that these properties were recovered from Sardar Patel Marg, New Delhi and kept with State Bank of India, Parliament Street, New

Delhi.

79. Merely on the ground that these jewelry items were recovered from the house of defendants no. 1 and 2, it would not change the nature of ownership of these jewelries. The jewelries mentioned in the list Ex.PW-3/1 was held by late Nawab as his private properties at the time of his death as deposed by PW -4, therefore, these jewelries have devolved upon all his LRs after his demise as per the Muslim personal law, applicable to Shia sect in India.

80. The plaintiff and defendants are the legal heirs of late Nawab as per the Muslim Personal Law, applicable to Shia sect, therefore, 66 jewelry items mentioned in the list Ex. PW-3/1 have devolved upon the plaintiff and defendants, being the LRs of late Nawab after his demise.

The claim of the plaintiff qua 4 jewelry articles discovered at Bombay and presently lying in a Bank in Bombay, mentioned in list Ex.P-2 (Ex.PW-3/2).

81. The plaintiff has claimed that during the course of certain government investigations, 4 items of jewelry were discovered from the safe deposit locker in a bank in Bombay, approximate value of Rs. 10 Lakhs, form part of private property of late Nawab at the time of his death, therefore,

plaintiff has a share in these four jewelry items in accordance with the principles of Mohammedan Law.

82. The claim of the plaintiff has been supported by defendants no. 3 to 14.

83. Defendants no. 1 and 2 have claimed that these four items of jewelry, mentioned in the list Ex.PW-3/2, are the personal properties of Defendants no. 1 and 2 and no other LR of late Nawab has anything to do with this jewelry.

84. To prove his claim qua above four items of jewelries, mentioned in Ex. PW-3/2, plaintiff has examined PW – 4 Begum Rafat Zamani Ali Khan, who deposed in her examination in chief that she has examined list titled Ex. P-2 (Ex.PW-3/2). **She recognized the items, the first being a string of emerald and pearls, the second earrings, the third bracelets and the fourth, packets of diamonds.** She further deposed that items no. 1, 2 and 3, mentioned in the list titled Ex.2 were given by her late husband to her daughter in law Begum Aftab Zamani Ali Khan at the time of her Muh Dikhai upon her wedding. She further deposed that item no. 4 in the list titled 'Exhibit 2', the packets of diamond, were always kept in the 'Poshak Khana'.

85. During cross-examination PW-4 deposed that out of four items mentioned in List E, **the first three items were given**

by her late husband to her daughter-in-law on her wedding as Muh Dikhai. These three items after having been given to her daughter in law were kept by her and same were not kept in Poshak. She further deposed that the fourth item, packets of loose diamonds, were kept in the Poshak. **She further deposed that after her husband's death, she does not know where these items were kept as she had handed over the keys of her palace to her son.**

86. Defendant no. 2 Begum Aftab Zamani Ali Khan has examined herself as the sole defendant witness (DW-1). She deposed during her cross-examination that jewelry mentioned in Ex.1 and 2, attached to the plaint was given to her by her father in law, the then ruler. She further deposed that her father in law did not give the said jewelry to her out of any love or affection but on account of official.

87. Ld. Counsel for the plaintiff has contended that these four jewelry items mentioned in list Ex.PW-3/2 were the private properties of late Nawab, therefore, same devolved upon all his LRs, after his demise. He further contended that although PW – 4 Begum Rafat Zamani Ali Khan, widow of late Nawab has deposed in her evidence that items no. 1 to 3 in list Ex. PW-3/2 were given by her late husband to defendant no. 2 in her Muh Dikhai but defendant no. 2 and her husband had written a letter to the Wealth Tax Department dated 19.08.1969

Mark E, which has been admitted by defendant no. 2 during her cross-examination. In the said letter, defendants themselves mentioned that these three items were found in the box brought from Rampur Palace, which was opened on 28.09.1968. He further contended that averment of said letter clearly shows that possession of these three articles, mentioned in list Ex.PW-3/2 were never handed over to defendant no. 2 by late Nawab, therefore no valid gift, as per Muslim Law was concluded, thus these jewelry articles were also the private property of late Nawab, which have devolved upon all his LRs after his death. In support of his plea, Ld. Counsel of the plaintiff has relied upon judgments titled ***"Musa Miya Walad Mohammad Shaffi & Anr Vs Kadar Bax Walad Khaj Bax & Ors" AIR 1928 Privy Council 108; "Hafiz Abdul Basit & Anr Vs Hafiz Ahmad Mian & Ors" AIR 1973 Delhi 280; "Jhumman Vs Hussain & Ors" AIR 1931 Oudh 7; "Maqbool Alam Khan Vs Mst. Khodaija & Ors" AIR 1966 SC 1194; "Mst. Noor Jahan Begum Vs Mukhtar Dad Khan & Ors"***

88. Ld. Counsel for defendants no. 1 (iii) and (iv) has contended that plaintiff has failed to prove on record that jewelry items mentioned in list Ex.PW-3/2 was the private property of late Nawab. He further contended that PW – 4 Begum Rafat Zamani Ali Khan, widow of late Nawab has categorically deposed before the Court that three items mentioned in list Ex.PW-3/2 were given to defendant no. 2

Begum Aftab Zamani Ali Khan by late Nawab in her muh-dikhai, therefore, same are the private property of defendant no. 2 and item no. 4 also belongs to defendants no. 1 and 2

89. The claim of the plaintiff is that though PW – 4 Begum Aftab Zamani Ali Khan, widow of late Nawab deposed before the Court that three jewelry items of list Ex. PW – 3/2 were given by the late Nawab to defendant no. 2 in her muh-dikhai but actual physical possession of these articles were not given to defendant no. 2 as admitted by defendant no. 1 and 2 in their letter dated 19.08.1969, therefore same was not a valid gift as per the Mohammedan Law. Thus, these articles were held by the late Nawab as his private properties at the time of his death.

90. The defendant no. 2 has admitted the contents of letter dated 19.08.1969 Mark E, produced by PW – 4 during her examination in chief. Para IV of the said letter has been relied upon by the plaintiff, qua these jewelry items, which is reproduced herein below:-

> ***4.1 Recently, a box with late His Highness, name painted on it was noticed in the Rampur Palace. This box was brought to Delhi. As the keys had been lost or mislaid, the box was broken open on 28.09.1968 under the instructions of Her Higness Begum Aftab Zamani and it was found to contain some personal effects of late His Highness and three pieces of jewelry. A list of the same was duly made on the same day, and handed to Her Highness Begum***

Aftab Zamani. Late His Highness Nawab Syed Raza Ali Khan had several years ago, long prior to 1954, mentioned that he had given some pieces of jewelry to Begum Aftab Zamani, his daughter in law. Accordingly, they were kept away separately from his heirlooms and other jewelry, which he declared to the Home Ministry. These remained in Late His Highness box. On account of differences between Late His Highness and Nawab Syed Murtaza Ali Khan, he later came to live in Delhi with his wife Begum Aftab Zamani. As the strained relations continued till the death of Late His Highness, the jewelry remained in his (Late His Highness) box for over fourteen years and they were not among her other jewelry. It was only discovered when the above box was opened.

4.2 A list marked "A" attached hereto gives the contents of that box. It will be noticed from the list that the contents of the box were with the exception of items no. 2, 3, 4 & 16 personal effects or wearing apparels of Late His Highness. There are three items of wearing apparels and 18 items of personal effects.

4.3 As the three pieces of jewelry and a bag containing some stones being the property of Her Highness Begum Aftab Zamani, she gave them to M/s Bansali & Co. Jewellers, Bombay for evaluating the same. Late His Highness Nawab Syed Raza Ali Khan did not include these four pieces in the list of jewelry declared to the Home Ministry, as they did not belong to him. As such he did not also declare them in his Wealth-Tax

Returns.

91. Ld. Counsel of the plaintiff has claimed that as the actual possession of three jewelry items mentioned in the list Ex. PW-3/2 was never handed over to defendant no. 2, thus, a gift as per Muslim Law was not complete.

92. The issue regarding essential condition of a valid gift as per Mohammedan law, came for consideration before the Hon'ble Privy Counsel in ***"Musa Miya Walad Mohammad Shaffi & Anr Vs Kadar Bax Walad Khaj Bax & Anr"(Supra).*** The relevant part of this judgment is reproduced herein below:-

> *"Their Lordships are of opinion that a correct statement of the law on the question under consideration is to be found in the material clauses of Ch. 5 of Macnaghten's "Principles and Precedents of Mohammedan Law", published in 1825. They are as follows:-*
> *(1) A gift is defined to be the conferring of property without a consideration.*
> *(2) Acceptance and seisin, on the part of the donee, are as necessary as relinquishment on the part of the donor.*
> *(4) It is necessary that a gift should be accompanied by*

> *delivery of possession and that seisin should take effect immediately or at a subsequent period by desire of the donor.*
>
> *(8) A gift cannot be implied. It must be express and unequivocal, and the intention of the donor must be demonstrated by his entire relinquishment of the thing given and the gift is null and void where he continues to exercise any act of ownership over it.*
>
> *(9) The case of a house given to a husband by a wife and of orperty given by a father to his minor child form exception to the above rule.*
>
> *(10) Formal delivery and seisin are not necessary in the case of a gift to a trustee having the custody of the article given, nor in the case of a gift to a minor. The seisin of the guardian in the latter case is sufficient."*

93. The Hon'ble Supreme Court of India in "***Maqbool Alam Khan Vs Mst. Khodaija & Ors" (Supra)*** has held as under:-

> "5. We also think that the alleged gift was

invalid. In February, 1943, Khodaija was in possession of the tenure claiming it adversely to Najma. After the alleged gift, Najma neither gave possession of the property, nor did anything to put it within the power of the appellant to obtain possession. The three pillars of a valid gift under the Mohamedan Law are declaration, acceptance and delivery of possession. In Mohammad Abdul Ghani Vs Fakhr Jahan Begum 49, Ind App 195 at p. 209 (AIR 1922 PC 281 at p.288) Sir John Edge said:
"For a valid gift inter vivos under the Mohammedan Law applicable in this case, three conditions are necessary, which their Lordships consider have been correctly stated thus (a) manifestation of the wish to give on the part of the donor; (b) the acceptance of the donee either impliedly or expressly; and (c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively' (Mohamedan Law, by

Syed Ameer Ali, 4th Edn., Vol. I.p. 41)."
(6) The Prophet has said: "A gift is not valid without seisin." The rule of law is:
"Gifts are rendered valid by tender, acceptance and seisin Tender and acceptance are necessary "because a gift is a contract and tender and acceptance are requisite in the formation of all contracts; and seisin is necessary in order to establish a right of property in the gift, because a right of property, according to our doctors, is not established in the thing given merely by means of the contract, without seisin."
(7) Previously, the rule of law was thought to be so strict that it was said that land in the possession of a usurper (or wrongdoer) .,or of a lessee or a mortgagee cannot be given away, see Dorrul Mokhtar, Book on Gift, p. 635 cited in Mullic Abdool Guffoor V. Muleka (1). But the view now prevails that there can be a valid gift of property in the possession of a lessee or, a mortgagee and a gift may be sufficiently made by delivering

constructive possession of the property to the donee. Some authorities still take the view that a property in the possession of a usurper cannot be given away, but this view appears to us to be too rigid. The donor may lawfully make a gift of a property in the possession of a trespasser. 'Such a gift is valid, provided the donor either obtains and gives possession of the property to the donee or does all that he can to put it within the power of the donee to obtain possession

94. Similar proposition was laid in other judgments relied upon by the plaintiff.

95. The above legal propositions make it absolutely clear that to constitute a valid gift, as per Muslim Law, three pre-requisites are required:-

(a) Manifestation of the wish to give on the part of the donor;

(b) the acceptance of the donee either impliedly or expressly;

(c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively."

96. The Hon'ble Delhi High Court in ***"Hafiz Abdul Basit & Anr Vs Hafiz Ahmad Milan & Ors." AIR 1973 Delhi 280,*** has

held that:-

"While delivery of possession is an essential condition for the validity of the gift, it is not necessary that in every case there should be a physical delivery of possession. Possession, the delivery of which would complete a gift, may be either actual or constructive. All that is necessary is that the donor should divest himself completely of all ownership and dominion over the subject of the gift. (Mohd. Baksh Vs Hosaini Bibi, ILR 15 Cal 684). The relinquishment of control is thus necessary to complete the gift. Constructive possession of the subject of the gift is, therefore, sufficient. Delivery of possession can be made in such a manner as the subject of the gift is susceptible of (Sadik Hussain Khan Vs Hashim Ali Khan, 43 Ind App 212 = (AIR 1916 PC 27). If the property is in possession of the tenants then the donor may put the donee in possession by asking

the tenants to attorn to the donee."

97. The above legal proposition clearly shows that for constituting a valid gift under Mohammedan Law, three pre-requisites are essential. Gift is required to be given over by the donor to the donee, acceptance of the gift by the donee from the donor and delivery of possession of the gift by the donor to the donee. The delivery of possession can be actual or implied.

98. In the instant case, PW – 4 has deposed during her examination in chief that jewelry items no. 1, 2 and 3, mentioned in list Ex. PW – 3/2 were given by her late husband to her daughter in law at the time of her muh-dikhai in her wedding. She has also deposed during her cross-examination that out of the items mentioned in the list, first three items were given by her late husband to her daughter in law in her wedding as muh-dikhai. She further deposed that those three items, after being given to her daughter in law, were kept by her. Same were not kept in the Poshak.

99. The testimony of PW – 4 Begum Rafat Zamani Ali Khan, widow of late Nawab, makes it absolutely clear that late Nawab had gifted three jewelry items i.e. one single string consisting of 14 emerald engraved beads and 14 pearls, one pair of earrings with two emerald drops with diamonds and one pair of bracelets with two square emeralds in centre, surrounded with

diamonds, mentioned in list Ex.PW-3/2, to defendant no. 2 at the time of her marriage in muh-dikhai. As per PW – 4, these items were kept by defendant no. 2 with her .

100. The testimony of PW – 4, makes it absolutely clear that late Nawab had gifted these three items to defendant no. 2 at the time of her marriage in her muh-dikhai. The said gift was accepted by defendant no. 2 and possession of those jewelry items was also handed over by late Nawab to defendant no. 2 as per PW – 4. Thus, all the three conditions of a valid gift as per Mohammedan Law were complete.

101. Late Nawab had thus gifted these three jewelry items to defendant no. 2 at the time of her marriage as per Mohammedan law and merely on the ground that subsequently these three items were found in the box of late Nawab, which was opened by defendant no. 1 in the presence of defendant no. 4 on 28.09.1968, would not invalidate the gift, which was complete as per the Mohammedan Law.

102. Items no. 1 to 3 mentioned in the list Ex. PW-3/2 were gifted by late Nawab to Defendant no.2 as per the Mohammedan Law. Therefore, these three articles are the private properties of defendant no. 2, in which plaintiff or any other defendants have no right.

103. The defendants no. 1 and 2 have claimed that item no. 4 is also their personal property. But they have failed to place on record any proof to substantiate their claim.

104. Item no. 4 in the list Ex.PW-3/2 was the private property of late Nawab, at the time of his death, therefore, item no. 4 of list Ex.PW-3/2, would devolve upon plaintiff and other LRs of late Nawab as per Muslim Personal Law.

The claim of the plaintiff regarding the 7 items of so called heirloom Jewelry, lying in State Bank of India, Parliament Street, New Delhi, mentioned in list Ex.PW-3/3.

105. The plaintiff has claimed that 7 items of dynastic jewelry, so called heirloom jewelry, valued approximately Rs. 85 Lakhs, left by the late Nawab, have been illegally appropriated by defendant no. 1 whereas these jewelries have devolved upon LRs of late Nawab in accordance with the provision of Mohammedan Law.

106. Defendants no. 3 to 14 have also supported the said claim of the plaintiff.

107. Defendants no. 1 (iii) and (iv) have claimed that 7 items of jewelry mentioned in the third list Ex.PW-3/3 are the sole and exclusive property of defendants no. 1, to which plaintiff

and other defendants have nothing to do.

108. In order to prove his case, plaintiff has examined defendant no. 4 Begum Rafat Zamani Ali Khan as PW- 4, who deposed in her examination in chief regarding the said list that at the time of death of her husband, he left some heirloom jewelry and some other jewelries. She further deposed that in May 1966, after her husband's death heirloom jewelry , which was lying in the Bank, was given over by her to her elder son late Nawab Murtaza Ali Khan. She further deposed that when she handed over the heirloom jewelry, her son gave her a letter and receipt which she produced. She further deposed that the heirloom jewelry was kept in Poshak Khana. She further deposed that she has seen list of seven items, which carries the title 'Exhibit 3'. She recognize these as description of the heirloom jewelry.

109. During cross-examination, PW – 4 deposed that heirloom jewelry was kept in the bank from 1953 or 1954. She further deposed that it was kept in the same State Bank until 1966 and thereafter she does not know what happened after she handed it over to her son 'Bachan'. She further deposed that the heirloom jewelry could be used by the Nawab himself or with his permission by the junior members of the family. She further deposed that she has no knowledge whether her son late Nawab Murtaza Ali Khan ever used the heirloom jewelry.

110. PW – 4 has placed on record a letter Ex.P-1 dated 27.05.1961, written by defendant no. 1, acknowledging the receipt of box having dynastic heirloom jewelry, belonging to State of Rampur, which was delivered by PW – 4 to him along with list of those 7 items Ex. PW-1/A.

111. Ld. Counsel for the defendant 1 (iii) & (iv) has contended that these 7 heirloom jewelry mentioned in list Ex. PW-3/3 were exclusively belonging to defendant no. 1, who was recognized as Ruler of Rampur by the Central Government, after the demise of late Nawab. He further contended that these 7 items, which are the dynastic heirloom jewelry are attached with the gaddi and therefore impartible in nature and plaintiff and any other defendants are not entitled for any share in these jewelry items. In support of his plea, Ld. Counsel has relied upon judgment delivered by the ***Hon'ble Supreme Court of India in "Marthanda Verma (D) through LRs Vs State of Kerala & Ors (Supra).***

112. Ld. Counsel for the plaintiff has contended that judgment passed by the Hon'ble Supreme Court of India titled "Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (Supra), was between the parties to this suit, it was held by the Hon'ble Supreme Court of India in the said case, that all the private movable and immovable properties of the Late Nawab would

be governed by Muslim Personal Law, applicable to Shias and not by the rule of primogeniture. He further contended that the decision in Marthanda Varma (Supra) case is inapplicable to the facts of the present case as same was the case of Shebaitship and not of succession to the private properties of a covenanting ruler unlike in the present suit. He further contended that the observation made by the Hon'ble Supreme Court of India in para(s) 123 and 124 is peculiar to the facts of that case. He further contended that Marthand Varma (Supra) is a two Judge Bench case, which did not consider Talat Fatima Hasan (Supra), which is a three judge bench case and is binding upon the parties. He further contended that the assessment order dated 16.03.1959, quoted in letter dated 19.08.1969 shows that Nawab did not claim any part of jewelry as heirloom nor claimed any exemption in respect of any jewelry under the Wealth Tax Act, 1957, therefore, para(s) 123 and 124 of Marthanda Varma (Supra) would not apply to the jewelries mentioned in Ex.PW-3/3. He further contended that defendants no. 1 and 2 have neither pleaded nor proved that so called heirloom jewelry were different from the personal properties of the late Nawab and were attached to Gaddi and hence impartible.

113. Similar arguments have been advanced by Ld. Counsel of defendant no. 3 (iii). He even contended that as on the date of demise of the late Nawab i.e. 06.031966, when succession to

his private and personal properties opened, there existed no jewelry in his possession that could be regarded as heirloom within the statutory framework of the Wealth Tax Act, 1957 or otherwise, consequently, the entire edifice of the arguments advanced by defendant no. 1 (iii) in respect of the jewelry in Ex.3 being heirloom jewelry is devoid of any legal foundation. In support of his claim, Ld. Counsel of defendant no. 3 (iii) relied upon judgment titled ***"Rajkumari Amrit Kaur Vs Maharani Deepinder Kaur & Ors" (Supra) and "Maharani Deepinder Kaur (since deceased) Through Legal Representatives & Ors Vs Rajkumari Amrit Kaur & Ors" (Supra).***

114. The plaintiff has filed the present suit for seeking partition of jewelry left by late Nawab as his private property at the time of his death. In para 15 of the paint, the plaintiff himself has mentioned that 7 dynastic jewelries, (so called heirloom jewelries) left by the late Nawab, have been illegally appropriated by defendant no. 1.

115. The plaintiff has also annexed the list of these 7 articles along with the plaint as Ex.3, giving heading *"Details of 7 Items of so called Heirloom Jewelries, presently lying in State Bank of India, New Delhi"*

116. The defendants no. 1 and 2 have claimed that the entire jewelry, subject matter of the present suit are belonging to them

and other LRs of late Nawab has no right over the same on the ground that after the demise of late Nawab, defendant no. 1 was recognized as the Ruler of Rampur State and became the absolute owner of the property left by him.

117. The issue regarding the private property, movable and immovable left by Nawab in Rampur, came for consideration before the Hon'ble Supreme Court of India in ***"Talat Fatima Hasan Vs Syed Murtaza Ali Khan'***. In the said judgment, the Hon'ble Supreme Court of India has held that the private properties left by late Nawab shall devolve upon his LRs, as per the Muslim Personal Law applicable to Shia sect and not as per the customs of primogeniture.

118. In the said suit, issue of entitlement of heirloom jewelry was not there before the Hon'ble Supreme Court of India. The suit was initially filed before the District Judge, Rampur, which was withdrawn by Hon'ble Allahabad High Court and subsequently same was dismissed, against which an appeal was filed before the Hon'ble Supreme Court of India in "Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (Supra). There was no reference of heirloom jewelry of late Nawab in the said suit.

119. Ld. Counsel for the plaintiff has contended that defendants no. 1 (iii) and (iv) cannot be allowed to travel beyond their pleading as they have not taken any plea in their

written statement that Nawab left any heirloom jewelry, which was attached to the gaddi.

120. No doubt that defendants no. 1 and 2 have not taken any plea in the written statement specific to the heirloom jewelry.

121. The said plea taken by the plaintiff has also not been controverted by defendants no. 3 to 14. However, it is the case of the plaintiff, which he pleaded in para 15 of the plaint that late Nawab left seven dynastic jewelries, so called heirloom jewelries, which were misappropriated by defendant no. 1. Even the list attached with the plaint, gives description of 7 items as so called heirloom jewelries.

122. The plaintiff has solely relied upon the testimony of defendant no. 4 Begum Rafat Zamani Ali Khan wife of late Nawab, to prove his case, whom he has examined as PW – 4. The said witness has categorically deposed in her examination that late Nawab had left some jewelry and also heirloom jewelry. She also identified 7 articles titled Ex.3 as heirloom jewelry. She has deposed during her cross-examination that heirloom jewelry can be used by the Nawab himself and by his permission by the junior member of the family. She also deposed that when she handed over heirloom jewelry to her son, he gave her a letter of receipt, which she has proved as Ex.

PW-1/A and letter dated 01.01.1970 as Ex.PW – 1/B.

123. A perusal of the letter Ex.PW-1/A, written by defendant no. 1 to PW – 4 Her Highness Begum Rafat Zamani Ali Khan, widow of late Nawab, shows that vide this letter, defendant no. 1 acknowledged the receipt of box having dynastic jewelries of Rampur State, delivered to him by PW – 4. Along with the said letter, a list of these 7 jewelry items was also annexed, which bears signature of defendant no. 1 on 27.05.1967.

124. ***The Hon'ble Supreme Court of India in "Marthanda Verma (D) through LRs Vs State of Kerala & Ors" (Supra)*** has dealt with the issue regarding succession of heirloom jewelries in para(s) 123 and 124 of the judgment. In the said judgment, the Hon'ble Supreme Court has highlighted five issues in para 67 concerning status and entitlement of appellant no. 1 including the relationship vis-a-vis the Temple are concerned, which are reproduced as under:-

> ***67. In the backdrop of the facts and circumstances on record, the issues concerning the status and entitlement of appellant no. 1 including the relationship vis-a-vis the Temple are concerned, the controversy can be considered under the following five segments:-***
>
> ***67.1 (A) Situation obtaining before and up***

> *to date when the covenant was entered into in May 1949.*
> *67.2 (B) Effect of the covenant that was entered into in May 1949.*
> *67.3 (C) Effect of the Constitution of India as it stood before the Constitution (Twenty sixth Amendment) Act, 1971 and of the provisions of the TC Act.*
> *67.4 (D) Effect of the Constitution (Twenty-sixth Amendment) Act, 1971.*
> *67.5 (E) Effect of the death of the person who had signed the covenant as the ruler of Travancore.*

125. Para 123 and 124 of the above judgment are relevant, which are reproduced as under:-

> *123. As is evident from the White Paper referred to hereinabove, the assurances and guarantees given in the ocvenants or agreements entered into with various rulers normally had four elements:*
> *123.1 (i) that certain sums shall be payable to the rulers by way of Privy Purses.*
> *123.2 (ii) that certain properties mentioned as private properties of the ruler would vest in the*

ruler in his personal capacity.
123.3 (iii) that succession to the gaddi would go strictly by the prevalent law and customs.
123.4 (iv) that personal rights, privileges and dignities enjoyed by the rulers and in some cases by the members of the family of the ruler, would continue to be available.
124. Out of the aforesaid four elements, Elements (i) and (iv) were covered by Articles 291 and 362 as they stood before being deleted. The effect of such deletion has been discussed and dealt with. Elements (ii) and (iii) are normal incidents which were not within the scope of said Articles 291 and 362. Despite the Constitution (Twenty-sixth Amendment) Act, 1971, the private properties of the ruler would continue to be available for the normal succession and devolutionin accordance with the law and custom. Though concepts such as ruler or Rulership have ceased to operate, succession to the Gaddi as an incident may still operate. For instance, there could be a sword or any other ceremonial weapon, or a sarpech, or heirloom jewelry, which must go by rule of

> *primogeniture, as against the normal way of succession with regard to other personal properties. All such incidents have not been terminated. The clear example is in clause (iv) of sub-section (1) of Section 5 of the Wealth Tax act, 1957 which uses the expression "jewelry in the possession of any ruler, not being his personal property" which had been recognized as his "heirloom". Such items or properties which fall in our are connected strictly with Element (iii), may descend along with succession to the Gaddi and by very nature must remain impartible. On the other hand, if normal principles of succession are applied, at any given level of succession, such items or properties recognized as "heirloom" may be required to be shared amongst more than one person and would therefore cease to be impartible.*

126. The above observation made by the Hon'ble Supreme Court of India in ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra),*** makes it absolutely clear that heirloom jewelry like sword or any other ceremonial weapon or a sarpech would not devolve upon as per normal way of succession with regard to family property and continue

to be covered by the rule of primogeniture, thus impartible in nature.

127. Ld. counsel of plaintiff and defendant no. 3 (iii) have contended that reference of heirloom jewelry in judgment titled ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra)*** is only an obiter dicta and not the ratio of the said judgment, therefore, same is not binding and should be discarded.

128. The said contention of Ld. Counsel is however not acceptable. As per Article 141 of the Constitution, the judgment passed by the Hon'ble Supreme Court of India is binding upon all the Courts in India. Even the obiter dicta in judgment delivered by the Hon'ble Supreme Court of India is binding.

129. The Hon'ble Delhi High Court in "***M/s M3M India Pvt. Ltd. Vs Dr. Dinesh Sharma & Anr", AIR 2020 Delhi 23,*** has discussed about the impact of obiter dicta of judgment delivered by the Hon'ble Supreme Court of India. Para(s) 16, 17 and 18 of the said judgment are relevant, which are reproduced herein below:-

> *16. The petitioners' characterisation of paragraph 86(ii), to the extent that it refers to CPA, as obiter dicta is also unfounded. At the*

outset, it is settled law that obiter dicta of the Supreme Court are also binding upon all other Courts, including the High Court. In Municipal Committee, Amritsar vs. Hazara Singh (1975) 1 SCC 794 (paragraph 4), the Supreme Court approved the following observation of the Kerala High Court in State of Kerala vs. Vasudevan Nair 1975 Cri LJ 97: -

> *"...Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matters other than law have no binding force.... "*

In Oriental Insurance Co. Ltd. vs. Meena Variyal & Ors. (2007) 5 SCC 428 (paragraph 26), the Supreme Court has observed that although an obiter dictum of the Supreme Court may be binding only on the High Courts, it has clear persuasive value even

before the Supreme Court itself. The binding effect of obiter dicta of the Supreme Court has been reiterated in the recent decision in Peerless General Finance and Investment Co. Ltd. vs. Commissioner of Income Tax 2019 SCC Online 851 (Civil Appeal No. 1265 of 2007, decided on 19.07.2019), wherein the Court has held as follows:

> *"13. ...It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in Peerless General Finance and Investment Co. Limited vs. Reserve Bank of India [(1992) 2 SCC 343] must be read as not having laid down any absolute proposition of law that all receipts of subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the ratio decidendi of the judgment, would certainly be binding on the High Court...."*

17. Quite apart from the position that the High Court is therefore not the

appropriate forum for this argument, the question of the relationship between CPA and RERA does appear to have been placed before the Supreme Court, as recorded in paragraph 14 of the judgment, extracted above. The relevant finding of the Court has been included in a paragraph headed "Conclusion", wherein the Supreme Court has distilled three short conclusions. It is not possible for this Court to find that any of those conclusions are obiter dicta or made as passing observations, and not intended to be followed.

18. Having come to this conclusion, I am also not persuaded that the judgment of the Supreme Court can be disregarded as being per incuriam. The High Court cannot choose whether or not to follow a decision of the Supreme Court based on its perception regarding the arguments considered in the Supreme Court's judgment. The Supreme Court in Suganthi Suresh Kumar vs. Jagdeeshan AIR 2002 SC 681 held as follows: -

> *"9. It is impermissible for the High Court to overrule the decision*

of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in Anil Kumar Neotia v. Union of India [(1988) 2 SCC 587 : AIR 1988 SC 1353] that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court."

In Sundeep Kumar Bafna vs. State of Maharashtra & Anr. (2014) 16 SCC 623 (paragraph 20), while discussing the doctrine of precedent, the Supreme Court gave a "salutary clarion caution to all courts, including the High Courts, to be extremely careful and circumspect in concluding a judgment of the Supreme Court to be

per incuriam". Similarly, in South Central Railway Employees Cooperative Credit Society Employees Union vs. B. Yashodabai & Ors. (2015) 2 SCC 727, the Supreme Court set aside a judgment of the Andhra Pradesh High Court with the following observations:

> *"14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] was per incuriam.*
>
> *15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is*

distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] . If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India."

130. The above observation made by the Hon'ble Delhi High Court, on the basis of well settled legal proposition, makes it absolutely clear that an obiter dicta in a judgment

delivered by the Hon'ble Supreme Court of India is binding not only upon the District Courts but even upon the Hon'ble High Courts, therefore, the contention of Ld. Counsel of plaintiff that the reference of heirloom jewelry in ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra)*** is obiter dicta and required to be discarded, cannot be accepted.

131. Ld. Counsels of plaintiff and defendant no. 3 (iii) have contended that the issue with regard to the property left by late Nawab has been finally dealt with by the Hon'ble Supreme Court of India in ***"Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (Supra)***, therefore the observation made regarding heirloom jewelry in ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra)***, is having no relevance in the present case.

132. The said contention however is not sustainable for the simple reason that the issue regarding devolution of heirloom jewelry of late Nawab, was not there before the Hon'ble Supreme Court of India in ***Civil Appeal no. 1773/2002 "Talat Fatima Hasan Vs Syed Murtaza Ali Khan" (Supra).*** In the said judgment, not a word has been mentioned regarding heirloom jewelry left by late Nawab at the time of his death. The said judgment is only with regard to the private properties left by late Nawab, situated in Rampur.

133. The issue of heirloom jewelry has been agitated by the plaintiff first time in this case. The plaintiff himself has mentioned that late Nawab left 7 heirloom jewelries, which are dynastic heirloom jewelries as mentioned in list Ex.PW-3/3, which is also devolved upon the plaintiff as per Muslim Personal Law applicable to Shia sect.

134. To establish his case, plaintiff has examined defendant no. 4 Begum Rafat Zamani Ali Khan, widow of late Nawab as PW – 4, who categorically stated before the Court that these are heirloom jewelries left by Nawab, were handed over to defendant no. 1 against receipt after the demise of late Nawab.

135. The judgments relied upon by the plaintiff and defendant no. 3 (iii) ti*tlea* ***"Rajkumari Amrit Kaur Vs Maharani Deepinder Kaur & Ors" (Supra) and "Maharani Deepinder Kaur (since deceased) Through Legal Representatives & Ors Vs Rajkumari Amrit Kaur & Ors" (Supra)*** are having no reference of heirloom jewelry. These judgments are only regarding succession of private properties movable and immovable of ex-rulers.

136. The Hon'ble Supreme Court of India in ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra)*** has dealt with the succession of heirloom jewelry in para(s) 123-124, in which it is categorically stated that succession of heirloom jewelry must go by the rule of

primogeniture, therefore, same is impartible.

137. The plaintiff has claimed that the defendant has not placed on record any document to show that Nawab declared these jewelry as heirloom jewelry to the Wealth Tax Department, which is mandatory as per Section 5 of the Wealth Tax Act. They also pointed out that order dated 16.03.1959, passed by the Wealth Tax Officer, specifically mentions that the assessee has not claimed any part of jewelry as heirloom, as per provisions of Section 5 (1) (iv) of the Wealth Tax Act, therefore, those 7 items cannot be treated as heirloom jewelry.

138. No doubt that defendants no. 1 and 2 have not placed on record any such declaration made by the late Nawab as per Section 5 of the Wealth Tax Act. However, fact remains that it is the case of the plaintiff that late Nawab had left 7 dynastic heirloom jewelry at the time of his death.

139. PW – 4 Begum Rafat Zamani Ali Khan wife of late Nawab stated that heirloom jewelry was kept in bank from the year 1953 or 1954 uptill 1966. She further deposed that in May 1966, after the death of her husband, heirloom jewelry was lying in the bank, which was handed over by her to her eldest son against receipt. She further deposed that the heirloom jewelry were used by the Nawab and with his permission by the younger member of the family.

140. PW – 4 was not re-examined by the plaintiff to get an explanation that these items were not heirloom jewelries of Nawab but were his private jewelries. The plaintiff and defendants no. 3 to 14 themselves have pleaded that these 7 items mentioned in list Ex.PW-3/3 are the heirloom jewelries of late Nawab, left by him at the time of his death, therefore, they cannot be allowed to say that these jewelries cannot be considered as heirloom jewelries, due to non-compliance of Section 5 (1) (iv) of the Wealth Tax Act.

141. The plaintiff and defendants no. 3 to 14 themselves have pleaded that 7 items of jewelries mentioned in list Ex.PW-3/3 were dynastic heirloom jewelries, left by late Nawab and in view of judgment passed by the Hon'ble Supreme Court of India in ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra),*** the heirloom jewelries are impartible and must devolve as per rule of primogeniture.

142. The heirloom jewelry mentioned in the list Ex. PW-3/3 have thus not devolved upon the plaintiff and other defendants except defendant no. 1 after the demise of late Nawab.

143. In view of the above facts and circumstances, I am of the considered view that plaintiff has successfully proved on record that 66 jewelry articles, mentioned in list Ex.1 (Ex.

PW-3/1) and item no. 4, mentioned in list Ex. PW-3/2 were the private properties of late Nawab at the time of his death, which have devolved upon plaintiff and defendants as per personal law of Muslims.

144. The plaintiff however has failed to prove on record that jewelry articles at serial no. 1 to 3 in list Ex.PW-3/2 were belonging to late Nawab at the time of his demise. These three items are the private properties of defendant no. 2, therefore, neither the plaintiff nor defendants no. 3 to 14 have any share in these jewelries.

145. The plaintiff has also failed to prove on record that 7 heirloom jewelry items, mentioned in Ex.PW-3/3, left by late Nawab have devolved upon the legal heirs of late Nawab as per personal law of Muslims, applicable to Shia sect as held by Hon'ble Supreme Court of India in ***"Sri Marthanda Verma (D) through LRs & Anr Vs State of Kerala & Ors" (Supra).*** Neither the plaintiff nor defendants no. 3 to 14 are thus having any share in these jewelry articles. Issue no. 1 is accordingly decided.

146. ***Issue no. 2. If issue no. 1 is proved, what are the respective shares of the parties to the suit?***

The plaintiff has filed chart of details of shares of plaintiff and defendants in the estate of late Nawab, according to Muslim Personal Law as applicable to Shia sect as on 17.03.2026, copy of which has been supplied to all the

defendants.

147. After going through the details of shares. Ld. Counsels of all the defendants have accepted the correctness of the shares devolved upon them being the heirs of late Nawab as per Muslim Personal Law applicable to Shia sect, which is recorded in the order dated 15.04.2026.

148. The details of shares of entitlement of plaintiff and defendants as on 17.03.2026 as per Muslim Personal Law, applicable to Shia sect are given as under:-

S.No.	Party	Name	Sahams	Percentage
1.	Plaintiff	Sh. Saiyid Sirajul Hasan	20,160	4.05
2.	Defendant no. 1 (iii) (Being LR of defendant no.1 Late Syed Murtaza Ali Khan)	Sh. Mohammed Ali Khan	40,320	8.10
3.	Defendant no. 1 (iv) (Being LR of defendant no.1 Late Syed Murtaza Ali Khan)	Smt. Nighat Abedi @ Smt. Nighat Ali Khan	20,160	4.05
4.	Defendant no. 3 (i) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Begum Mehtab Zamani Ali Khan @ Begum Noor Bano	12,924	2.59

5.	Defendant no. 3 (ii) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Mrs. Saman Ali Khan @ Mrs. Saman Khan	22,617	4.55
6.	Defendant no. 3 (iii) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Mrs. Saba Durrez Ahmed	22,617	4.55
7.	Defendant no. 3 (iv) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Mr. Kazim Ali Khan @ Navaid Mian	45,234	9.10
8.	Defendant no. 5	Mrs. Gisela Ldschbor alias Mrs. Gisela Maria Ali Khan	9,072	1.82
9.	Defendant no. 6	Mr. Raza Ledschbor alias Sh. Syed Raza Andrias Ali Khan	25,704	5.17
10.	Defendant no. 7	Mr. Nadeem Ledschbor @ Sh. Syed Nadim Ali Khan	25,704	5.17
11.	Defendant no.9	Talat Fatima Hasan	10,080	2.02
12.	Defendant no. 10 (i) (Being LR of defendant no. 10 Late Birjees Laqa Begum)	Mrs. Yasmin Qasim Mohiuddin	17,232	3.46
13.	Defendant no. 10 (ii) (Being LR of defendant no. 10	Ms. Seeme Qasim	17,232	3.46

	Late Birjees Laqa Begum)			
14.	Defendant no. 10 (iii) (Being LR of defendant no. 10 Late Birjees Laqa Begum)	Mrs. Sabin Qasim Siddiqi	17,232	3.46
15.	Defendant no. 11	Smt. Akhtar Laqa Begum	51,696	10.39
16.	Defendant no. 12	Smt. Naheed Laqa Begum @ Smt. Naheed Mehta	51,696	10.39
17.	Defendant no. 13 (i) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Mrs. Rahab Ali Soni	17,232	3.46
18.	Defendant no. 13 (ii) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Ms. Sameera Bahadur	17,232	3.46
19.	Defendant no. 13 (iii) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Mr. Samir ali Khan	11,488	2.31
20.	Defendant no. 13 (iv) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Mrs. Amna Ali Khan	5744	1.15
21.	Defendant no. 14 (i) (Being LR of defendant no. 14 Late	Mr. Zain Naqi	24,192	4.86

	Mehrunnissa Begum)			
22.	Defendant no. 14 (ii) Late Mehrunnissa Begum)	Mrs. Zeba Husain	12,096	2.43

149. The plaintiff and defendants are thus entitled for the share stated herein above as per Muslim Personal Law, applicable to Shia sect. Issue no. 2 is accordingly decided.

150. ***Issue no. 3. Whether the suit is within time?***

The plaintiff has claimed that the suit has been filed within the period of limitation.

151. Ld. counsel for defendants no. 1 (iii) and (iv) has contended that suit filed by the plaintiff is barred by limitation as Late H.H. Major General Sir Saiyid Ali Khan Bahadur (Late Nawab) left for heavenly abode on 16.03.1966. The suit could have been filed within three years from death of late Nawab. However, the suit has been filed on 20.05.1972 i.e. after more than three years from the date of death of the late Nawab, therefore, same is barred by limitation. He further contended that explanation given by the plaintiff regarding the event taken place in the year 1969, 1970 and 1971 is misleading.

152. Ld. Counsel for the plaintiff has contended that suit filed by the plaintiff is well within the period of limitation as

defendant no. 1 was holding the jewelry, left by late Nawab as tenant in common, therefore, limitation for filing the suit for partition would commence from the date of denial of division by defendant no. 1 i.e. w.e.f. July 1969. He further contended that the plaintiff came to know about the jewelry left by late Nawab in the year 1970 – 71 and he filed the present suit in the year 1972. He further contended that issue no. 3 was decided vide order dated 20.02.2001 as the said issue was not pressed by defendants no. 1 (iii) and (iv), however, subsequently, an application being IA no. 1871/01 was filed on behalf of defendants no. 1 (iii) & (iv) and defendant no. 2 for seeking review of said order, which is still pending.

153. The present suit has been filed by the plaintiff for seeking partition of the jewelry left by late Nawab. No doubt that Ld. Counsel for defendant no.1 (iii) and 1 (iv) stated before the Court on 20.02.2001 that they are not pressing issue no. 3 and on their statement, it was held that issue no. 3 is not required to be answered. However, soon thereafter defendants no. 1 (iii) and 1 (iv) filed an application for seeking withdrawal of that concession.

154. Be that as it may. It is mandatory for the Courts as per Section 3 of the Limitation Act to see whether the suit filed by the plaintiff is within the period of limitation or not.

155. The defendants no. 1 (iii) and 1 (iv) have contended that present suit has been filed for seeking partition of jewelry

left by late Nawab, who died intestate on 06.03.1966. The present suit should have been filed within 3 years from the death of late Nawab, however, the suit was filed in 1972 i.e. much after three years from the death of late Nawab, therefore, same is barred by limitation.

156. The claim of the plaintiff is that after the demise of late Nawab, defendant no. 1 was holding the jewelry left by late Nawab as tenant in common and limitation for filing the suit for partition would begin from the date of denial of their right by defendant no. 1, which as per the plaintiff was denied by defendant no. 1 in July 1969 and the present suit was filed within three years from such denial.

157. The Hon'ble Madras High Court in ***"Marian Beeviammal Vs Kadir Meera Sahab Taragan", 29 IC 275 (Mad.)*** has held that:-

> ***"It has now been decided that in suits brought by one of the heirs to recover his share of the estate left by a Muhammadan who dies intestate, Article 123 of the Limitation Act does not apply as the estate is at once vested in the heirs as tenants-in-common. It was pointed out that Article 123 only applies to suits against executors and***

administrators or other persons whose legal duty it is to distribute the estate among certain persons. This has been held by a Full Bench of this Court. In the case of immoveable property Article 144 is applicable, and in the case of moveable property Article 120 is applicable. See Khadersa Hajee Bappu v. Puthen Veettil Ayissa Ummah i. We are bound by this decision and accordingly hold that Article 120 applies to the case before us. The defendants having taken possession of the property as tenants-in-common, they must be deemed to have been in possession of such property on behalf of themselves and of the plaintiff and it lies on them to show that so far as the plaintiff is concerned, the character of their possession was changed six years before the date of their suit. The judgment of the Judicial Commitee in Gorea v. Appuhamy (1912) App. Cas. 230 : 105 L.T. 836 :

81 L.J.P.C. 151. would show that mere intention on their part is not enough to change the character of that possession. Nor is it sufficient to show that if the plaintiff had inquired, she might have found out that they had divided the property among themselves. When the plaintiff's husband died she was about 18 years of age. One of these defendants was appointed by her husband as her son's guardian. They were her relatives under whose protection and control-she was, livinfir and who were supporting her. She was therefore, entitled to assume that her interests would be looked after by them. In these circumstances, we cannot assume there was sufficient notice to her that her property was being dealt with by the defendants as their own, even assuming that such knowledge would be sufficient. Applying the "principle laid down by their Lordships we must hold that the plaintiff's claim is not

barred.

158. Similar proposition has been reiterated by Hon'ble Privy Counsel in ***"Mohamedally Tyebally & Ors Vs Safiabai & Ors, reported as AIR 1940 Privy Council 215,*** which is reporduced as under:-

> *"It is a suit against certain Mohammedan co-heirs by a person entitled to part of the interest of an heir and the High Court on appeal rightly held that to such a suit neither Article 106 nor Article 123 is applicable. The heirs of a Mohammedan succeed to his estate in specific shares as tenants in common and the plaintiff's suit against the son and daughters of Ebrahimji for due administration of what come to their hands as property left by their father is governed regards immovable property by Article 144 and as regards moveables by Article 144 and as regards moveables by Article 120.*

159. The above legal propositions shows that a suit for partition qua the movable property left by a Mohammedan, who died intestate, shall be covered by Article 120 of the Limitation Act, 1908, which is corresponding to Article 113 of

the Limitation Act, 1963.

160. Ld. Counsel for defendants no. 1 (iii) has contended that the judgment relied upon by the plaintiff are not applicable as those judgments are with respect to the Limitation Act 1908, which was repelled and now the case is covered by Limitation Act, 1963.

161. The said contention of Ld. Counsel for the appellant is however not sustainable. Article 113 of Limitation Act, 1963 corresponds to Article 120 of Limitation Act, 1908. The Hon'ble Madras High Court and Hon'ble Privy Counsel in above judgments have simply held that when a Mohammedan dies intestate, his estate vests into his legal heirs as tenants in common.

162. Defendant no. 1 who got jewelry after the death of late Nawab was holding those jewelry as tenant in common on behalf of himself as well as all other LRs of late Nawab. It is now for defendants no. 1 and 2 to show that nature of jewelry changed and defendant no. 1 started dealing with those jewelry left by late Nawab as his own. However, no such material has been placed on record by defendant no. 1.

163. The jewelry mentioned in list Ex.PW – 3/1 and item no.4 in list Ex.PW – 3/2, left by late Nawab, were the private properties of late Nawab, who died intestate. After the demise

of late Nawab, the said jewelry were in the possession of defendant no. 1, who was holding these jewelries astenant in common, in which plaintiff and other LRs of late Nawab were also having their share.

164. As per the plaintiff, he came to know about the jewelry left by late Nawab, sometime in the year 1969, 70-71 and demand was made on his behalf from defendant no. 1 in July 1969. However, defendant no. 1 refused to partition the same.

165. The cause of action for filing the present suit for seeking partition of jewelry left by late Nawab would commence as per Article 113 of the Limitation Act, 1963, from the refusal on the part of defendant no. 1, which as per the plaintiff was in July 1969.

166. To prove that the present suit has been filed within 3 years from the said denial, plaintiff has examined himself as PW – 3 and deposed in his examination in chief that around July, 1969, on one such visit, he was present there when his aunts (sisters of his late mother) and his uncle (brother of his mother viz.Zulfikar Ali Khan, Nawabzada) were discussing the inheritance of his grandfather. He further deposed that in particular they were talking about attempts to have a settlement with Nawab Murtaza Ali Khan. He further deposed that during this discussion, he learnt that he as a heir of his mother also had a share in the properties of late Nawab Raza Ali Khan, who had

died in March, 1966. He further deposed that since his aunts and uncle were trying to reach a settlement with his uncle Nawab Murtaza Ali Khan, he requested them to ask him on his behalf also if he would be wiling to let him have his share due to him, however, they subsequently told him that he had refused to do so.

167. PW – 3 has been thoroughly cross-examined but his deposition that he came to know about his share in the estate left by late Nawab in the discussion taken place in July 1969 and subsequently he was told that defendant no. 1 refused to give a share has not been controverted.

168. The plaintiff has thus proved on record that in July 1969, his uncle and aunt contemplated settlement with regard to the estate left by late Nawab with defendant no. 1 and when they demanded their share in the property left by late Nawab, defendant no. 1 refused for the same. Thus, the cause of action for filing the present suit would accrue w.e.f. July 1969 when defendant no. 1 refused to partition the estate left by late Nawab.

169. The present suit for partition of jewelry left by late Nawab could be filed within three years from the date of such denial as per Article 113 of the Limitation Act, 1963. The present suit has been filed on 23.05.1972 i.e. within a period of three years from the date of refusal from defendant no. 1, same

is thus within the period of limitation.

170. In view of the above facts and circumstances, I am of the considered view that present suit has been filed within the period of three years from the date of denial by defendant no. 1 as per Article 113 of the Limitation Act, 1963, same is thus within the period of limitation. The plaintiff has thus successfully discharged the onus of Issue no. 3, same is accordingly decided in favour of the plaintiff.

171. ***Issue no. 4. Relief.***

In view of my findings on issue no. 1, I am of the considered view that plaintiff has successfully proved on record that 66 jewelry items mentioned in list Ex.PW-3/1 and item no. 4 of list Ex. PW-3/2 are the private property of late Nawab, at the time of his death, thus plaintiff and defendants have inherited the above jewelry items left by late Nawab as per their respective shares as held while deciding issue no. 2.

The plaintiff however has failed to prove that items no. 1 to 3 of list Ex. PW-3/2 are the private properties of late Nawab at the time of his death, therefore, same is not required to be partitioned amongst plaintiff and defendants.

The plaintiff has also failed to prove that he is entitled for partition of dynastic jewelries i.e. heirloom jewelries, mentioned in list Ex.PW-3/3, as same is impartible as per judgment passed by the Hon'ble Supreme Court of India titled ***"Sri Marthanda Varma (D) through LRs & Anr Vs State of***

Kerala & Ors (Supra)". Accordingly, the present suit filed by the plaintiff against the defendant is partly decreed.

172. The plaintiff and defendants are thus entitled to have their shares in 66 jewelry items of list Ex.PW-3/1 and item No.4 of list Ex.PW-3/2, in the following manner:-

S.No.	Party	Name	Sahams	Percentage
1.	Plaintiff	Sh. Saiyid Sirajul Hasan	20,160	4.05
2.	Defendant no. 1 (iii) (Being LR of defendant no.1 Late Syed Murtaza Ali Khan)	Sh. Mohammed Ali Khan	40,320	8.10
3.	Defendant no. 1 (iv) (Being LR of defendant no.1 Late Syed Murtaza Ali Khan)	Smt. Nighat Abedi @ Smt. Nighat Ali Khan	20,160	4.05
4.	Defendant no. 3 (i) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Begum Mehtab Zamani Ali Khan @ Begum Noor Bano	12,924	2.59
5.	Defendant no. 3 (ii) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Mrs. Saman Ali Khan @ Mrs. Saman Khan	22,617	4.55
6.	Defendant no. 3 (iii) (Being LR of defendant no. 3 Late Syed Zulfiquar Ali Khan)	Mrs. Saba Durrez Ahmed	22,617	4.55
7.	Defendant no. 3 (iv) (Being LR of defendant no. 3 Late	Mr. Kazim Ali Khan @ Navaid Mian	45,234	9.10

	Syed Zulfiquar Ali Khan)			
8.	Defendant no. 5	Mrs. Gisela Ldschbor alias Mrs. Gisela Maria Ali Khan	9,072	1.82
9.	Defendant no. 6	Mr. Raza Ledschbor alias Sh. Syed Raza Andrias Ali Khan	25,704	5.17
10.	Defendant no. 7	Mr. Nadeem Ledschbor @ Sh. Syed Nadim Ali Khan	25,704	5.17
11.	Defendant no.9	Talat Fatima Hasan	10,080	2.02
12.	Defendant no. 10 (i) (Being LR of defendant no. 10 Late Birjees Laqa Begum)	Mrs. Yasmin Qasim Mohiuddin	17,232	3.46
13.	Defendant no. 10 (ii) (Being LR of defendant no. 10 Late Birjees Laqa Begum)	Ms. Seeme Qasim	17,232	3.46
14.	Defendant no. 10 (iii) (Being LR of defendant no. 10 Late Birjees Laqa Begum)	Mrs. Sabin Qasim Siddiqi	17,232	3.46
15.	Defendant no. 11	Smt. Akhtar Laqa Begum	51,696	10.39
16.	Defendant no. 12	Smt. Naheed Laqa Begum @ Smt. Naheed Mehta	51,696	10.39
17.	Defendant no. 13 (i) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Mrs. Rahab Ali Soni	17,232	3.46
18.	Defendant no. 13 (ii) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Ms. Sameera Bahadur	17,232	3.46

19.	Defendant no. 13 (iii) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Mr. Samir ali Khan	11,488	2.31
20.	Defendant no. 13 (iv) (Being LR of defendant no. 13 Late Qamar Laqa Begum)	Mrs. Amna Ali Khan	5744	1.15
21.	Defendant no. 14 (i) (Being LR of defendant no. 14 Late Mehrunnissa Begum)	Mr. Zain Naqi	24,192	4.86
22.	Defendant no. 14 (ii) Late Mehrunnissa Begum)	Mrs. Zeba Husain	12,096	2.43

Decree Sheet be accordingly prepared. File be consigned to Record Room after due compliance.

Announced in the open Court today
i.e. on 28th of April, 2026

(PITAMBER DUTT)
Principal District & Sessions Judge,
New Delhi District, Patiala House Courts
New Delhi.