

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s).2705 OF 2000

INDRAMANI PD. SHUKLA & ORS.

Appellant (s)

VERSUS

SHAKUNTALA & ANR.

Respondent (s)

(With prayer for interim relief and office report)

Date: 20/04/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. T.P. Mishra, Adv.

Mr. A. Sharma, Adv.

Mr. K.S. Rana, Adv.

For Respondent(s) Mr. Shiv Sagar Tiwari, Adv.

Mr. Goodwill Indeevar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal stands allowed in terms of the signed order. No order as to

costs.

dha R. Bhatia)

(K.K. Chawla)

(Ra

Court Master

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2705 OF 2000

INDRAMANI PD.SHUKLA & ORS.

.. APPELLANTS

VERSUS

SHAKUNTALA & ANR.

.. RESPONDENTS

O R D E R

It appears to us that both the Courts concluded against the Appellants-Plaintiffs that their suit was barred by res judicata. We have been shown the Appeal Memo in the Second Appeal and a question has been squarely raised by the Appellants impugning the correctness of the decisions of the two courts below on the issue of res judicata. Thus, it would appear that the findings on res judicata and its correctness was a substantial question of law which, at least, required admission of the Second Appeal for examination thereof. Unfortunately, the High Court has summarily dismissed the Second Appeal by a laconic finding which reads as under:

"Matter stands concluded by findings of fact. No substantial question of law arises for determination.

Appeal stands dismissed in limine."

In our view, this finding is erroneous. The Second Appeal will have to be admitted and heard.

We set aside the judgment of the High Court, admit the Appellants' Second Appeal SA No.409/98 on the following substantial questions of law:

"A. Whether the judgment of the District Judge Rewa passed on 25.01.1951 in Civil Appeal No.271/1951, the Judgment of the Additional District Judge, Rewa passed on 13.09.1952 in C.S. No.33/1952 and the judgment of the Judicial Vindhya Pradesh in F.A. no.93 decided on 04.12.1952 operated res judicata to the present suit?

B. Whether the judgment of the District Judge Rewa passed on 25.01.1951 in Civil Appeal No.271/1951, the judgment of the Additional District Judge Rewa passed on 13.09.1952 in C.S. No.33.1952 and the judgment of the Judicial Commissioner Vindhya Pradesh in F.A. No.93 decided on 04.12.1952 hold that under the will dated 15.06.1950 Mst. Malkutia had only life interest in the suit property and after her death the suit property has vested on Shyamdas?"

The High Court shall hear the parties and decide the Second Appeal on the aforesaid questions of law.

The Appeal stands allowed and Second Appeal No.409 of 1998 is remitted to the High Court for decision in accordance with law on the questions as formulated above.

Since the matter is pending for a long time, it is preferable that the  
Second Appeal is heard and disposed of within a period of nine months  
from the date of receipt of a copy of this order by the High Court. Parties  
are directed to appear before the High Court on 24th July, 2006 for taking  
further directions in the matter. No order as to costs.

.....J.

(B.N. Srikrishna)

.....J.

(Lokeshwar Singh Panta)

New Delhi;

April 20, 2006.