

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

CIVIL APPEAL NO. 2122 OF 2000

Om Prakash
Appellant (s)

Appellant

Versus

Kimtu & Anr.
Respondent (s)

Respondent

(with prayer for interim relief and office report)

With
Civil Appeal No. 2123 of 2000
(with prayer for interim relief)

Date: 11/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant(s) Mr. Subramonium Prasad, Adv.

For Respondent(s) Mr. S.S. Mittal, Sr. adv.
Mr. Nikhil Goel, Adv.
Mrs. Sheela Goel, Adv.

For R-2 Mr. Anil Shrivastav, Adv.
Mr. Saurabh Shrivastava, Adv.
Ms. Banoshri V., Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals stand disposed of in terms of the signed order. No costs.

(J.S. Rawat)
Judge
Court Master
Court Master

(Kanwal Si)
Judge
Court Master

(Signed order is placed on the file)

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2122 OF 2000

Om Prakash

Appellant (s)

Versus

Kimtu & Anr.

Respondent (s)

With
Civil Appeal No. 2123 of 2000

O R D E R

These appeals are directed against the judgments and decrees dated 1.4.1999 and 13.8.1999 passed by a learned Single Judge of the High Court of Himachal Pradesh at Shimla in R.S.A. Nos. 269/93 and 127/1994 respectively whereby and where-under the appeals preferred by the first respondent herein were allowed.

Bereft of all unnecessary details, the fact of the matter is as under:

The property in dispute admittedly belonged to one Gheru. He was said to be deaf and dumb. On or about 28.8.1962, he allegedly executed a Power of Attorney in favour of his wife Sobhi. Acting on or on the basis of the said Power of Attorney, Sobhi executed several deeds of sale in favour of various persons. Kimtu, the original plaintiff (respondent no.1 herein) is the daughter of Gheru. Several suits were filed by Gheru or Kimtu questioning the legality or validity of the said Power of Attorney and consequently the diverse deeds of sale executed by Sobhi in favour of the vendees. Some of the suits were decreed. So far as the present suit filed by

Kimtu is concerned, the same came to be dismissed by the trial court, inter alia, holding that Gheru was not legally disabled to execute the Power of Attorneys. The said judgment and decree of the trial court was affirmed by the First Appellate Court.

The High Court in the Second Appeal preferred by the plaintiff-respondent, formulated the following substantial questions of law:

"1. Whether once a person is held to be an idiot or Lunatic, can he be allowed to deal with his property by himself or through appointment of any Agent?

2. Whether in view of section 6 of the Indian Limitation Act, limitation can start running against an idiot or lunatic before he becomes sane and in case he dies as an idiot or lunatic, the suit can be said to be barred by limitation if the same is filed within three years of his death by his successors?"

For the reasons stated hereinafter, it is not necessary to deal with the said purported questions of law.

It is not in dispute that another suit being Suit No. 63/83 filed by Gheru in the Original Side of the High Court of Himachal Pradesh, questioning certain transactions entered into by and between the aforesaid Sobhi and one Shri Charan Das Dogra, was dismissed by a learned Single Judge of the said Court. However, an appeal was preferred thereagainst before a Division Bench by Kimtu, who was substituted in place of Gheru as he died during the pendency of the said suit, marked as RFA No. 355/92 was allowed. It is also not in dispute that although the original Power of Attorney executed by Gheru in favour of his wife Sobhi was not brought on record, but the same had been produced by the defendants in the said civil

suit No. 63/83 which was the subject-matter of appeal in RFA No. 355/92.

It is stated at the bar that the plaintiff-respondent filed an application for adduction of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure (CPC) for bringing on record the aforementioned judgment in RFA No. 355/92. Nothing has been shown to us that the said application was allowed. The learned Single Judge of the High Court however relying heavily on the said judgment of the Division Bench, allowed the instant appeal.

The learned counsel for the parties addressed us at great length as regards the relevancy and admissibility of the said judgment in terms of Sections 41, 42 and 43 of the Indian Evidence Act. We, however, for the reasons to be stated hereinafter, do not intend to enter into the said questions as at present advised. Suffice to say that the High Court, if intended to rely upon the aforesaid judgment of the Division Bench passed in RFA No. 355/92, was bound to formulate an appropriate substantial question of law in terms of sub-Section(5) of Section 100 CPC. It failed to do so. It has not been disputed before us and even otherwise it is apparent from the record that the High Court in setting aside the judgment of the trial court and the First Appellate Court, principally relied upon the judgment of the Division Bench rendered in RFA No. 355/92. There cannot be any doubt or dispute that the said judgment being not a judgment in rem was not binding upon the appellants herein. It might have been taken in evidence but its relevance / evidentiary value was required to

be considered and determined by referring to the appropriate provisions of the Indian Evidence Act, as envisaged under Section 43 thereof. It, however, appears that this aspect of the matter was not argued before the High Court and, therefore, it had no occasion to consider the same. It is trite that the decision in a case cannot be rendered only on the basis of the judgment in another case which is not conclusive between the parties. {See: Surendra Kumar Vakil and Ors. v. Chief Executive Officer, M.P. & Ors., [2004(10) SCC 126 (paragraph 10)] and Sanjay Gera v. Haryana Urban Development authority and Anr., [2005(3) SCC 207]}. The High Court, therefore, in our opinion, committed a manifest error in passing the impugned judgment solely relying on or on the basis of the aforesaid judgment of the Division Bench passed in RFA No. 355/92 and ignoring the other materials on record. It was, in law, obligatory on the part of the High Court to consider the other materials on record so as to arrive at a finding that the conclusions of the trial court as also of the First Appellate Court were not legally sustainable. Having not done so, in our opinion, the High Court fell into an error particularly so as it failed to formulate an additional substantial question of law in terms of sub-Section (5) of Section 100 CPC.

For the reasons aforementioned and in view of the fact that the main substantial questions of law have been answered without framing an additional substantial question of law, the findings recorded by the High Court are required to be set aside. The impugned judgment is accordingly

set aside and the matter is remitted to the High Court for determining the issues between the parties afresh in accordance with law.

The High Court would be at liberty to frame appropriate question of law, if it arises in the appeal.

Needless to mention that nothing stated herein above be treated as an expression of opinion on the merits of the dispute and the High Court shall decide the appeal uninfluenced by any of the observations made herein above, in accordance with law.

Since the present proceedings pertain to the suits instituted in the year 1987, we would request the High Court to take up the matter on priority basis and dispose it of as expeditiously as possible, preferably within six months from the date of receipt of this order. Parties are directed to appear before the Registrar General of the High Court through their counsel or otherwise on the 9th of September, 2005 for directions.

Registry is directed to transmit the original record of the case to the High Court forthwith to enable it to proceed with the matter.

The appeals stand disposed of accordingly. No costs.

..J.

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(ASHOK BHAN)

New Delhi;
...J.
August 11, 2005.

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(S.B. SINHA)