Shakuntla Devi vs Kamla & Ors on 11 April, 2005

Equivalent citations: 2005 AIR SCW 2203, 2005 AIR - JHAR. H. C. R. 1479, (2005) 4 ANDH LT 38, (2005) 3 PAT LJR 43, (2005) 4 SCALE 21, 2005 ALL CJ 2 1514, (2005) 3 MAD LJ 56, (2005) 3 SCJ 368, 2005 (5) SCC 390, (2005) 3 CIVLJ 492, (2005) 2 CURCC 93, 2005 BOMCRSUP 787, (2005) 4 CTC 754 (SC), 2005 UJ(SC) 1 632, (2005) 2 RECCIVR 668, (2005) 2 CIVILCOURTC 645, (2005) 3 MAH LJ 578, (2005) 3 MPLJ 254, (2005) 3 KCCR 1697, (2005) 59 ALL LR 599, (2005) 2 ALL WC 1599, (2006) 1 LANDLR 492, (2005) 3 PUN LR 351, (2005) 3 ANDHLD 118, (2005) 2 ALLMR 538 (SC), (2005) 3 SUPREME 360, (2005) 1 WLC(SC)CVL 758, (2005) 3 JCR 91 (SC), (2005) 29 ALLINDCAS 13 (SC), (2005) 1 CLR 631 (SC), (2005) 3 CAL HN 106, (2005) 100 CUT LT 568, (2005) 2 CURLJ(CCR) 364, (2005) 4 JT 315 (SC)

Bench: N. Santosh Hegde, D.M.Dharmadhikari, S.B. Sinha

CASE NO.:
Appeal (civil) 3644 of 1998

PETITIONER:
Shakuntla Devi

RESPONDENT:
Kamla & Ors.

DATE OF JUDGMENT: 11/04/2005

BENCH:
N. Santosh Hegde,D.M.Dharmadhikari & S.B. Sinha

JUDGMENT:

J U D G M E N T SANTOSH HEGDE, J.

Noticing certain contradictory views in three different judgments of this Court in Teg Singh vs. Charan Singh [(1977) 2 SCC 732], Kesar Singh vs. Sadhu [(1996) 7 SCC 711) and Balwant Singh vs. Daulat Singh [(1997) 7 SCC 137), a Division Bench of 2-Judges of this Court referred the instant appeals for disposal by a larger bench by its referral order dated 27th October, 2004, hence, this appeal is before us.

Brief facts giving rise to these appeals are as follows:

> One Hirday Ram was the owner of the suit property. He had three wives, namely, Kubja, Pari and Uttamdassi. Kubja had pre- deceased Hirday Ram leaving behind a

daughter named Tikami. During his life time, Hirday Ram made a Will dated 1.10.1938 whereby he bequeathed a part of his property to his daughter Tikami and the remaining property was given to his two other wives, named above, for their maintenance with the condition that they would not have the power to alienate the same in any manner. As per the Will, after the death of the above two wives of Hirday Ram, the property was to revert back to his daughter Tikami as absolute owner. After the death of Hirday Ram and his second wife Pari in 1939, the property in question came to be vested with the third wife, Uttamdassi as per the terms of the Will. After the coming into force of the Hindu Succession Act, 1956, Uttamdassi claiming to be the absolute owner sold a part of the property to one Sandup on 28.11.1958 predecessor-in-interest of respondent Nos.1 and 2 herein. The said Sandup mortgaged back the property to Uttamdassi who on 2.12.1958 made a gift of another property in favour of respondent No.3 herein who in turn sold to it respondent No.4.

The appellant herein is a daughter of Tikami and granddaughter of Hirday Ram filed a suit challenging the alienation made by Uttamdassi seeking a decree for declaration that the alienation made by Uttamdassi would not effect her reversionary rights. The suit was decreed by the trial court on 12.7.1961. Appeal filed by Uttamdassi was dismissed on 25.1.1963. Thus the said declaratory decree became final as it was not put to challenge in further appeal in the High Court.

On 24.5.1975 Uttamdassi gifted the property sold by her to Sandup in 1958 in favour of respondent No.5. The appellant herein again filed a suit challenging the said alienation also and seeking a declaration that the said alienation made by Uttamdassi would not effect her reversionary rights. The trial court dismissed the suit but an appeal preferred by the appellant herein the was accepted by the First Appellate Court and the gift made by the Uttamdassi in favour of respondent No.5 was held to be void ab initio and a declaration was given that the alienation made by Uttamdassi would not effect reversionary rights of the plaintiff. This decree also became absolute as the same was not put to any further challenge. It is relevant to mention herein that Uttamdassi had gifted a part of the property in favour of respondent No.5 by way of a Will on 27.12.1986. She died on 1.1.1987.

After the death of Uttamdassi, appellant the granddaughter of the original owner Hirday Ram brought a suit for possession of the suit property being the nearest reversioner and on the basis of the two earlier declaratory decrees obtained by her. The trial court dismissed the suit on 22.8.1989. Relying upon a judgment of this Court in the case of V.Tulasamma vs. V.Sesha Reddy [(1977) 3 SCC 99) holding, inter alia, that though the suit property was given to the wives of Hirday Ram as limited owners but in view of Section 14(1) of the Hindu Succession Act, 1956 Uttamdassi became the absolute owner of the suit property and had the right to alienate the same by way of sale, gift or will.

Appeal filed by the appellant was dismissed on 30.9.1991 by the First Appellate Court holding inter alia that the declaratory decrees obtained by the appellant did not operate as res judicata inter se parties as the same were passed in suits filed by the appellant as presumptive reversioner of the widow of Hirday Ram and the present suit was filed after her death for possession as owner. The appellant preferred a regular second appeal which has been dismissed by the impugned judgment of

the High Court holding inter alia that interpretation of Section 14 of the Hindu Succession Act, 1956 was a pure question of law and the earlier decrees obtained on the interpretation of law in the case of Mst. Karmi vs. Amru & Ors. (AIR 1971 SC 745) cannot operate as re judicata in the face of the contrary interpretation put to Section 14 in the later decision of this Court in V.Tulasamma's case (supra). It was also observed that the declaratory decree of 1978 (in the second suit) was given after the interpretation of and declaration of the law ignoring the law laid down by this Court in V.Tulasamma's case (supra). Therefore, these decrees were erroneous on points of law and could not operate as res judicata. It was also held that earlier decree of 1961 also could not operate as res judicata as the same was based on the interpretation and declaration of law given in Karmi's case (supra) which stood superceded by the later judgment in V.Tulasamma's case (supra). The point for our consideration in this case is whether the finding of the High Court in the impugned judgment that the earlier decree obtained by the appellant being declaratory in nature would not operate as res judicata in favour of the appellant and would not enable her to obtain possession through the court of law by filing a suit for possession, is correct in law or not ? Learned counsel appearing for the appellant contended that the two declaratory decrees obtained by the appellant declaring her right as a reversioner to the property in question having become final, she is entitled to the fruits of the said decree. It is contended that the declaration of law made by this Court in V.Tulasamma's case not being retrospective the judgments obtained by the appellant even if it is contrary to the said judgment in V.Tulasamma's case the same having become final cannot be held to be invalid in law, merely because by a subsequent judgment law stood changed. In such cases, the parties opposing the said judgment would be prevented by the principles of res judicata from contending that the appellant has no right to claim the property as the reversioner by virtue of the terms of the Will under which the property in question was bequeathed by Uttamdassi, predecessor- in-interest of the respondents herein.

In support of this contention the learned counsel for the appellant relied on a judgment of this Court in Teg Singh's case (supra) which was a case in which a declaratory decrees obtained under the Punjab Custom (Power to Contest) Act, 1920, as amended by Act 12 of 1973, held that though a suit to contest an alienation of immovable property under the customary law may not lie after the coming into force of the Amending Act of 1973, but a declaratory decree already obtained by a reversioner would continue to be operative as the Amending Act does not render such a decree a nullity. We do not think that the law laid down by this Court in Teg Singh's case (supra) would support the case of the appellant in this case because the law declared in that case is on the basis of the special enactment referred therein which protected the declaratory rights already obtained by a reversioner. The appellant in this case is not governed by any such law. In Kesar Singh's case (supra), this Court took a different view in that, in a case where a declaratory decree was obtained in 1924 by a reversioner on the basis of custom after the death of the vendor in the year 1978, a suit for recovery of possession was held to be not maintainable. This is also a case governed by the provisions of the Punjab Custom (Power to Contest) Act, 1920. Thus in this case of Kesar Singh this Court took somewhat a different view from the law laid down in the earlier case of Teg Singh (supra) but we do not think that it is necessary for us to go into that controversy to decide the issue arising in this appeal before us because the law applicable in those two cases does not apply to the facts of this case. Therefore, we will have to proceed to examine the merits of this case without going into the correctness of the decision in Teg Singh and Kesar Singh (supra). Since the provision of law

involved in those case and the present appeal have nothing in common.

However, the decision of this Court in the case of Balwant Singh (supra) would have a bearing on the merits of this case wherein it is held that suit for possession would not be maintainable on the basis of a declaratory decree as the declaratory decree did not convey any title in favour of the reversioners. This was a case under the Hindu Law wherein the widow of the original owner in the year 1954 made a gift and got the land mutated in favour of her adopted sons. The reversioners filed a suit seeking a decree that the alienation made by the widow was not binding on their reversionary rights. The suit was decreed and it was held that the gift made by the widow would not affect the rights of the reversioners. The property was re-mutated in the name of the widow. In the year 1970, the widow again gifted the suit property to the adopted sons and she died in the year 1973. A suit for recovery of possession filed by the reversioners on the basis of the earlier decree, the court held that since the widow continued to be in possession of the property even after the declaratory decree obtained by the reversioners because of the enlarged rights she got under the Hindu Succession Act, 1956 which made her the absolute owner of the property the gifts of the property made by her to her adopted sons in the year 1970 could not be set aside. Almost similar is the facts of this case inasmuch as in this case also since on the coming into force of the Hindu Succession Act by virtue of Section 14(1) the limited right got by Uttamdassi under the Will got enlarged to an absolute right in the suit property. Thus, she became absolute owner of the property, hence, any declaratory right obtained earlier by the reversioner as contemplated in the Will cannot be the basis on which the suit for possession could be maintained unless, of course, the claimants in the suit for possession established a better title independent of the declaratory decree obtained by them.

As stated above, the learned counsel for the appellant contended that since the two declaratory decrees obtained by them having become final and being a decree inter se between the parties or their successors in interest, the defendants in the present suit could not take a stand contrary to the declaration already obtained by appellant. This argument is obviously based on the principle of res judicata. Ordinarily such an argument ought to be accepted but there are some exceptions in regard to the application of this principle. One such exception would be where the earlier declaration obtained by the court is established to be contrary to an existing law. In Mathura Prasad Bajoo Jaiswal & Ors. vs. Dossibai N.B.Jeejeebhoy [(1970) 1 SCC 613) this Court held :

> "7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties; Tarini Charan Bhattacharjee's case (supra). It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different."

It is to be noticed that in the present case when the first declaratory decree was obtained, the law as it stood then right of Uttamdassi remained a limited right, in the suit property hence, a declaratory decree was given in favour of the plaintiffs in that suit, but by the time the second declaratory decree was obtained by the appellant herein, this Court by the judgment in V.Thulasamma's case had declared the law under Section 14 of the Hindu Succession Act holding that the estate of persons similarly situated as Uttamdassi got enlarged and a beneficiary under a Will with limited rights became the absolute owner of the same. Since the judgment of this Court in Tulasamma's case was

the law on that date and is the law currently, the second declaratory decree was contrary to the said declaration of law made by this Court. Therefore, that declaration cannot be of any use to the appellant. In view of the law laid down by this Court in Mathura Prasad's case (supra) as extracted herein above.

Apart from the above in the very same case of Mathura Prasad (supra), this Court at para 11 held:

> "Where, however, the question is one purely of law and it relates to the jurisdiction of the court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supercede the law of the land."

If we apply the above ratio with which we are in respectful agreement, the consequent result would be that since the two declaratory decrees obtained by the appellant being contrary to law laid down by this Court in Tulasamma's case, it will be open to the defendants as rightly held by the High Court in the impugned judgment to challenge those declarations and avoid the declaratory decree if they succeed in such challenge. In the instant case, in our opinion, the High Court rightly held that the declaratory decrees obtained by the appellant being contrary to the judgment in Tulasamma's case (supra) would not be of any assistance to the appellant to obtain the possession of the suit property.

In Chief Justice of Andhra Pradesh & Ors. vs. L.V.A.Dixitulu & Ors. (1979 2 SCC 34) at para 24 discussing the effect of Section 11 of the CPC on a pure question of law or a decision given by a court without jurisdiction this Court held:

> "Moreover, this is a pure question of law depending upon the interpretation of Article 371D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case."

This view of this Court in the case of Chief Justice (supra) has been quoted with approval in subsequent judgment of this Court in Ashok Leyland Ltd. vs. State of T.N. & Anr. (2004 (3) SCC 1 at para 56).

In the Management of M/s. Sonepat Cooperative Sugar Mills Ltd. vs. Ajit Singh (2005 (2) Scale 151) discussing the principles of res judicata and considering the earlier judgment of this Court, this Court held thus:

> "It is true that the appellant did not challenge the judgment of the learned Single Judge. The learned Judge in support of his judgment relied upon an earlier decision of the High Court in Rajesh Garg vs. Management of Punjab State Tube-well Corporation Limited & Anr. [1984 (3) SLR 397] but failed to consider the question having regard to the pronouncements of this Court including H.R.Adyanthaya

(supra), Rajesh Garg (supra) was rendered following S.K.Verma (supra), which being not a good law could not have been the basis therefor.

The Principle of res judicata belongs to the domain of procedure. When the decision relates to the jurisdiction of a court to try an earlier proceedings, the principle of res judicata would not come into play. [See :

Mathura Prasad Bajoo Jaiswal (supra)].

An identical question came up for consideration before this Court in Ashok Leyland Ltd. vs. State of Tamil Nadu and Another [(2004) 3 SCC 1] wherein it was observed:

"The principle of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like, estoppel, waiver or res judicata ."

It would, therefore, be not correct to contend that the decision of the learned Single Judge attained finality and, thus, the principle of res judicata shall be attracted in the instant case."

From the above principles laid down by this Court, it is clear that if the earlier judgment which is sought to be made the basis of res judicata is delivered by a court without jurisdiction or is contrary to the existing law at the time the issue comes up for reconsideration such earlier judgment cannot be held to be res judicata in the subsequent case unless, of course, protected by any special enactment.

Learned counsel for the appellant then contended that the judgment in Tulasamma's case being prospective the first declaratory decree obtained by her would prevail since that was based on the law as it stood then and had become final, therefore, the first declaratory decree would be protected. In support of this contention he relied upon the judgment of this Court Managing Director, ECIL, Hyderabad & Ors. vs. B.Karunakar & Ors. [(1993) 4 SCC 727]. We do not think this judgment would help the appellant in support of the contention raised by her. It is true that the judgment in Tulasamma's case is not retrospective and would not apply to cases which have ended finally. But a declaratory decree simplicitor does not attain finality if it has to be used for obtaining any future decree like possession. In such cases of suit for possession based on an earlier declaratory decree is filed it is open to the defendant to establish that the declaratory decree on which suit is based is not a lawful decree.

Unfortunately for the appellant the declaration obtained by her based on which she was seeking possession in the present suit being contrary to law, the courts below correctly held that the appellant could not seek possession on the basis of such an illegal declaration. Thus, the law is clear on this point i.e. if a suit is based on an earlier decree and such decree is contrary to the law prevailing at the time of its consideration as to its legality or is a decree granted by a court which has

no jurisdiction to grant such decree, principles of res judicata under Section 11 of the CPC will not be attracted and it is open to the defendant in such suits to establish that the decree relied upon by the plaintiff is not a good law or court granting such decree did not have the jurisdiction to grant such decree.

In the instant case, as noticed hereinabove, the present suit is filed for possession of the suit properties on the basis of a declaratory decree obtained earlier which is found to be not a lawful decree as per the law prevailing at present. Hence, the impugned judgment cannot be interfered with.

Thus, examined from any angle, we do not find any merit in this appeal.

We make it clear that we are not deciding the correctness of the judgment in the case of Teg Singh (supra) and Kesar Singh (supra), since it is not necessary for us to go into that question in this appeal.

Appeal dismissed.