State Of Bihar vs Kalika Kuer @Kalika Singh & Ors on 25 April, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2443, 2003 AIR SCW 2458, 2003 AIR - JHAR. H. C. R. 807, 2003 (3) ALL CJ 1803, (2003) 4 JT 489 (SC), 2003 (5) SCC 448, (2003) 7 ALLINDCAS 188 (SC), 2003 (4) SCALE 302, 2003 (5) ACE 143, 2003 (4) SLT 252, (2003) 3 SCR 919 (SC), 2003 (6) SRJ 239, 2003 (4) JT 489, 2003 ALL CJ 3 1803, 2003 BLJR 1 767, (2004) 2 BANKJ 460, (2003) 3 PAT LJR 76, (2003) 3 JLJR 51, (2003) 3 BLJ 682, (2003) 3 SUPREME 505, (2003) 4 SCALE 302, (2003) 6 INDLD 362, (2003) 96 CUT LT 487, (2004) 1 BANKCLR 340

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Bench: R.C. Lahoti, Brijesh Kumar

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           CASE NO.:
Appeal (civil)  5654 of 1990

PETITIONER:
State of Bihar

RESPONDENT:
Kalika Kuer @Kalika Singh & Ors.

DATE OF JUDGMENT: 25/04/2003

BENCH:
R.C. Lahoti & Brijesh Kumar.

JUDGMENT:
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JUDGMENT BRIJESH KUMAR, J.

This is an appeal preferred by the State of Bihar against the judgment and order dated 25.9.1989 passed by the Patna High Court declaring, Sections 15 (1) and 15 (2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short `the Act'), ultra vires of Articles 13 and 14 of the Constitution. It appears that the question of vires, interpretation and scope of various provisions of the Act came to be considered by a Full Bench consisting of three Hon'ble judges of the Patna High Court and considering the points raised and some decisions rendered earlier, the Full Bench held Section 15 of the Act ultra vires and further held that certain categories of disputes and matters could be entertained and decided by the civil court despite the restrictions placed under section 4(b) and 4(c) of the Act and bar of jurisdiction of Civil Court u/s 37 of the Act. The first and the foremost submission put forward by learned counsel for the appellant for consideration of this

Court is that in an earlier Full Bench decision of the Patna High Court reported in AIR 1979 Patna 250, Ramkrit Singh and Others versus State of Bihar and Ors, the same questions have been considered and decided inter alia the question of the validity of Section 15 and the impact of Sec. 4(b), Sec. 4(c) and Section 37 of the Act. The vires of Section 15 of the Act has been upheld in the case of Ramkrit Singh (supra) by the Full Bench, including the bar of jurisdiction of the Civil Court in respect of matters covered by notification u/s 3 read with Section 4(b) and 4(c) of the Act.

The provision contained under Section 4 (b) provides that after a Notification is published under Section 3(1) of the Act, no suit or other legal proceeding falling in the area notified, shall be entertained by any Court and Section 4(c) provides that every proceeding for correction of records and for declaration of rights or interest in any land or any other right, pending before any other Court or authority shall stand abated. Section 15 of the Act provides that the Consolidation Officer shall grant to every raiyat to whom holding has been allotted under the Scheme of Consolidation, a Certificate which shall be a conclusive proof of the title of such raiyat and similar certificate is provided to every under-raiyat having a right of occupancy or not but having been allotted a land under the Consolidation Scheme. It is also considered to be a conclusive proof of the title of the under-raiyat . Section 37 attaches finality to the decisions and orders passed under the Act and the jurisdiction of the civil court is barred to entertain any suit or proceedings in respect thereof. The impugned judgment besides declaring Section 15 ultra vires has also diluted the effect of the provisions contained under Section 4 (b), 4(c) and 37 of the Act, while holding that pending suits shall not abate unless specific order of abatement is passed by the civil court and that the suit would revive and proceeded with in accordance with law, in the event of cancellation of Consolidation Scheme or on its completion. And where the claim in respect of declaration of rights or interest in the land is incidental, such suits pending before the civil court or other authorities shall not abate. Bar of Section 37 has also been curtailed.

It has been submitted on behalf of the appellant that the Full Bench decision, impugned herein, is in direct conflict with the decision in the case of Ramkrit Singh (supra), in which case also same or similar arguments and grounds were raised. Our attention has been drawn to Paragraph 78A of the impugned Judgment, delivered on behalf of two Hon'ble Judges and third Hon'ble Judge concurring with it, holding that the decision in the case of Ramkrit Singh (supra) is not binding, having been rendered per incuriam . We quote the relevant paragraph 78A which reads as follows:

> "78A. As noticed hereinbefore, the Special Bench in Ram Kirat Singh's case did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not and thus it made an observation that the civil court while disposing of the suits after revival thereof at the end of the consolidation proceedings, would merely pass a decree in terms of the decision of the consolidation authorities. The said observations must be held to have been rendered per incuriam in as much as in the cases where the jurisdiction of the civil court is not barred in terms of Section 4(b) or Section 37 of the Act, the civil court cannot pass a decree only in terms of the decision of the consolidation authorities after revival of the suit. The said observations, therefore, are not binding upon this court. In such a situation the civil court will have jurisdiction to decide suits relating to such matter in respect whereof

> its jurisdiction is not barred either in terms of section 4(b) or Section 37 of the said Act"

The reasons which has been indicated to hold that the decision in the case of Ramkrit Singh (supra) was per incuriam is that it did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not. Hence, an observation was made that civil court while disposing of suits after revival of their jurisdiction at the end of consolidation proceedings would merely pass a decree in terms of decision of the consolidation authority. It is observed that cases where jurisdiction of civil court is not barred in terms of Section 4(b) or Section 37 of the Act, "the civil court cannot pass a decree only in terms of decision of the consolidation authorities" after revival of the suit. Whatever has been held or observed in the case of Ramkrit Singh (supra) may not appear to be correct or may seem to be against the provisions of the Act but that would not be a valid ground to hold that the earlier judgment was rendered per incuriam or that decision would not be binding on the Bench of a coordinate jurisdiction. In respect of other points no reference has been made to the Full Bench decision of Ramkrit Singh (Supra).

At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsburry's Laws of England (Fourth Edition) Vol.26: Judgment and Orders Judicial Decisions as Authorities (pages 297-298, Para

578) we find it observed about per incuriam as follows:

> "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction while covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force . A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties , or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority . Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."

Lord Godard CJ in Huddersfield Police Authorities case observed that where a case or statute had not been brought to the Court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

In a decision of this Court reported in 2000 (4) S.C.C. 262 Govt. of Andhra Pradesh and Anr. Vs B. Satyanarayana Rao (Dead) by Lrs., it has been held as follows:

> "Rule of Per Incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or

> where a court omits to consider any statute while deciding that issue. We therefore find that the rule of per incuriam cannot be invoked in the present case. Moreover a case cannot be referred to a larger Bench on mere asking of a party. A decision by two judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law"

According to the above decision, a decision of the coordinate Bench may be said to be ceased to be good law only if it is shown that it is due to any subsequent change in law.

In State of U.P. and Another Vs. Synthetics and chemicals Ltd. & Anr. 1991 (4) S.C.C. 139, this court observed:

> " `Incuria' literally means `carelessness'. In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The `quotable in law' is avoided and ignored if it is rendered, `in ignoratium of a statute or other binding authority'. (Young versus Bristol Aeroplane Co. Ltd.) . Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law"

In Fuerst Day Lawson Ltd. Vs Shivaraj V. Patil (2001) 6 SCC. 356, this Court observed:

> " A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a latter case. In exceptional instances, where obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment "per incuriam". It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam."

Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that decision in the case of Ramkrit Singh (supra) was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh (supra) the Court did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seems to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the latter bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible

and the matter will have to be resolved only in two ways either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.

In Dr. Vijay Laxmi Sadho versus Jagdish 2001 (2) S.C.C. it has been observed as follows:

> "As the learned Single Judge was not in agreement with the view expressed in Devilal Case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs".

In Pradip Chandra Parija and others Vs. Pramod Chandra Patnaik and others 2002 (1) S.C.C. 1, it has been held that where a Bench consisting of two Judges does not agree with the Judgment rendered by a Bench of three Judges, the only appropriate course available is to place the matter before another Bench of three Judge and in case three Judge Bench also concludes that the judgment concerned is incorrect then the matter can be referred to a larger Bench of five Judges.

The decision and reasoning in the two judgments of the Full Benches i.e. in the case of Ramkrit Singh (Supra) and one impugned in this appeal run contrary to each other on almost all points. In our view the doctrine of per incuriam has been misapplied by the High Court to the earlier decision in the case of Ramkrit Singh (supra). Hence the case is liable to be remanded to the High Court to consider it in the light of this judgment and to dispose it of, in accordance with law. We order accordingly while allowing the appeal and setting aside the judgment of the High Court. Costs easy.

Young vs. Bristol Aeroplane Co. Ltd. (1944) I KB 718 at 729 (1944) 2 All ER 293 at 300. In Hudderfield Police Authority vs. Waton (1947) KB 842 (1947) 2 All ER 193.

Young vs. Bristol Aeroplane Co. Ltd. (1944) 1 KB 718 at 729 (1944) 2 All ER 293 at 300. See also Lancaster Motor Co. (London Ltd. vs. Bremith Ltd. (1941) 1 KB 675 For a Divisional Court decision disregarded by that court as being per incuriam, See Nicholas vs. Penny (1950) 2KB 466, 1950 2 All ER 89.

Morvelle Ltd. vs. Wakeling (1955) 2 QB 379 (1955) 1 All ER 708 C. Bryers vs. Canadian Pacific Streamships Ltd. (1957) 1 QB 134, (1956) 3 All ER 560 CA Per Singleton LJ, affd. Sub nom. Canadian Pacific Streamship Ltd. versus Bryers (1958) AC 485, (1957) 3 All ER 572.

1. A. and J. Mucklow Ltd. vs. IRC (1954) Ch. 615, (1954) 2 All ER ; 508 CA, morelle Ltd. versus Wakeling (1955) 2 QB 379, (1955) 1 All ER 708 CA, See also Bonsor versus Musicians Union (1954) Ch.479, (1954) 1 All ER 822 CA, where the per incuriam contention was rejected and, on appeal to the house of Lords although the House overruled the case which bound the Court of Appeal, the House agreed that that court had been bound by it; see (1956) AC 104, (1955) 3 All ER 518 HL.

Williams versus Glasbrook Bros Ltd (1947) 2 All ER 884 CA (1944) 1 KB 718; (`1944) 2 All ER 293 AIR 1960 SC 936: (1960) 3 SCR 378