Mamleshwar Prasad & Anr vs Kanahaiya Lal (Dead) Through L.Rs on 4 March, 1975

Equivalent citations: 1975 AIR 907, 1975 SCR (3) 834, AIR 1975 SUPREME COURT 907, 1975 2 SCC 232, 1975 MADLJ(CRI) 653, 1975 2 SCJ 396, 1975 3 SCR 834, 1975 (1) SCWR 405

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, A.N. Ray, Kuttyil Kurien Mathew

PETITIONER:
MAMLESHWAR PRASAD & ANR

Vs.

RESPONDENT:
KANAHAIYA LAL (DEAD) THROUGH L.Rs.

DATE OF JUDGMENT04/03/1975

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
RAY, A.N. (CJ)
MATHEW, KUTTYIL KURIEN

CITATION:
1975 AIR 907 1975 SCR (3) 834
1975 SCC (2) 232

ACT:
Practice and Procedure--Judgment given at the instance of the party in one appeal on the basis it would dispose of connected appeals on Identical facts and law--Whether connected appeals can be argued on the basis of earlier judgment being incuriam.

HEADNOTE:
The question that arose in the three appeals and a connected appeal related to the jurisdiction of Civil courts under the Delhi Land Reforms Act to adjudicate on certain questions. The four matters were disposed of by a common judgment by the High Court. Special leave having been granted, there were four appeals to this Court. The appellants then moved

this Court with a view to save money etc., that one of the four appeals may be got ready and directed to be posted as the matter for decision is common to all. Accordingly, one of the appeals was heard and decided against the appellants. It was, however, contended, as regards the other three appeals, that the earlier adjudication was a judgment per incuriam and, therefore, was not binding either on the) appellants or the Court.
Rejecting the contention,
HELD : (1) As a result of an application at an earlier stage the appellants got benefits like reduced security deposit and consolidation for printing and hearing on their representation to the Court that the points arising in all the appeals were common and the disposal of one would govern the rest. A litigant cannot play fast and lose with the Court. [836F-H] Ex Parte Pratt (52) Q.B. 334, referred to.
(2) Ordinarily a decision once rendered must later bind like cases that is, a prior decision of the Court on identical facts and law binds the. court on the same points in a later case. In the present case the earlier decision was admittedly rendered on facts and law, indistinguishably identical with those in the other the, appeals. (837B, C-D]
(3) In exceptional and rare instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and the result reached, it may not have the sway of a binding precedent. But in the present case, the point about the Civil Court's power to go into a land reform litigation had been considered and adversely decided, so much so, it is not correct for the appellants to say that the matter had, by grave inadvertence been missed. to give rise to any question of a judgment given per incuriam. [835E; 837B-C]
Cassel & Co. Ltd. v. Broome [19721 1 All. E.R. 801=[1972] 2 W.L.R. 645 and The English Legal System by R. J. Walker & M. G. Walker, III Edn., Butterworths, 1972, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2167 to 2169 of 1968.

From the Judgment and Order dated 16th August, 1966 of the Delhi High Court in L.P.A. Nos. 63-D, 65-D & 66-D of 1965. N. S. Bindra, S. S. Dalal and D. D. Sharma, for the appellants.

V. D. Mahajan, for respondents (In C.As. 2168-69). Sarjoo Prasad, Uma Mehta, R. K. Mehta and M. L. Jain,, for the respondent (in C.A. No. 2167/68).

The Judgment of the Court was delivered by KRISHNA IYER, J. A common judgment of the Division Bench of the Delhi High Court disposed of four appeals, the points covered by all being

admittedly identical' Special leave was granted by this Court and thus four appeals came into existence here. However, the appellants before us moved this Court that with a view to save money and energy, one of the four may be directed to be got ready and disposed of and the others may, thereafter, follow the fate of the first. On this basis C.A. 2556 of 1966 was heard at length and decided adversely to the present appellants. Shri Bindra, learned counsel for the appellants submits that the earlier adjudication by this Court amounted to a judgment per incuriam and did not bind him or the Court. He was thus free,to argue on the merits, especially the holding on the civil court's jurisdiction, and the matter was at large. We have to consider this contention on its merits. Certain background facts bearing on the narrow question above posed serve to appreciate the point made. The present batch of appeals, as already stated, emanated from a judgment covering them all rendered by the Delhi High Court which itself arose out of a like common judgment of a Single Judge of the High Court and so on down the pyramid to the base viz., the decree of the trial Court. The Pretoria appellant had lost the battle all along the line. For brevity's sake, we may content ourselves with the statement that the Courts had been invited to pronounce upon the jurisdiction of the civil court to adjudicate upon the controversy which related to the Delhi Land Reforms Act with special reference to relevant provisions barring suits. In short the point about the civil court's power to go into a land reform litigation had been considered and. adversely decided, so much so it is not correct for the appellants to say that the matter had, by grave inadvertence, been missed. We are not examining the soundness of the actual decision on the merits since indeed we feel that the appeals must fail in limine and no principle of judgment per incuriam can salvage the case.

At an early stage, an application was made before this Court embracing all the appeals, including the present three, which runs thus "In the matter of : Civil Appeal No. 2556 of 1966 and In the matter of Appeals arising from the orders dated 14-8-1968 of the Delhi High Court in S.C.A. No. 186-D/66, 189-D of 1966 and 190- D/66 and "in the matter of Mamleshwar Pershad and another.

x x x
x

The petitioners (appellants) accordingly pray that this Hon'ble Court may be pleased to pass orders (1) Consolidating the 4 appeals above- mentioned.

(2) Modifying the orders dated 8-12-1966 in S.L.P. 1366 of 1966 so that the security for the respondents' costs deposited in the said appeal may be considered also as security for the costs of the Respondents in the 3 appeals arising from the S.C.As. No. 186-15, 189-D and 190-D of 1966.

(3) That in case the appellants are required to furnish further security apart from the amount deposited in Civil Appeal No. 2556-of 1966, time may be suitably extended for such deposit and delay in depositing within the time allowed by the Rules may be condoned. (4) Modifying the directions regarding the preparation of record so that the proceedings in the High Courts to be printed in the appeal No. 2556 of 1966 be read as record in the three other appeals aforementioned and that the record for the said three other appeals may be printed only so as to include the proceedings in the trial Court and the 1st Appellate Courts; and (5) Such further or other directions may be made as this Hon'ble Court may deem fit in the circumstances of the case."

What needs to be underscored is the appellant's own prayer that the four appeals be consolidated. The reason given is tell-tale :

> "That only one judgment of the High Court in the Letters Patent Appeals is impugned before your Lordships in all the 4 appeals above- mentioned. It is therefore in the interest of justice that the 4 appeals viz., the Civil Appeal No. 2556 of 1966 and the other 3 appeals arising from SCAs No. 186-D, 189-D and 190-D of 1966 deserve to be consolidated and would be disposed of by one argument common to all of them. That there isnothing to be decided by this Hon'ble Court in any of the Appeals which is not common to any of the rest of them."

(Emphasis, ours) This prayer was granted and thus the appellants got the benefits like reduced security deposit and consolidation for purposes of printing and hearing of the appeals, on their representation to the Court that the points arising in all the appeals were common and the disposal of one would govern the rest.

A litigant cannot play fast and loose with the Court. His word to the Court is as good as his bond and we must, without more ado, negative the present shift in stand by an astute discovery of a plea that the earlier judgment was rendered per incuriam.

The wisdom which has fallen from Bowen, L.J. in Ex Parte Pratt(1), though delivered in a different context, has wider relevance to include the present position. The learned Lord Justice observed (1) 52 Q.B. 334, 341.

> "There is a good old-fashioned rule that no one has a right to conduct himself before a tribunal as if he accepted its jurisdiction, and then afterwards, when he finds that it has decided against him, to turn round and say, "You have no jurisdiction"."

Certainty of the law, consistency of rulings and comity of courts--all flowering from the same principle-coverage to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.

Finally it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same points in a later case. Here we have a decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind. Shri Bindra, learned counsel has cited a few decisions before us to substantiate his submission that judgments per incuriam bind none except the particular parties to the lis. In this context, he has drawn ,our attention to the observations in Young v. Bristol Aeroplane Co. Ltd.(1) which has been approved by the House of Lords in Young v. Bristol Aeroplane Co. Ltd.(2). Similar statements are found in brief terms in the rulings reported as Nicholas v. Penny(3) and The Bengal Immunity Company Ltd. Case(4). We need

not debate, in the present case, this fresh ground to undermine otherwise, conclusive judgments for other paramount ruler governing justice administration prevail, as earlier indicated. But it is extremely significant that this facile theory was frowned upon by the House of Lords in Cassel & Co. Ltd. v. Broome(5). In that case the highest Court, viz. the House of Lords.

> "rejected in condemnatory terms the, Court of Appeal's decision to the effect that the, decision of the House of Lords in Rookes v. Barnard (1964 A.C. 1129) on the issue of ex- emplary damages had been reached per incuriam because of two previous decisions of the House. Lord Hailsham, L.C., in the course of the leading speech for the majority. asserted that 'it is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way' while Lord Reid took the vie what it was 'obvious that the Court of Appeal failed to understand Lord Devlin's (1) [1944] 1 K. B. 718, 729.
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> (3) [1950] 2 K.B. 466.
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> (5) [1972] 1 All E.R. 801-(1972) 2 W.L.R.
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> 645. (2) [1946] A.C. 163,169.
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> (4) [1955] 2 S.C. R. 603 speech. The per incuriam principle is of limited application. very few decisions have subsequently been regarded as having been reached per incuriam and in Morelle v.

Wakeling (1) 1955 2 Q.B. 379) a Master of the Rolls stated that such instances should be 'of the rarest occurrence', and should be limited to 'decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned'. Thus the doctrine will not be extended to cases which were merely not fully argued or which appear to take a wrong view of the authorities or to misinterpret a statute."(1) Now to costs. A compassionate submission was made by Shri Bindra that the parties do bear their costs in this Court. We direct accordingly.

V.P.S. Appeal dismissed

(1) "The English Legal System" by R.J. Walker & M. G. Walker, if Edn.Butterworths, 1972.