

Har Pyari Devi

Vs

Ghanshiam Singh

Civil Appeal No. 821 of 1976

(V. R. Krishna Iyer, A. P. Sen JJ)

02.04.1980

JUDGMENT

KRISHNA IYER, J. –

1. The facts in this case are simple and the law simpler. The decision by the Full Bench (Ghanshiam Singh v. Smt. Har Piarey, AIR 1974 All 229 : 1974 All LJ 452 : ILR (1974) 2 All 31) is unassailable.
2. Briefly the facts are that one Parvati Devi had obtained a decree as owner of a shop for eviction of Khursheed, the judgment-debtor, who was the tenant. The decree-holder died on March 20, 1964 leaving a Will bequeathing the property in favour of Ghanshiam, the respondent who was her loyal servant for long. On the basis of this Will Ghanshiam filed an execution petition on May 20, 1964 to enforce the decree for eviction. The appellant before us filed an execution petition claiming the rights as an heir under the Hindu Succession Act, 1956 being the stepdaughter of the deceased. She also contested the genuineness of the Will. The executing court after considering the question of the genuineness of the Will upheld it and that finding was affirmed by the District Court and the High Court. Thus this finding about the genuineness of the Will has become final and the claim of the respondent as decree-holder is unassailable at the instance of the appellant. Thereafter apparently to circumvent the effect of the adjudication in favour of the respondent, an interpleader suit was brought by another tenant Shambhu Prasad wherein the present appellant was originally being impleaded as defendant but eventually transposed as the plaintiff. In that suit the Will was again challenged but on the score that an adjudication had already gone against the present appellant and the question of title has thereby been concluded, the High Court in reversal of the judgments of the two courts below upheld the right of the present respondent and negated the claim of the appellant holding that the finding in the earlier litigation was res judicata.
3. We have no hesitation in agreeing with the High Court in its conclusion and the distinction (sought to be drawn by counsel for the appellant) is irrelevant to the issue (and) cannot detract from the binding nature of the earlier adjudication. We do not think there is any need to discuss this point at length because it is, for one thing, an obvious proposition of law and for another, has received detailed consideration at the hands of the High Court. In this view we dismiss the appeal but in the circumstances of the case, we have been persuaded by counsel for the appellant to make no order as to costs.

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