

PETITIONER:
DEVIDAYAL ROLLING MILLS

Vs.

RESPONDENT:
PRAKASH CHIMANLAL PARIKH AND ORS.

DATE OF JUDGMENT 24/03/1993

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
VENKATACHALA N. (J)

CITATION:
1993 AIR 1982 1993 SCR (2) 611
1993 SCC (2) 470 JT 1993 (2) 626
1993 SCALE (2) 190

ACT:
Constitution of India 1950.
Articles 136, 142-Special Leave Petition-Involving tenancy of property-petition dismissed-Interlocutory application by third party after 12 years alleging title to said property and fraud in transaction relating thereto-Held application cannot be entertained in exercise of powers either under Article 136 or Article 142 or under Section, 47 C.P.C in disposed of Special Leave Petition.

HEADNOTE:
Father of respondents no.1 and 2 was the owner of the plot in dispute and respondent no.3 was the tenant therein. Respondents no.1 and 2, after the death of their father, obtained a decree for eviction against respondent no.3. In the execution proceedings the petitioners (in S.L.P. No.4925/77) intervened contending that they had purchased the business along with interest in the property in dispute from respondent no.3. They filed a declaratory suit for being declared tenant in the said property. Their application for interim injunction to restrain respondents 1 and 2 from executing the decree was rejected and the revision thereupon was also dismissed by the High Court. Their special leave petition was dismissed on 13.12.1977. However, respondents no. 1 and 2 agreed not to execute the decree before 1.1.1980 on the undertakings to be given by the petitioners and respondent no. 3. Later, an application was riled for declaring the order dated 13.12.1977 as complied with inasmuch as the petitioners and respondent no.3 had handed over the possession of the property to Respondents no.1 and 2. It was also stated that a fresh tenancy had been granted in favour of the petitioners with effect from 25.6.1978. As no objection was riled, the prayer was allowed by this Court's order dated 11.12.1978. Another company (the applicant company) riled the Interlocutory Application on 23.1.1990 in the dismissed S.L.P. no.4925/77 stating that the property in dispute belonged to a private limited company of which respondents no.1 and 2 were the only directors; that by an agreement of sale dated 31.7.1979 the applicant company

purchased 100% shares of the company of respondents no.1 and 2 and took over the entire estates of the said company. It was contended that the property in dispute being the property of the company, shares of which were purchased by the applicant company, respondents 1 & 2 had no right and authority to create fresh tenancy in favour of the petitioners on 25.6.1978; that respondents no.1 and 2 practiced a fraud upon this Court in obtaining the order dated 11.12.1978 by making a false representation that they were owners of the property in dispute. It was prayed inter alia that the applicant-company be impleaded as respondent no.4 In S.L.P. No. 4925/77, the order dated 11.12.1978 be recalled and an order of inquiry about the fraud practiced upon this Court be made.

This Court by its order dated 2.4.1990 directed the High Court to decide the question of title to the property in dispute and submit its findings to this Court. The High Court held that the property in dispute belonged to respondents no.1 and 2 and the applicant company was not the owner. The applicant company filed objections to the findings recorded by the High Court and the petitioners filed a counter to applicant's objections.

The petitioners raised a preliminary objection to the maintainability of the application (1. & No.1 of 1990) contending that the interlocutory application in the dismissed special leave petition could not be filed by the applicant company under any provision of law after a lapse of more than 12 years; that besides the lease dated 25.6.1978 never being the subject matter of any proceedings, the applicant company was never a party to the suit or the proceedings arising out of it and giving rise to the special leave petition.

The applicant company contended that the application was maintainable under Section 47 C.P.C and/or under Articles 136 and 142 of the Constitution inasmuch this Court has appellate powers from every decision of every Court or Tribunal and Article 142 gives power to this Court to do justice in any cause or matter raised even in a special leave petition already disposed of, that the petitioners having not filed any review application against the order dated 2.4.1990 were bound by the principles of acquiescence, waiver and estoppel; that the order dated 2.4.1990 had become final and it would cause irreparable injury to the applicant company if that order was recalled.

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Dismissing the interlocutory application, this Court, HELD: 1.1. The question of title to or fraud in any transaction in respect of an immovable property raised for the first time by a third party by way of an interlocutory application in a disposed of special leave petition, can not be gone into by this Court either in exercise of its power under article 136 or Article 142 of the Constitution or under Section 47 of the Code of Civil Procedure. [p p. 625 C-D; 626 F; 627 E]

1.2. The interlocutory application filed by the applicant company on 23.1.1990 in the special leave petition dismissed as long ago as 12 years, was totally misconceived and there was no provision under which the same could have been entertained by this Court. Controversy regarding title to the property or the question of alleged fraud had no relevance even remotely with the question raised in the special leave petition. According to the applicant company's own case, they had made an agreement of purchasing 100% shares of the private limited company of respondents no.1 and 2 on 31.7.1979 and thereafter the applicant company

took over the entire assets. Thus the applicant company cannot be said to have anything to do with the two orders passed by this Court on 13.12.1977 and 11.12.1978 nor could it be regarded as one in any way adversely affected by the agreement dated 25.6.1978 of new tenancy as till then It had not taken any steps of purchasing the said shares. [pp. 625 B-C; 626 A-D]

Union Carbide Corporation and Others v. Union of India and Others, [1991] 4 S.C.C. 584; inapplicable.

2.1. The orders dated 2.4.1990 neither decided any issue finally nor did it grant implement prayed by the applicant company nor can the order be considered as binding or operative as res judicata or otherwise. The order appears to have been passed under a clear misconception that it will aid the final decision on the application. There was no proceeding pending at all before this Court in respect of the special leave petition, in which the application could have been riled after a lapse of 12 years. [pp. 625 D-F; 627E-F]

Satyadhyan Ghosal & Ors. v. Sm. Deorajin Debi & Anr., [1960] 3 S.C.R. 590 and Y.B. Patil & Ors. v. Y.L. Patil [1977] 1 S.C.R. 320, distinguish.

Arjun Singh v. Mohindra Kumar & Ors., [1964] 5 S.C.R. 947, referred to.

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2.2. There Is no question of any acquiescence, waiver or estoppel against a party where the error is committed by this Court itself This Court is under a bounden duty to correct its own mistake. [p. 626 F]

2.3. Accordingly, the entire proceedings in the High Court including the findings recorded on the question of title are non est and not binding on any of the parties concerned. [p. 627 G]

3. So far as the question of rendering justice in a civil litigation is concerned, it can only be known after the final culmination of such litigation and the party succeeding can be adequately compensated by way of costs. [627 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Interlocutory Application No.1 of 1990.

IN

Special Leave Petition No.4925 of 1977.

From the Judgment and Order dated 13.10.1977 of the Bombay High Court in Special Civil Application No.742 of 1977.

Ram Jethmalani, S.K. Dholakia, P. Chidambaram, Ms. Bina, P.H. Parekh, A.L. Pandya, Ms Seita Vaidyalingam, Ms. Rina Agarwal, Anant Palli, Atul Sharma and E.C. Agarwal for the appearing parties.

The Judgment of the Court was delivered by

KASLIWAL, J. A Plot of land measuring 2000 sq. yards situated at Syani Road Bombay is the subject matter of this litigation. One part of the case is that the above property belonged to Chitnanlal D. Parikh. He executed a will on 20.10.1952 in favour of his minor sons Prakash Chimanlal Parikh and Pankaj Chimanlal Parikh (hereinafter referred to as respondent Nos.1 and 2). Chimanlal D. Parikh died on 5.12.1952. Devidayal Rolling and Refineries Pvt. Ltd. (hereinafter referred to as respondent No.3) was in occupation of the said property as a tenant. Smt. Mayadevi widow of Chimanlal D. Parikh and executors named in the will dated 20th October, 1952 acting on behalf of respondent

Nos.1 and 2 filed a suit No.344 of 1958 for eviction against respondent No.3 in the Bombay High Court. On 31.10.1961 a consent decree for eviction was passed in the above suit with

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the condition that-the decree shall not be executed for a period of 12 years i.e. upto 31.10.1973. The respondent Nos.1 and 2 in order to execute the said decree submitted an application under Order 21 rule 16 and Order 21 rule 22 C.P.C. in the Bombay High Court. The said applications were allowed and respondent Nos.1 and 2 were substituted as decree holders by an order of the High Court dated 10.12.1973. M/s Devidayal Rolling Mills (hereinafter referred to as "the petitioners") appeared in the execution proceedings and contended that they had purchased the business along with interest in the disputed property from Devidayal Rolling and Refineries Private Limited, the respondent No.3. The petitioners also filed a declaratory suit in January, 1974 in the Small Causes Court at Bombay for being declared as tenants in the above property. The petitioners also filed an interlocutory application for restraining the respondent Nos.1 and 2 from executing the decree for eviction. The respondent Nos.1 and 2 denied any tenancy having been created in favour of the petitioners. The Small Causes Court rejected the grant of any injunction in favour of the petitioners and a revision filed against the said order was also dismissed by the High Court. The petitioners then filed a Special Leave Petition No.4925 of 1977 in this Court, after the disposal of which, the present interim application No.1 has been filed.

A Bench of three Judges of this Court on 13.12.1977 dismissed the Special Leave Petition but respondent Nos.1 and 2 agreed not to execute the decree before 1st January, 1980 on an usual undertaking to be given by the petitioners as well as respondent No.3. The order dated 13.12.1977 having an important bearing in the case is reproduced as under:-

UPON hearing counsel, the Court passed the following,
ORDER

"Special Leave Petition is dismissed. However, Respondents 1 and 2 agree not to execute the decree before the 1st of January, 1980, on the undertaking given by Mr. Nariman on behalf of the petitioners and respondent No.3 that the petitioners and respondent No.3 shall hand over vacant and peaceful possession of the premises to respondents 1 and 2 on or before the said date. The petitioners and respondent 3 further undertake that they will not raise

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any contention hereafter that they were or are in possession of the premises either as licensee or tenants of respondents 1 and 2 under the unamended or the amended Rent Act. Arrears of compensation according to the consent decree shall be paid within four weeks from today and further compensation shall be paid before the 10th of every month at the rate of Rs.4000 per month. All other terms of the consent decree will remain. The petitioner and respondent No.3 shall file through their Managing Director an affidavit in terms of this order, within two weeks".

In pursuance to the above order, undertakings were filed on

15.1-2.1977. Subsequently an application C.M.P. No.18403 of 1978 was submitted on 8.8.1978 to the effect that after the filing of the undertakings the petitioners and respondent No.3 had handed over peaceful and vacant possession of the premises of respondent Nos.1 and 2 on 25th June, 1978. It was further submitted that on 25th June, 1978 itself a fresh tenancy had been granted by respondent Nos.1 and 2 in favour of the petitioners. A copy of the agreement granting fresh tenancy was also filed along with the application. The above application was filed in view of the fresh agreement of tenancy warranting the obtaining of discharge of the undertaking filed before this Court. The following prayer was made in the said application:

(a) That it may be declared and recorded that the petitioners and respondent No.3 have duly complied with the order of this Hon'ble Court dated 13th December, 1977 Exh. 'A' hereto and the undertakings recorded in the said order as well as the undertakings given by Kewal Kishan Agarwal and Bankey Kishan Agarwal in their affidavits dated 15th December, 1977;

(b) That the petitioners, respondent No.3, the said Kewal Kishan Agarwal and the said Bankey Kishan Agarwal be relieved on their respective undertaking given by them to this Hon'ble Court and recorded in the said order dated 13th December, 1977 Ex. 'A' hereto and the said affidavits of Kewal Kishan Agarwal and Bankey Kishan Agarwal dated 15th December, 1977 and

(c) for such further and other reliefs as the nature and circumstances of the case may, require for which act of kindness as the petitioners have in duty bound shall ever pray.

The above application came up for consideration on 11.12.1978 and was disposed of by the following order:

UPON hearing counsel, the Court passed the following order:

The other side has no objection. Order made as prayed for'.

This concludes one part of the case.

Second part of the case is that after a lapse of nearly 12 years of disposal of the Special Leave Petition the above I.A. No.1 of 1990 has been filed on 23.1.1990 by one Jugal Kishore Gupta and for convenience we shall hereinafter mention this application as having been filed by 'the applicant company'. It has been submitted on behalf of the applicant company that originally Chimanlal D. Parikh was the sole proprietor of a firm M/s Jayant Metal Manufacturing Company (in short 'JMMC'). On 21.11.1952 the said Chimanlal D. Parikh converted it into a partnership firm of himself and his Mayadevi.

Chimanlal D. Parikh died on 5.12.1952. On 22.10.1963 a deed of partnership was made between Mayadevi and her sons, respondents Nos.1 and 2. The business of JMMC was taken over and continued by this partnership firm. On 7.12.1966 Mayadevi retired from the above partnership firm and respondent Nos.1 and 2 alone continued as partners. On 13.12.1971 a private limited company was incorporated of which the respondent Nos.1 and 2 alone were the directors. On 1.9.1973 this private limited company also became a partner in the partnership firm of JMMC of which respondent

Nos.1 and 2 were the only partners. By an agreement of sale dated 31.7.1979 the applicant company purchased 100% shares of the private limited company of respondent Nos.1 and 2. After the aforesaid agreement Jugal Kishore Gupta on behalf of the applicant company also took over the entire-assets of the company of respondent Nos.1 and 2 on 23.4.1980. It has been further submitted on behalf of the applicant company

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that the disputed property had become the property of the private limited company floated by respondent Nos.1 and 2 in 1971 and respondent Nos.1 and 2 had no right to deal with the property in their individual capacity. They had so right and authority to create a fresh tenancy in favour of the petitioners on 25.6.1978 and they practised a fraud before this Hon'ble Court in obtaining the order dated 11.12.1978 by making a deliberate and intentional false misrepresentation that they were owners of the property in dispute and had a right to create fresh tenancy in favour of the petitioners in their individual capacity. It has been further submitted that the applicant company came to know of the above facts only after the advocate for the applicant. made inspection of papers on 20th January, 1990. In the above circumstances the applicant company has filed the I.A. No.1 and has made the following prayers.:

The Court may be pleased to

(a) direct that the applicant be impleaded as respondent No.4 in the Special Leave Petition No.4925 of 1977;

(b) order an enquiry about the fraud practiced by the petitioner and the respondents upon this Hon'ble Court and about any other point or points on which this Hon'ble Court deems fit to order an enquiry;

(c) clarify that the Undertakings given by the petitioner and respondent No.3 was to hand-over the possession to respondent Nos.1 and 2 for and on behalf of the applicant as its Directors;

(d) take action against the petitioner and respondent Nos. 1 and 3 for perjury;

(e) vacate the order dated 11th December, 1978 inasmuch as respondent Nos.1 and 2 were not competent to enter into Tenancy Agreement dated 25th June, 1978 creating tenancy in favour of the petitioner;

(f) direct the petitioner and respondent No.3 to forthwith handover vacant and peaceful possession of the suit premises to the applicant; and

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(g) pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

This application came up for consideration before this Court and the following order was passed on 2.4.1990:

"After hearing learned counsel for the parties, we find that in the present proceedings it is difficult to decide the question of title to the disputed property which includes an approximate area of 2000 sq

yds. of Plot No.581 Part and 582 Part in TPS Scheme IV, Mahim, Bombay, at present in the possession of M/s Devidayal Rolling Mills who are claiming to be protected tenants, under

the Rent Act. Title to this property is being claimed by M/s Jayant Metal Manufacturing Company Private Ltd., as well as by M/s Prakash Chimanlal Parikh & Pankaj Chimanlal Parikh from whom M/s Devidayal Rolling Mills are claiming to be tenants. Since this deputed question cannot be decided in the present proceedings we remit the issue relating to the title to the aforesaid property to the High Court, Bombay with a direction that the question of title will be decided after given opportunity to the parties concerned to file affidavits, discovery and leading evidence, etc. After hearing the parties and examining the witnesses the High Court will record findings and forward the same to this Court for further orders. The findings may be remitted to this Court within six months. After the report is submitted to this Court the parties are free to file objections, if any, within three weeks thereof. Thereafter the matter will be listed for further orders".

In compliance of the aforesaid order of this, Court the High Court framed the following two issues:

(1) whether the property admeasuring approx. 2000 sq. yds. of plot No.581 (pt) & plot No.582 (pt) of TPS IV, Mahim Division, Bombay belongs to Prakash Chimanlal Parikh and Pankaj Chimanlal Parikh?

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(2) whether M/s Jayant Metal Manufacturing Co. Pvt.

Ltd. are owners of the property mentioned in Issue no.1?

The High Court after discussing the entire evidence, recorded the finding on issue No.1 in the affirmative and that of issue No.2 in the negative. As a result of the above findings, the High Court has held that the property admeasuring approximately 2000 sq. yds. belonged to Prakash Chimanlal Parikh and Pankaj Chimanlal Parikh (respondent Nos.1 and 2) and that M/s JMMC Pvt. Ltd. (the applicant company) were not the owners. The High Court has sent the report dated 13-14-16-17.8.1991. The applicant company has filed objections on 29.10.1991 to the findings recorded by the High Court and the petitioners have filed a counter on 23.11.1991 to the objections filed by the applicant company. Mr. Jethmalani, learned senior counsel on behalf of the applicant company wanted to challenge the findings recorded by the High Court on the question of title of the disputed property. Mr. Chidambaram, learned senior counsel appearing on behalf of the petitioners raised a preliminary objection that the present interlocutory application filed by the applicant company is not maintainable and the order passed by this Court on 2.4.1990 was passed under a misconception. It was submitted that in spite of the findings recorded by the High Court in their favour, he was raising the preliminary objection that the interlocutory application filed by the applicant company itself was not maintainable and as such the order passed by this Court dated 2.4.1990 as well as the entire proceedings taken in pursuance to the said order and the findings recorded by the High Court were without jurisdiction. It was further contended that the Special Leave Petition No.4925 of 1977 had itself been dismissed by order dated 13.12.1977 and no application could have been filed under any provision of law by the applicant

company in the said Special Leave Petition after a lapse of more than 12 years. In view of the above preliminary objection raised on behalf of the petitioners, we called upon Mr. Jethmalani to make submissions on the preliminary objection. After hearing learned counsel for the parties at length on the preliminary objection, we consider it necessary to decide the preliminary objection first and we are disposing of the same by this order.

It was vehemently contended by Mr. Jethmalani, learned senior counsel that such application was maintainable under Articles 136 and 142 of the Constitution. It was contended that in this application apart from

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the prayer for impleadment in the Special Leave Petition No.4925 of 1977 a prayer was made that the fraud alleged against the petitioners should also be enquired. It was submitted that this Hon'ble Court while passing the order dated 2.4.1990 had allowed the prayer for impleadment by implication and the second prayer expressly when this Court had framed the issue of title and had directed the High Court to send its findings after giving an opportunity to the parties to file affidavits, discovery and leading evidence etc. It was also submitted that apart from the above reliefs it was also prayed that the order dated 11th December, 1978 regarding the satisfaction of the decree be also set aside. It was submitted that this Hon'ble Court has appellate powers from every decision of every Court or Tribunal and Art.142 of the Constitution gives power to this Hon'ble Court to do justice in any cause or matter raised even in a Special Leave Petition already dismissed or disposed of. Reliance is placed on the decision of this Hon'ble Court in Union Carbide Corporation Ltd Others v. Union of India and Others, [1991]4 S.C.C. 584. It was contended that the application is covered by Section 47 of the Code of Civil Procedure or within the principles of justice underlying Section 47 C.P.C. read with Art.142 of the Constitution.

It was also contended that by order dated 2.4.1990 this Hon'ble Court had granted two prayers made in the application. Firstly, this Hon'ble Court had impleaded the applicant company and had recorded its right of being heard in the matter and secondly, had decided to make an enquiry into the fraud complained of by the applicant company by directing the High Court to make a report on the question of title. The order dated 2.4.1990 had been passed after hearing the parties. It would cause an irreparable injury to the applicant company in case the order dated 2.4.1990 is recalled. The applicant company has already been put to enormous costs and expenses in conducting the proceedings before the High Court and a long and valuable judicial time has also been spent. It was submitted that the parties have already suffered a protracted hearing and it would be a travesty of justice if the parties would now be told to start their legal remedy from the lowest court of competent jurisdiction. It would bring justice into disrepute and would prove the dictum 'justice delayed is justice denied'. The order dated 2.4.1990 is neither per-incuriam nor without jurisdiction and the same being passed by this Hon'ble Court itself after full application of mind and hearing the parties ought to be sustained.

It was further contended that even after the passing of the order

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dated 2.4.1990 by this Hon'ble Court, the petitioners had raised the plea of correctness of the said order dated

2.4.1990 before the High Court. The High Court rejected the said contention by a specific order dated 21.8.1990. The High Court further granted an opportunity to the petitioners to seek a review of the order dated 2.4.1990 from this Hon'ble Court, but the petitioners did not avail of the said opportunity and continued with the proceedings before the High Court. Under these circumstances the order dated 2.4.1990 having become final cannot be impeached now in these very proceedings. It was submitted that the principle of res judicata applies also as between two stages in the same litigation and any question having been decided at an earlier stage in one way or the other cannot be allowed to be reagitated by the parties at a subsequent stage of the same proceedings. Once a matter is decided it is certainly final as regards that Court is concerned. Reliance in support of the above contention is placed on *Satyadhyan Ghosal & Ors. v. Sm. Deorajin Debi & Anr.*, [1960] 3 S.C.R. 590 and *Y.B. Patil & Ors. v. Y.L. Patil* [1977] 1 S.C.R. 320. It was further contended that the application in question is also maintainable under Section 47 of the Code of Civil Procedure. It is submitted that a dispute between a decree holder and a person claiming adverse to the decree holder which affects the judgment debtor falls within the purview of Section 47 of the Code of Civil Procedure. It is contended that the consent decree dated 31.10.1961 was modified and merged in the order of this Hon'ble Court dated 13.12.1977. By the said order dated 13.12.1977 the time for execution of the consent decree was extended upto 1.1.1980. By another order dated 11.12.1978 this Hon'ble Court recorded satisfaction of the executable order dated 13.12.1977 by discharging the undertakings given by the petitioners and respondent No.3. It has thus been contended that the applicant company being the true and absolute owner of the disputed property was entitled to the benefit of the modified decree dated 13.12.1977. In view of the satisfaction recorded by this Hon'ble Court by order dated 11.12.1978, the applicant company was justified in submitting the present application under Section 47 of the Code of Civil Procedure for setting aside the order of satisfaction of the decree for eviction recorded by this Court. The respondent Nos.1 and 2 destroyed such right of the applicant company by entering into a transaction acting as proprietors and committed a fraud by seeking an order dated 11.12.1978. Hence, this Hon'ble Court alone can go into the question of such fraud.

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it was also contended that the petitioners are also bound by the principle of acquiescence, waiver and estoppel in view of the fact that they did not file any review application against the order dated 2.4.1990, instead participated in the proceedings before the High Court for a long period of 78 days. It was also submitted that no prejudice has been occasioned to the petitioners on account of the order dated 2.4.1990 as the finding on the question of title has been recorded by the High Court in favour of the petitioners and it is the applicant company who wants to assail the same and get the question of title to be decided finally by the Apex Court to shorten the litigation.

On the other hand it was submitted by Mr. Chidambaram, learned senior counsel for the parties that the order dated 2.4.1990 being merely an interim order, the same can always be varied or modified by this Court. at any later stage of the proceedings. The prayer in the application for impleadment filed by the applicant company has itself not been granted so far and by the order dated 2.4.1990 no

question has been decided nor has any right been conferred thereby on the applicant company. This Hon'ble Court had passed the order dated 2.4.1990 under a clear misconception of both facts as well as law and as such the same can always be recalled at a subsequent stage in the proceedings. The application is not maintainable under any provision of law including Section 47 C.P.C. The applicant company was neither a party to the suit in which the decree for eviction was passed nor has it come forward as a representative of any party to the suit much less the representative of the decree holder. It has been contended that the respondent Nos.1 and 2 had filed an application under Order 21 rule 16 and Order 21 rule 22 C.P.C. for being substituted as decree holders and the executing court had allowed the applications in their favour and as such they alone were competent to execute the decree.

It was also argued on behalf of the petitioners that judgments which have the force of a decree are to be distinguished from other interlocutory orders which are a step towards the decision of the dispute between the parties by way of a decree or a final order. Thus it has been contended that the nature of the order dated 2.4.1990 was merely a step towards the decision of the application filed by the applicant company which itself is of an interlocutory nature. It was also argued that the lease granted by respondent Nos.1 and 2 in favour of the petitioners w.e.f. 25.6.1978 was not the subject matter of the prayers in C.M.P. No.18403 of 1978 nor the

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subject matter of the order made by this Hon'ble Court on 11.12.1978. The fresh lease granted in favour of the petitioners has never been the subject matter of any proceedings in any court of law, including this Hon'ble Court. Thus it is not open to the applicant company by moving the above interlocutory application No.1 of 1990 to question in any matter the fresh lease granted w.e.f. 25.6.1978 or to allege that the said lease is fraudulent or is vitiated in any other manner. Even if for arguments sake the applicant company now wishes to challenge the aforesaid lease granted as far back as on 25.6.1978, the applicant company is bound to institute separate and substantive proceedings challenging the said lease.

It has also been argued on behalf of the petitioners that in R.A.D.718 of 1974 the applicant company being a defendant had filed a written statement in November, 1986 in which it had referred and questioned the grant of fresh lease dated 25.6.1978 by respondent Nos.1 and 2. Thus the stand now taken by the applicant company that it came to know about the aforesaid lease only after its advocate took inspection of papers on 20th January, 1990 is totally false and the applicant company having not come with clean hands and also after a long delay the application is liable to be dismissed on these grounds alone.

We have given our thoughtful consideration to the arguments advanced on behalf of the parties and have carefully gone through the record as well as the written arguments. As already mentioned above the respondent Nos.1 and 2 were substituted as decree holders by an order of the High Court dated 10.12.1973. The petitioners having purchased the business from Devidayal Rolling Mills, (the respondent No.3) had filed a declaratory suit in January, 1974 in the Small Causes Court at Bombay. In the said suit the interlocutory application restraining the respondent Nos.1 and 2 from executing the decree for eviction was dismissed. The revision filed by the petitioners was also dismissed by the

High Court and against that order the petitioners had come before this Court by filing the above Special Leave Petition No.4925 of 1977. The said Special Leave Petition was also dismissed on 13.12.1977 and the time was granted to vacate the property in dispute before the 1st January, 1980. In pursuance to the order dated 13.12.1977 some undertakings were given by the petitioners as well as respondent No.3 on 15.12.1977 and thereafter the petitioners and respondent No.3 handed over the possession of the property in dispute to

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respondent Nos.1 and 2 on 25.6.1978 and on the same day a fresh agreement of lease was granted by respondent Nos.1 and 2 in favour of the petitioners. We are thus totally at a loss to understand as to how any question of its title as sought to be raised by the applicant company against respondent Nos.1 and 2 or any question of fraud, if any, in granting a fresh lease dated 25.6.1978 by respondent Nos.1 and 2 could at all be brought up before this Court straight away. These questions now sought to be raised by the applicant company in the present application have nothing to do with the controversy raised in the main Special Leave Petition itself which also came to be dismissed long back on 13.12.1977. In our view such controversy regarding the alleged applicant company's title to the property or the question of alleged fraud in respect of creating a fresh tenancy dated 25.6.1978 in respect of that property had no relevance even remotely with the question raised in the Special Leave Petition. Such questions of title or fraud could neither be gone into in a Special Leave Petition in exercise of its jurisdiction under Art. 136 or 142 of the Constitution nor could the same be raised under Section 47 of the Code of Civil Procedure in the disposed of Special Leave Petition nor by way of any interlocutory application. The order dated 2.4.1990 appears to have been passed under a clear misconception that it will aid the final decision on the application. This Court while passing the order dated 2.4.1990 did not decide any controversy nor did it grant the application for impleadment filed by the applicant company. There was no proceeding pending at all before this Court in respect of the above Special Leave Petition in which the present application could have been filed after a lapse of 12 years and it was an apparent and obvious mistake on the part of this Court in entertaining such application. We cannot accept the submission made on behalf of the applicant company that the order dated 2.4.1990 is final and binding so as to compel us to decide the question of title.

The Special Leave Petition itself was filed by the petitioners who were claiming as tenants in the property in dispute against the order of the High Court affirming the order of the Small Causes Court refusing to grant interim injunction against the execution of the decree for eviction. Thus the controversy, if any, raised, in the main special Leave Petition itself had nothing to do with the question of any dispute of title between the respondent Nos.1 and 2, and the applicant company.

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It may be noted that according to the applicant company's own case they had made an agreement of purchasing the 100% shares of the private limited company of respondent Nos.1 and 2 on 31.7.1979 and thereafter Jugal Kishore Gupta on behalf of the applicant company took over the entire assets on 23.4.1980. Thus the applicant company cannot be said to have anything to do with the two orders passed by this Court on 13.12.1977 and on 11.12.1978 nor could the applicant

company be regarded as one in any way adversely affected by the agreement dated 25.6.1978 of new tenancy as till then it had not taken any steps of purchasing the said shares. There was no scope or even any semblance of any controversy now sought to be raised by the applicant company which could have been raised or decided in the main Special Leave Petition itself. That apart a Bench of three Judges of this Court on 13.12.1977 had dismissed the Special Leave Petition and so far as the order dated 11.12.1978 is concerned it neither decided any controversy nor changed its earlier order of dismissal of the Special Leave Petition. We are clearly of the view that this interlocutory application filed by the applicant company on 23.1.1990 in the dismissed Special Leave Petition as back as on 13.12.1977, was totally misconceived and there was no provision under which the same could have been entertained by this Court.

It is no doubt true that on account of the order dated 2.4.1990 both the parties have been put to an enormous cost but this cannot be a justification for entertaining a controversy which did not arise even remotely in the main Special Leave Petition and which could only be decided by way of regular substantive proceedings in the lowest court of competent jurisdiction. This Court cannot entertain and decide the question of title in respect of an immovable property raised for the first time before this Court by way of an interim application in a dismissed Special Leave Petition. There is no question of any acquiescence, waiver or estoppel against a party where the error is committed by the Court itself. This Court is under a bounden duty to correct its own mistake. So far as the case of Union Carbide Corporation v. Union of India, (supra) is concerned the same has no relevance and can be of no assistance at all to the applicant company in the facts and circumstances of the present case.

The principle laid down in Satyadhyani's case (supra) and Y.B. Patil & Ors. (supra) is to the effect that the principle of res-judicata can be

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invoked not only in separate subsequent proceedings but they can also get attracted in subsequent stage of the same proceedings. There cannot be any difference of opinion in the said view. However, this question would depend on the facts and circumstances of each case and the nature of the order passed at an earlier stage of the proceedings. In Arjun Singh v. Mohindra Kumar & Ors., [1964] 5 S.C.R. 947 it was observed as under:

"Where the principles of res-judicata is invoked in the case of the different stages of proceedings in the same suit the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached as well as the specific provision made on matters touching such decisions are some of the factors to be considered before the principle is held to be applicable".

So far as the question of rendering justice in a civil litigation is concerned, it can only be known after the final culmination of such litigation and the party succeeding can be adequately compensated by way of costs. It has been rightly said that "cost is a panacea in law which heals every sore in litigations. In the present system of adversarial civil litigation between the parties it may turn out to be costly as well as time consuming, if either of the parties decide to bring all or any controversy

for decision upto the Apex Court. In our considered view the question of title to an immovable property or fraud in any transaction relating to it cannot be entertained by this Court in an interlocutory application filed by a third party in a Special Leave Petition dismissed as long ago as 12 years discarding all procedural requirements. We are thus clearly of the view that the order dated 2.4.1990 did not decide any issue finally nor can it be considered as binding or operative as res-judicata or otherwise.

It is true that the High Court has recorded a finding in favour of the petitioners and against the applicant company and as such the applicant company is prejudiced if the said finding remains in tact. However, in view of the fact that we are upholding the preliminary objection, it is necessary in the interest of justice to declare the entire proceedings in the High Court including the findings recorded on the question of title as non-est and not binding on any of the parties concerned. We order accordingly. Although we have refrained from making any observations on the merits of the issues

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raised in the I.A. regarding the questions of alleged title and alleged fraud we make it clear that this Judgment or any observations made therein will not in any manner prejudice the rights of any of the parties with regard to the title of the property in dispute or any question of fraud sought to be raised by the applicant company in an appropriate forum. Subject to the above, we dismiss Interlocutory Application No.1 of 1990 with no order as to costs.

R.P.

Application dismissed.

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