

(2003) 10 AP CK 0044

In the Andhra Pradesh High Court

Case No : Rev. A No's. 1408 to 1415 of 2001 in OSA No's. 19 to 26 of 2001 in CS No. 14 of 1958

State of A.P. and Others

APPELLANT

Vs

Paltati Sharavan Kumar and Others

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 11

Citation : (2004) 4 ALD 261 : (2004) 3 ALT 445

Hon'ble Judges : V.V.S. Rao, J;P.S. Narayana, J

Bench : Division Bench

Advocate : A.G, for the Appellant; E. Ayyapu Reddy, for Respondent Nos. 1 to 3 in Application Nos. 1408, 1409, 1410 and 1411 of 2001 and K. Anand Rao, in Application Nos. 1412, 1413, 1414 and 1415 of 2001 and for Respondent Nos. 4 to 8 in Application Nos. 1408, 1409, 1410 and 1411 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The State of Andhra Pradesh, represented by Chief Secretary, Hyderabad and others are fighting this legal battle against the respondents by moving this batch of Review Applications as against the judgment and decree made in O.S.A. Nos. 19 of 2001 and Batch dated 24-8-2001 in C.S.No. 14/58.

2. These Review Applications came up for hearing before the Division Bench consisting of Dr. Motilal B. Naik, J., and one of us (P.S. Narayana, J.), and the said Division Bench on 12-7-2002 made the following order:

"At the stage of hearing this Review Application, across the Bar, it is brought to our notice that as provided under Order 47, Rule 5 of CPC, the Review Application is to be heard only by such of those Judges who are party to the decision, provided if one of them is retired or transferred and the other continues, if there is no embargo for the Judge who still continues to hear the Review Application.

This Review Application is filed seeking to review the decision rendered by the Division Bench of this Court consisting of Brother B. Subhashan Reddy, J. and Brother P.S. Narayana, J. in O.S.A. No. 19/2001 dated 24-8-2001.

As laid down under Order 47, Rule 5 CPC, one of the members of the Division Bench which rendered the said decision, Brother Justice P.S. Narayana, is functioning as a Judge of this Court, in our considered view, this Review Petition has to be placed before Brother Justice P.S. Narayana, for consideration.

Accordingly, Registry is directed to place the matter before the Hon"ble the Chief Justice, for posting this Review Application before Brother Justice P.S. Narayana."

Subsequent thereto, these matters came up before one of us (P.S. Narayana, J.) and on 14-11-2002, one of us referred these matters to be heard by an appropriate Division Bench and by virtue of the orders made by the Honourable the Chief Justice, these matters came up before this Court and opportunity had been given to file counters and no counters were filed and accordingly Review Applications were admitted on 3-1-2003. Thus, these matters are before this Court and in view of the commonness involved in all these matters, they are being disposed of by this Common Order.

3. These Review Applications are filed to review the judgment in O.S.A. Nos. 19 to 26 of 2001, disposed of on 24-8-2001 by B. Subhashan Reddy, J., as he then was and one of us (P.S. Narayana, J.). Though elaborate submissions were made in the said judgment at Para 2 it was recorded:

"Mr. T. Anantha Babu, the learned Advocate-General, submits that the learned Single Judge was incorrect in ordering the assignment of rights even without issuing notice to the Government, as the Government was the necessary party in view of the fact that the lands were Inam lands and they were not partible and as such, no decree could be passed and consequently, there could be no assignment of rights of the decree-holders."

Several other factual details also had been discussed, but it may be appropriate to have a look at para 6 of the said judgment in detail for the present purpose and it was stated by the Division Bench as hereunder:

"Civil Suit No. 14 of 1958 was tried by this Court on its original side and the said suit was filed for partition of the Matruka properties held by late Khurshid Jah and after a protracted litigation, it ended in a preliminary decree being passed by judgment dated 28-6-1963. The Government of Andhra Pradesh was 53rd defendant and filed a written statement. The said written statement is as vague as possible. It is apt to extract the same:

"This Defendant No. 53 files the written statement as under:

(1) That the facts contained in paras 1 to 11 are incorrect and having not been properly narrated are not admitted. Plaintiff is put to strict proof thereof. Many of the properties claimed are not Matruka properties and as such plaintiff has no

cause of action. This defendant in fact is not aware of any share of the plaintiff and much less of the correctness of the quantum claimed.

(2) Paras 12 to 16 are denied and not admitted. Properties as would be evident from the very firmans issued were not Matrooka properties and much less can they be treated as Matrooka, after the abolition of Jagirs.

(3) With regard to the properties claimed in para 17(a) and other foregoing paragraphs, it is submitted that the paigah has constructed certain buildings for Tahsil Office, Cattle, pound, Gadi Khana, Ashoorkhana etc. They were rightly taken over by the Government following the integration of the Jagirs. The plaintiff in fact, can have no claim and much more so when no land was or is in the name of Paigah Nawab. They are not the personal properties of Hissedars of Jagirdars. On the other hand, they were considered as public buildings and were maintained out of the State budget.

(4) That the valuation put forth and the Court fee paid thereunder are incorrect and insufficient. Further suit is bad for misjoinder of causes of action. Prayers are misconceived and the suit is untenable.

(5) That the facts which have not been categorically admitted or denied shall be deemed as denied.

Whereof, the Defendant No. 53 prays that the Plaintiff's suit be dismissed with costs."

Insofar as schedule property is concerned, the decree which has been passed in the above suit is to the following effect:

"That properties mentioned in items 37 and 40 in Schedule IV shall also be available for partition only in case they happened to be released by the Government. Thereafter, there was a spate of litigation centering around scheduled lands and there are several applications filed to give effect to the preliminary decree. Application Nos. 19 and 114 of 1973 were filed to hand-over possession. Application No. 19/1973 relates to lands at Hydernager. Application No. 114/ 1973 relates to the scheduled lands. The prayer against the Government was to restore possession of the said lands to the applicants therein. After perusing counter of the Government, it was held by a learned Single Judge by his order dated 5-7-1994 that the applicants were entitled for restoration of the scheduled lands. In fact, remarks have been made by the learned Single Judge to the effect that in spite of several years having elapsed, the Government did not handover the possession of the said lands. The Government's stand was that though it was prepared to deliver the possession of the scheduled lands to the applicants, but, it was unable to do so for the reason of encroachment by 3rd parties and then directions were given by the learned Single Judge for taking possession and, thus, enabling the restoration of possession to the applicants. It is not disputed that this judgment had become final. In fact, to get over all these orders, which had become final, the Government had filed an appeal against the

preliminary decree before a Division Bench of this Court with a delay of 38 years 4 months and 13 days. But, the said petitions for condonation of delay were dismissed by a Division Bench of this Court, to which, one of us (B. Subhashan Reddy, J.) was a party, by order dated 7-2-2001 and the said order was assailed before the Supreme Court in SLP (Civil) No. 10622-19623/ 2001, but the Supreme Court by order dated 16-7-2001 has affirmed the order of the Division Bench dated 7-2-2001. As seen from the above, both the preliminary decree that scheduled lands are partible subject to release by the Government and the orders of the learned Single Judge directing the delivery of possession, had become final and as such, the principle laid down relating to res judicata and constructive res judicata by the Privy Council, Full Bench of this Court and the Supreme Court in the cases (1) to (4) supra are squarely applicable to these appeals."

Since the Appeals were dismissed, aggrieved by the same, the Review Petitioners filed Special Leave to Appeal (Civil) No. 4463-4470/2002 before the Supreme Court and the petitions were dismissed on 8-4-2002 and aggrieved by the same, Review Petitions (Civil) Nos. 782 to 789 of 2002 were moved and these also were dismissed on 31-7-2002. It is pertinent to state that the grounds of Review in the present matters and the grounds raised in the Special Leave Petitions appear to be virtually the same. It is also relevant to point out that the same questions were advanced by the learned Advocate-General in O.S.A. Nos. 19/2001 and Batch.

4. The learned Government Pleader for Appeals Sri Jagannadha Sharma, made the following submissions. The learned Counsel explained several factual details and the historical background of the case also at a considerable length, which may have only a limited bearing in deciding the present Review Applications. The learned Counsel had traced the history of the case from the assignment of rights, the implead applications, the applications being allowed on no objection and all other series of events. The learned Counsel meticulously had taken this Court through the specific grounds raised in these Review Applications. The learned Counsel pointed out that the Government was not made a party to these applications though the Government was one of the parties to C.S. No. 14/58. It was further maintained that the appellate Court should have noted that the observation in the learned Single Judge's order while dealing with Applications 19 and 14 of 1973, was based on a fundamental mistake that in the judgment in O.S. No. 14/58 it was held that item 37 was held to be partible. The learned Counsel also submitted that the order dated 5-7-1974 would not constitute a binding precedent and at any rate the said order would not have overriding effect over the judgment in C.S. No. 14/58, dated 20-8-1963. The learned Counsel had pointed out several aspects raised in paras 5 to 9 of the grounds and had submitted that these aspects were not taken note of. The Counsel, while elaborating his submissions, had pointed out to the relevant findings which had been recorded in C.S. No. 14/58 relating to Item No. 37, S.No. 77 part. It was further pointed out that the 53rd defendant in C.S. No. 14/ 58 is the Government

of Andhra Pradesh and the 55th defendant is the State of Mysore. The learned Counsel also had taken this Court through the respective pleadings of the parties in general and para 17-B of the plaint in particular and Issue No. 14(a) also was referred to. The relevant findings recorded on Issue No. 14(a) and the grounds raised in the O.S.As. also had been pointed out. The learned Counsel also had brought to the notice of this Court that the very assignment deed is unregistered and the right to immovable property cannot be assigned by such a document. It was further maintained that there was no enquiry by the Government at any point of time. The learned Counsel also had explained in detail the different provisions of A.P. (Telangana Area) Inams Abolition Act, 1955, referred to as "Act" in short for the purpose of convenience. Attention also was drawn to the nature of the order made in Application Nos. 19 and 114 of 1973 in C.S. No. 14/58. The learned Counsel would contend that the said order will not operate as res judicata and when an order does not operate as res judicata, dismissing the Appeal on such a ground is definitely an error apparent on the face of record. No issue was decided and definitely it is not a reasoned order and it is based on erroneous consideration and contrary to the judgment made in C.S. No. 14/58. It was further pointed out that the present parties were not parties to the prior order. Elaborate submissions were made relating to Section 11 of the Code of Civil Procedure, hereinafter referred to as "Code" in short and the scope and ambit thereof. The learned Counsel would further maintain that an order without jurisdiction will not operate as res judicata and the Civil Court cannot entertain a dispute of this nature under the Act in view of the provisions of the Act. The definition of "inam" in Law Lexicon also had been referred to. The learned Counsel would further maintain that in view of the different provisions of the Act and also the nature of the occupancy certificate, the very application made by the Receiver relating to release of property is not maintainable. At any rate, in view of the inherent lack of jurisdiction, the finding in C.S. No. 14/58 or the subsequent orders made thereon, in this regard definitely will not operate as res judicata and the Division Bench mainly proceeded on the assumption that these will operate as res judicata and ultimately had dismissed the Appeals. Emphasis was made on the aspect that the very placing of reliance on the order made either on the ground of res judicata or constructive res judicata definitely is an error apparent on the face of record, especially in the light of the fact that the said order was neither a reasoned order nor the one made on merits. The learned Counsel also submitted that in SLP leave was not granted and hence the Reviews can be maintained definitely before this Court. At any rate, in view of the fact that the matters had been admitted, now the Review Applications may have to be disposed of only on merits and again this question need not be considered and hence, in any view of the matter, the Review Applications are to be allowed. Several decisions also had been relied upon by the learned Counsel to substantiate his elaborate submissions.

5. Sri Ayyappu Reddy, the learned Counsel while opposing these submissions had maintained that the finding that an order operates as res judicata cannot be said

to be an error apparent on the face of record. The learned Counsel also expressed his surprise as to how it will lie in the mouth of the petitioners to contend that these applications are maintainable having been unsuccessful even before the Apex Court. Even otherwise, it was explained that these applications are only subsequent to the order made in Application No. 114/73 in C.S.No. 14/58 and the said order was not challenged and the same had attained finality. The learned Counsel also had drawn the attention of this Court to Order 47, Rule 1 of the Code and Section 11 of the Code and also Section 41 of the Transfer of Property Act, 1882. The learned Counsel would maintain that even if the decision is erroneous, the remedy is elsewhere and definitely not by way of Review.

6. Sri Narasimha Rao, the learned Counsel representing the original decree-holders had submitted that it is a long drawn litigation and at some stage there should be finality to the litigation and the petitioners having made an attempt at the Apex Court by way of SLP and even by way of Review, cannot raise the self-same grounds which were raised as grounds for SLP before the Apex Court. The learned Counsel had taken this Court through the grounds raised before the Apex Court by the petitioners in this regard. The learned Counsel also would contend that though these Review Applications may be maintainable, definitely it will be abuse of process of Court by not allowing the litigation to attain finality, especially in the light of the fact of having been unsuccessful even before the Apex Court. The learned Counsel also while elaborating his submissions had drawn the attention of this Court not only to the aspects which had been recorded in the Appeals by the Division Bench, but several additional aspects also relating to C.S. No. 14/58 in detail. The learned Counsel also had drawn the attention of this Court to the relevant findings in C.S. No. 14/58 and several subsequent orders which had attained finality and had concluded his submissions stating that at any rate this is not a fit case to invoke Order 47, Rule 1 of the Code.

7. Sri Vedula Venkataramana had submitted that the very foundation or the grounds raised in the Review Applications definitely will go to show that the petitioners are making yet another attempt to keep the lis just alive without any basis, thus preventing the lis attaining some finality. The learned Counsel also further would maintain that the Review is not rehearing of the Appeal. The very fact that such lengthy arguments are being advanced by the petitioners will definitely go to show that it is not an error apparent on the face of record since the very basic test for granting Review is not satisfied. The learned Counsel also would maintain that any other sufficient reason also must be akin to the ground specified in Order 47, Rule 1 of the Code and not the reasons of the nature now being raised by the petitioners. Elaborate submissions were made on the doctrine of res judicata, the principles of estoppel, the distinction between erroneous decision and error apparent on the face of record and also the aspect of jurisdiction and the nature thereof. The learned Counsel would further maintain that under the guise of review, the questions which had been decided in the Appeal, cannot be raised again which will amount to rehearing of the Appeal and

the same is not permissible in law. The question of *res judicata* always necessarily need not be a question of law alone and it may be a question of fact and a question of law and a mixed question of fact and law as well. Hence this cannot be a ground at all for review. Several factual details also had been urged by the learned Counsel in this regard and ultimately the learned Counsel concluded that this is only yet another attempt on the part of the petitioners which cannot be permitted in law,

8. Sri Bhari, the Receiver, had made the submissions stating that the petitioners cannot be allowed to raise the same point again and again and such stand being taken repeatedly by the petitioners will be definitely unreasonable and an unjust stand. The learned Counsel also had taken this Court through the orders which the petitioners had suffered already and having allowed them to attain finality, the learned Counsel would maintain that this question cannot be reagitated again under the guise of Review under Order 47, Rule 1 of the Code.

9. Heard the Counsel at length.

10. O.S.A. Nos. 19 to 26 of 2001 were filed against the orders made in Applications 1452/2000 and Batch in C.S. No. 14/58 dated 10-10-2000 and as already referred to supra, the said Appeals were dismissed and aggrieved by the same, Special Leave Petitions and Review Applications also were filed before the Apex Court which ultimately resulted in their dismissal. Though the maintainability of Review Applications had been argued at length before one of us (P.S. Narayana, J.) on the strength of which reference was made and the matters were referred in toto to the Division Bench, no elaborate arguments had been advanced now and in view of the admission of the Review Applications by this Court, this question need not be discussed at length. But, however, one of us (P.S. Narayana, J.) had referred the following questions to be decided by an appropriate Division Bench:

(1) Whether a review petition can be further prosecuted as against the decision of this Court having invoked the review jurisdiction of the Apex Court after dismissal of the special leave petitions by the Apex Court?

(2) Whether the order of review made by the Apex Court can be said to be one on merits virtually putting a seal of approval of the judgment made by the Division Bench of this Court?

(3) Whether the judgment of the Apex Court in review petitions can be taken as binding between the parties and be treated as a precedent in view of the decision in *Nityanandakar and Anr. v. State of Orissa and Ors.* (1991) 2 Supp. SCC 516, which was decided by a three Judge Bench of the Apex Court?

11. In the Special Leave to Appeal (Civil) No. 44634470/2002, questions of law as hereunder were raised before the Apex Court:

(A) Whether the High Court is justified in dismissing the Appeals saying that they are hit by *res judicata*?

(B) Whether the High Court is justified in saying that these Appeals are hit by res judicata more particularly when in the earlier order referred to by the High Court the parties are entirely different?

(C) Whether the assignments in question are valid and legal and are not contrary to the judgment of the Trial Court (High Court) in C.S. No. 14 of 1958?

(D) Whether the assignors have any right or title over the land in question to assign the same when these lands are Inam lands and vested in the Government?

(E) Whether the assignors can assign these lands to the assignees when the Trial Court specifically held that Item No. 37 of Schedule IV (lands in question are part of these items) are partible only in case the Government releases these lands?

(F) Whether the High Court is justified in allowing the applications filed by the assignees for recognizing their right in the assignment in question when the Government has not released these lands and they have vested in the Government on abolition of the Jagir?

It may be appropriate to look at the orders made by the Apex Court dated 8-4-2002

"We do not find any merit in these petitions. The special leave petitions are dismissed."

Review Petitions (Civil) Nos. 782 - 789 of 2002 were filed in SLP (Civil) Nos. 4463 - 4470 of 2002 and on 31-7-2002, the Appeal Court made following order:

"Delay condoned. We have gone through the Review Petitions and relevant documents. In our opinion, no case for review is made out. Hence, the Review Petitions are dismissed."

Before one of us (P.S. Narayana, J.) elaborate arguments were advanced by Sri Jagannadha Sharma, the learned Government Pleader for Appeals representing that Review petitioners and Sri Sitaramaiah, the learned Senior Counsel representing the respondents. In Kunhayammed and Others Vs. State of Kerala and Another, , the Apex Court had observed:

"To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a Court, Tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leaver petition is converted into an appeal."

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the capability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion to as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, Tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, Tribunal or authority below has stood merged in the order of the Supreme Court rejecting the SLP or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modifications or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted to an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-rule (1) of Rule 1 of Order 47 CPC."

In the same decision, at paras 25 and 26 the Apex Court also observed:

"The efficacy of an order disposing of a SLP under Article 136 of the Constitution came up for the consideration of the Constitution Bench in *Penu Balakrishna Iyer and Others Vs. Ariya M. Ramaswami Iyer and Others*, in the context of revocation of a special leave once granted. This Court held that in a given case if the respondent brings to the notice of the Supreme Court facts which would justify the Court in revoking the leave earlier granted by it, the Supreme Court would in the interest of justice not hesitate to adopt that course. It was therefore held

that no general rules could be laid down governing the exercise of wide powers conferred on this Court under Article 136; whether the jurisdiction of this Court under Article 136 should be exercised or not and if used, on what terms and conditions, is a matter depending on that facts of each case. If at the stage when special leave is granted the respondent-caveator appears and resists the grant of special leave and the ground urged in support of resisting the grant of special leave is rejected on merits resulting in grant of special leave then it would not be open to the respondent to raise the same point over again at the time of the final hearing of the appeal. However, if the respondent-caveator does not appear, or having appeared, does not raise a point, or even if he raised a point and the Court does not decide it before grant of special leave, the same point can be raised at the time of final hearing. There would be no technical bar of res judicata. The Constitution Bench thus makes it clear that the order disposing of a SLP has finality of a limited nature extending only to the points expressly decided by it.

The underlying logic attaching efficacy to an order of the Supreme Court dismissing SLP after hearing Counsel for the parties is discernible from a recent three-Judge Bench decision of this Court in *Abbai Maligai Partnership Firm V.K. Santhakumaran*. In the matter of eviction proceeding initiated before the Rent Controller, the order passed therein was subjected to appeal and then revision before the High Court. Special leave petitions were preferred before the Supreme Court where the respondents were present on caveat. Both the sides were heard through the Senior Advocates representing them. The special leave petitions were dismissed. The High Court thereafter entertained review petitions which were highly belated and having condoned the delay reversed the orders made earlier in civil revision petitions. The orders in review . were challenged by filing appeals under leave granted on special leave petitions. This Court observed that what was done by the learned Single Judge was "subversive of judicial discipline". The facts and circumstances of the case persuaded this Court to form an opinion that the tenants were indulging in vexatious litigations, abusing the process of the Court by approaching the High Court and the very entertainment of review petitions (after condoning a long delay of 221 days) and then reversing the earlier orders was an affront to the order of this Court. However the learned Judges deciding the case have no where in the course of the judgment relied on doctrine of merger for taking the view they have done. A careful reading of this decision brings out the correct statement of law and fortifies us in taking the view as under."

In *Nityanandakar v. State of Orissa* (1991) Supp. 2 SCC 516, the Apex Court observed:

"Though it is true that the dismissal of the SLP against the High Court order is not ordinarily a seal of total approval of the views expressed by the High Court in arriving at its decision, yet in the instant case, having regard to the nature of the controversy and it having been settled on the canvass of local conditions, we

take the view that this Court's seal to the decision of the High Court must be taken as a seal of an approval of what it decided and thus a precedent settling the matter."

In *State of Gujarat and Others Vs. Bhaterdevi Ramnivas Sanwalram*, it was observed:

"The SLP and the writ petition were dismissed by this Court on 16-8-1994 and the following order was passed:

"We do not find any ground to grant the relief for family pension claimed by the petitioner. We may, however, observe that in case such a benefit is being granted to any other person similarly situate then the authorities may consider the petitioner's case allegations for grant of similar relief.

Special leave petition and the writ petition are dismissed with the above observations.

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It was also contended that the Scheme of 1972 to the extent it lays down minimum five years" eligibility criterion to be entitled to grant of family pension is illegal and unconstitutional. This contention is again without any merit. The said challenge was also made earlier and was rejected on the dismissal of the SLP and the writ petition by this Court on 16-8-1994. The respondent cannot be permitted to reopen that question again in this appeal."

From the ratio laid down in the aforesaid decisions of the Apex Court, inasmuch as even in the present case the Special Leave Petitions were dismissed at the threshold and especially in view of the fact that the present review petitions were presented even prior to the orders made by the Apex Court in the Special Leave Petitions and also in the subsequent Review petitions thereof, the present Review Applications before this Court are maintainable. It is no doubt true that the Apex Court also had exercised the review jurisdiction, but it was only to the limited extent of reviewing the orders already made in the Special Leave Petitions and nothing more or nothing beyond that. It is no doubt true that decision referred in *Nityanandakar v. State of Orissa* (supra) was decided by a three-Judge Bench. But, however, the question of maintainability of the Review Applications in a similar fact-situation had fallen for consideration before the Apex Court in the decision referred in *Kunhayammed and Ors. v. State of Kerala and Anr.*, (supra) and in view of the same, this Court is of the opinion that virtually there is no conflict in the views expressed by the Apex Court in the decisions referred in *Kunhayammed and Ors. v. State of Kerala and Anr.* and *Nityanandakar v. State of Orissa*, (supra). Apart from this aspect of the matter, in view of the fact that already the Review Applications were admitted by this Court and since these questions were not further elaborately argued before this Court, this Court need not dwell any further on this aspect.

12. The total land admeasuring Acs.94-16 guntas in S.No. 77 of Hafeezpet Village, Serilingampalli Mandal, Ranga Reddy District, the land in question, is part of Item No. 37 of Schedule IV in C.S. No. 14/58. The said suit was one for partition of matruka property claiming to be private property of Khurshid Jahi Paigah. One Dildarunnisa Begum had initially instituted the suit O.S. No. 41/55 on the file of the learned Chief Judge, City Civil Court, Hyderabad which was subsequently transferred to this Court and tried as C.S. No. 14/58 and a preliminary decree was passed on 28-6-1963 in terms of compromise drawn by the parties. The State of Andhra Pradesh, represented by Chief Secretary, was arrayed as Defendant No. 53 and Jagir Administrator was arrayed as Defendant No. 43, and no doubt the Government of Mysore also was made a party. The relevant portion of the decree reads as hereunder:

"That properties mentioned in items 37 and 40 of Schedule IV shall also be available for partition only in case they happened to be released by the Government."

In the plaint itself it is pleaded that these are inam lands. The relevant portions of judgment in C.S. No. 14/58 are as hereunder. It was stated at pages 10 and 11:

"Suit for the partition of the Matraka of Nawab Khrushid Jah, praying the High Court to pass a preliminary decree:

1. Directing the properties detailed in Schedule IV and IV(a) which are in the possession of the parties detailed therein and other (b) category properties detailed in para 12 of the plaint which are in the possession of Defendant No. 43 and all other properties whatsoever they may be found to belong to the Mattuka of late Nawab Khurshid Jah be divided by metes and bound and plaintiffs be given 29/1944th share therein etc.

At page 23 it was stated:

"The Jagirs and the Paigahs were abolished by means of the Jagir Abolition Regulation (69 of 1388 F) with effect from 15-8-1949, and the Jagirs and the properties connected with the Jagirs were taken over by the Jagir Administrator and the Jagirdars were declared entitled only to the commutation amounts. The other properties and estates unconnected with the Jagirs, however were allowed to remain with the Jagirdars. In these circumstances, the plaintiff with the allegation that the properties coming under the above mentioned categories were not Jagir or paigah properties but strictly Matraka property of Nawab Khurshid Jah and that the order or Firman prohibiting its distribution has worked itself out on account of the abolition of the Jagirs, has filed this suit for partition of the same."

At page 24 it was stated:

"The third category consists of Defendant No. 43, the Jagir Administrator, Defendant No. 53 the State of Andhra Pradesh and Defendant No. 55 the State of

Mysore, who were brought on record as they are supposed to be in possession or custody of some of the suit properties."

At page 41 it was stated:

"Defendant No. 53 is the State of Andhra Pradesh. The Andhra Pradesh Government is interested in some of the buildings that Paigah had constructed for the Tahsil Office, Cattle pound, Gade Khana, Assoorkhana etc., which were taken over by the Government following the integration of the Jagirs. They contend that the parties can have no right in relation to these, as they are not the personal properties of the Jagirdars or Hissedars.

At pages 46 and 47 it was stated:

"Issue No. 14(a): Are the properties mentioned in items 37 to 40 of Schedule 4 the maktas and Inam properties and it so, whether the Civil Court has no jurisdiction in relation to, the same?

At pages 213, 214, 221 and 285 the relevant findings are as hereunder:

"In para 17(b) of the plaint, only Items 37 and 40 of Schedule IV are said to be properties taken over by the Government and not Items 38 and 39, though Defendant No. 1 had stated that they are in the possession of the Government. The Government too have not set up any claim with regard to the same.

Thus properties Items 35, 36, 37 and 40 of Schedule IV must be deleted from the schedule as suit property. Items 37 and 40 will be available for partition in case the Government as a result of inquiry releases the same. Enquiry into imams or maktas is certainly not within the exclusive jurisdiction of Civil Court.

Issues 7(a) and (b) are decided as follows: Items 26 and 34, 29, 30, house bearing Municipal Nos. 28 and 29 in Item 22, Items 35, 36, 37 and 40 in Schedule IV, and Items 13 to 16 of Schedule IV-A are not the properties left by Khurshid Jah which may be available for partition in the suit.

The compromise covers the entire subject-matter of the suit. In the earlier part of this judgment, a reference has been made to the general scheme of the compromise. As would appear from the compromise the parties thereto have admitted for purposes of compromising the suit that the suit property is the property partible in the suit and that all the parties to the compromise are the legitimate heirs in the line of succession of Nawab Khurshid Jah. But, as already noticed, according to the conclusions reached by me as the evidence on record, certain specific properties being the exclusive properties of particular parties to the suit cannot be included in the suit for partition. These are Items 26, 29, 30, 34, 35 to 37 and 40 and two houses bearing Nos. 28 and 29 in Item No. 22 Schedule IV, and Items 13 to 16 in Schedule IV-A under the compromise. Except Item No. 30, as also some of the properties which have gone into the possession of Defendants 53 to 55 (viz., Items 35 to 37 and 40 in Schedule IV and 13 to 16 in Schedule IV-A), all the other properties in Schedule IV and IV-A

have been made available for partition among the parties."

No doubt there is some controversy between the parties relating to release of lands by the Government. The respondents had pointed out several aspects to convince the Court relating to release of the property. There is some factual controversy relating to factum of delivery of possession too. On the strength of the plea in the plaint that these are inam lands and certain findings were recorded in C.S.No. 14/58, elaborate arguments had been advanced on the aspect of lack of jurisdiction to grant relief of partition and the finding on res judicata recorded by the Division Bench while dismissing O.S.As. as being totally erroneous which will fall under the expression "error apparent on the face of the record". In the decree it was made clear that Items 37 and 40 of Schedule IV shall also be available for partition only in case of their release by the Government. The release by Government itself is in controversy by the parties making the lis virtually unending. Strong reliance was placed on Lokraj and Others Vs. Kishan Lal and Others, , to substantiate the stand that the Civil Court has no jurisdiction to entertain C.S. No. 14/58 at all. In the said decision the abolition of vesting of inam lands came up for consideration under the Act and the Apex Court while considering this aspect held at paras 3 to 7 as follows:

"Therefore, notwithstanding any contra-usage, settlement etc., enumerates Section 3(1), on and from the date of the Act the inams were abolished and inam lands stood vested in the State. Section 3 expressly saves certain properties from the vesting as enumerated in Clauses (a) to (i) of Sub-section (2) thereof, with which we are not presently concerned. Section 4 gives right to registration by the inamdar as occupant. As per this section, every inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than the lands enumerated in Clauses (a) to (c) therein. Sections 6 - 8 deal with registration of permanent tenants as occupants, either protected tenants or non-protected tenants etc. Section 5 deals with registration of Kabiz-e-kadim tenants as occupants. Section 9 deals with vesting of certain buildings and inam lands used for non-agricultural purposes. Section 10 creates forum for determination of the entitlements in Sections 4 - 9. Section 11 saves certain rights created under the Act before the date of vesting as inamdars. Section 23 deals with constitution of special Tribunals and their power to deal with the questions arose therein. Section 24 gives right of appeal against the order passed by the authorities constituted u/s 10 to determine the questions enumerated in Sections 4 - 9. Thus the Act is a complete code, abolished the inam, vested the land in the Government and conferred rights on the persons in occupation enumerated, subject to the right of appeal and the decision thereon. The Act abolished existing rights and created new rights. Created forum to determine the rights and liabilities arising therefrom. The question, therefore, is whether the civil suit for partition is maintainable, after the estate was abolished.

Consequent to the abolition, the pre-existing right, title and interest of the inamdar or any person having occupation of the inam lands stood divested and

vested the same in the State until re-grant is made. The inamdar, thereby lost the pre-existing right, title and interest in the land. The right to partition itself also has been lost by the statutory operation unless regrant is made. We are not concerned with the consequences that would ensue after regrant of this appeal. Therefore, it is not necessary for us to go into the question that may arise after the regrant.

In Bhubaneshwar Prasad Narain Singh and Others Vs. Sidheswar Mukherjee and Others, , this Court held that after the estate was abolished under Bihar Land Reforms Act, 1950 the decree for partition stood abated as the lands stood vested with all assets in the State of Bihar. This Court pointed out that the object of the Act was to cause transference to the State of the interest of the properties and tenure holders in land as also of the mortgagees and lessees of such interests including interest in the lands etc. Though the plaintiffs therein had a share in the lands as a ryot after the regrant, but they had lost the right as a tenure-holder or proprietor. In Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, this Court held that after the estate is abolished, the rights created u/s 6 of the Bihar Land Reforms Act has to be worked out in accordance with the provisions of the Act. In Maddada Chayanna Vs. Karnam Narayana and Another, and Oduru Chenchulakshamma and Another Vs. Duvvuru Subrahmanya Reddy, , this Court held that after the abolition of the estate and vesting of the land in the State, while the new rights were created under the Act, the Civil Court has no jurisdiction to adjudicate the pre-existing rights. The parties have to work out the rights under the Act before the forums created thereunder.

In Sheetal Singh v. Mahmood Shariff, (1984) 1 An.WR 406, a Single Judge of the High Court considered the effect of the abolition and following the Judgments of this Court held that the suit is not maintainable. The Division Bench overruled the judgment on the sole ground that the ratio in Govind Reddy v. Lakshminarayan Reddy, (1959) 1 An.W.R. was not considered, therefore, it was not good law. The Division Bench obviously overlooked the fact that under aliat Act the ultimate jurisdiction for deciding the question has been vested only in the Civil Court. Therefore, the Division Bench in Govind Reddy case had held that suit for partition was maintainable. But that ratio bears or relevance to the consequence that would ensue under the Act. The Division Bench therefore, was not right in holding that the suit for partition is maintainable even though inam has been abolished under the Act and the lands stood vested in the state.

Shri Madhava Reddy, the learned Senior Counsel, placing reliance on Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil and Others, and Shivappa Tammannappa Karaban Vs. Parasappa Hanammappa Kuraban and Others, contended the right to claim partition has not been lost, though inam has been abolished. We find no force in the contention. Therein, after abolition of the watan regrants were made in favour of watandars. In view of the pre-existing watans burdened with service of watandar as per pre-existing law, excluded the

junior members of the family to claim partition, was abolished and regrant was made to the watandar, after the regrant the property became the joint family property. So, the coparceners of the Hindu Joint Family were held entitled to lay the suit for partition and Civil Court has jurisdiction to grant decree of partition by metes and bounds pro rata. That ratio has no application to the facts of this case. When regrant is made and in what capacity the regrant would be made is a matter to be considered and decided in terms of the regrant."

In *The State of Maharashtra Vs. Lazmen Abaji and Another*, it was held that though the inams were abolished and the lands vested in the State Government by reason of Section 3(1) of the 1955 Act, the rights and interests of landlord and tenant mentioned in Section 3(2)(b) were preserved by Section 33 inasmuch as Section 3(2), Clauses (d), (g), (h) and (i) did not come into effect until 1-7-1960. This Enactment, is an Act to abolish inams in the Hyderabad State. Section 3 of the Act deals with Abolition and vesting of Inams and the consequences thereof; Section 4 of the Act deals with registration of inamdars as occupants; Section 6 of the Act deals with registration of permanent tenants as occupants; Section 7 of the Act deals with registration of protected tenants as occupants; Section 8 of the Act deals with registration of non-protected tenants as occupants; Section 9 of the Act deals with vesting of certain buildings and inam lands used for non-agricultural purposes; Section 10 of the Act, likewise, deals with Enquiry by Collector in certain cases. After passing of the preliminary decree in C.S No. 14/58, an Advocate Receiver-Commissioner was appointed to demarcate, identify and deliver possession of the schedule properties in terms of compromise and the Commissioner prepared a Scheme for distribution of urban immovable property in Application No. 73/70 and the said Scheme was accepted and the Receiver-Commissioner was directed to prepare a suitable Scheme of partition in respect of the agricultural lands. The Receiver filed Application No. 139/71 in C.S. No. 14/58 for partition of the agricultural lands. Subsequent thereto, the Receiver-Commissioner filed Application Nos. 19/73 and 114/73 in C.S.No. 14/58. Application No. 19/73 was an application u/s 151 of the Code and Order 41, Rule 1 of the Code, praying for issuance of directions to the Collector, Hyderabad District, to handover possession of patta lands such as S.Nos. 145, 163, 172 of Hydemagar without any further delay. Application No. 114/73 was an application filed u/s 151 of the Code and under Order 40, Rule 1 of the Code praying for a direction to the Collector, Hyderabad to restore possession of patta lands at Hafeezpet, Taluq West, Hyderabad District. The operative portion of the common order in the said Applications dated 5-7-1974 reads as hereunder:

"Item Nos. 38 and 37 of the Plaintiff Schedule IV, situated at Hydernagar and Hafeezpet respectively, have been held by this Court, in the preliminary decree passed in O.S. No. 14 of 1958, to belong to the estate of "Khurshid Jahi Paigah". To the proceedings, in which the above lands have been held to belong to the Khurshid Jahi Paigah, the State of Andhra Pradesh was a party. Those lands were taken over by the Government from the Paigah under an erroneous impression that they were inams and Arzai Makhatas. The finding of this Court given in the

preliminary decree that the said lands belonged to the Paigah, has become final and is binding upon the Government of Andhra Pradesh since it was a party to those proceedings. The Paigah, is therefore, entitled to get back possession of those lands."

No doubt Application No. 268/66 also was referred to and it was also pointed out that in fact symbolic delivery was effected. It is no doubt true that the prayer in Application No. 114/73 itself was for restoration of possession. Certain other correspondence with the Revenue Officials also had been pointed out and those details need not be discussed further. Though series of orders had been made, Defendant No. 53 in C S No. 14/58 - Government of Andhra Pradesh, after a lapse of 38 years 4 months 13 days, filed applications O.S.A. (SR) Nos. 3526/2000 to 3527/2000 assailing the preliminary decree made in C.S. No. 14/58 on 28-6-1963 and a Division Bench of this Court had dismissed the said Applications on 7-2-2001 and the Government of Andhra Pradesh had carried the matter to the Apex Court in SLP (Civil) Nos. 10622-10623/2001 and the said order was affirmed by the Apex Court by order dated 16-7-2001. Thus, it is clear that from the different proceedings and the orders made thereon the petitioners an the original-decree holders and the subsequent parties who had entered into the shoes of the original decree holders have been taking the same stand and fighting the lis on the same ground which is be repeatedly canvassed before the Courts of law. This is made a ground again in the present Review Applications.

13. As already referred to supra, item No. 37 also was held to be partible, subject to the release by the Government, in C.S.No. 14/58. The ground raised in the present Review Applications is one of the jurisdiction of the Civil Court to entertain the suit to grant the relief of partition. Submissions at length were made about the nature of the order passed and the reasons recorded in Application Nos. 19 and 114 of 1993. This contention virtually will amount to rehearing of the appeals and not grounds for granting the review applications. No doubt these review applications filed are of the year 2001 and the orders of dismissal of Special Leave Petitions and the Review Applications were made by the Apex Court subsequent thereto. Order 47, Rule 1 of the Code reads:

Application for review of judgment--Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or

made the order.

Thus, Review is permissible only in case of an error apparent on the face of record or discovery of new and important evidence, after exercise of due diligence which was not within the knowledge of the party. Any other sufficient reason also should be analogous to those specified in the said rule. Elaborate submissions were made pointing out that since the Division Bench had arrived at the conclusion that the question which had been decided, which in fact had not been decided in Application No. 114/73, operates as *res judicata* and in view of the fact that there is inherent lack of jurisdiction in Civil Court to make such an order, in view of the fact that these are inam lands and these lands are not partible at all, the said finding recorded is an error apparent on the face of record and hence these applications of Review are to be allowed. While placing reliance on certain decisions of the Madras High Court, the decision of the Full Bench in *M. Subbarayudu and Others Vs. The State*, was referred to. It is no doubt true that the Full Bench in the aforesaid decision held that the decisions of Madras High Court delivered prior to 5-7-1954 are binding precedents on Andhra High Court as these are Courts of co-ordinate jurisdiction. In *Opporti Padmi v. Paila Ujjala*, AIR 1927 Mad. 998, it was held by a Single Judge of Madras High Court that mere omission on the part of a Judge to consider a decision, however regrettable or however wrong, cannot possibly be recorded as constituting an error apparent on the face of the record. In *(Nekkanti) Seeramma Vs. (Nekkanti) Seshamma*, , a Single Judge of the Madras High Court had explained the expression "strict proof and the meaning thereof in Order 47, Rule 4(2)(b) of the Code. In *Puthiya Purayil Puthanpurayil Ussain Vs. Pavayi Kunhiraman and Others*, , Govinda Menon, J., as he then was, of the Madras High Court had an occasion to consider the same question in a slightly different context and the learned Judge held that where the Court ignores or does not decide a case on the principle of *res judicata*, it cannot be stated that such an error is one apparent on the face of the record. It is no doubt true that this decision was delivered by a Single Judge of the Madras High Court and the present Review Applications are being, decided by a Division Bench of this Court. The decision referred *Puthiya Purayil Puthanpurayil Ussain v. Pavayi Kunhiraman and Ors.* (supra), may not be a binding precedent on a Division Bench of this Court since the Division Bench can definitely take a different view, if otherwise the Division Bench is convinced that the view expressed by the learned Single Judge of Madras High Court is not the correct view. At any rate, definitely it is having great persuasive value. In *Varupanda Seetharama Swamy and Others Vs. Allam Ugra Narasimha Murthy*, , the essentials of doctrine of *res judicata* had been well explained. In *Smt. Isabella Johnson Vs. M.A. Susai*, , the Apex Court at paras 5 and 6 held:

Learned Counsel for the appellant submitted that the learned Judge of the High Court was in error, as the earlier decisions of the Rent Controller to the effect that it was the City Civil Court and not the Rent Controller who had the jurisdiction to entertain the suit for eviction filed by the appellant against the respondent, constituted *res judicata* between the parties on the question of

jurisdiction. It was submitted by him that, even if that decision was wrong, the issue of jurisdiction was finally decided between the parties and that decision was that it was the Civil Court and not the Rent Controller that had the jurisdiction to entertain and dispose of the suit for eviction. He further submitted that the respondent could not be permitted to take inconsistent pleas as he was barred by the principles of estoppel from taking up the plea before the Civil Court that it was the Rent Controller who had the exclusive jurisdiction to entertain the suit. He placed reliance on a decision rendered by a Division Bench comprising two learned Judge of this Court in *Avtar Singh and Others Vs. Jagjit Singh and Another*, , which took the view that the Civil Court's decision regarding lack of jurisdiction will operate as *res judicata* in a subsequent suit. In that case the Civil Court declined jurisdiction. The Civil Court took the view that it had no jurisdiction to try the suit in question and directed the return of the plaint for representation to the appropriate Revenue Court. When the claim was filed in the Revenue Court, the Court took the view that it had no jurisdiction to try the claim. Thereupon, a suit was again instituted in the Civil Court for the same relief. This suit failed throughout on the ground of *res judicata*. The High Court affirmed the dismissal and the Division Bench of this Court took the view that the High Court was right in taking the view that the principles of *res judicata* were-applicable to the issue of jurisdiction. In our opinion, the contention of learned Counsel for the appellant cannot be upheld. We find that in *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*, , a Bench comprising three learned Judges of this Court has taken the view that a decision on the question of jurisdiction of the Court or a pure question of law unrelated to the right of the parties to a previous suit is not *res judicata* in the subsequent suit. The Court observed:

"It is true that in determining the application of the rule of *res judicata* the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in, the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e., the interpretation of a statute, it will be *res judicata* in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the CPC means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. 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 supersede the law of the land."

The same view has been reiterated by a Bench comprising three learned Judges of this Court in *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.,* . We find that the decision of three learned Judges of this Court in *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,* , has not been noticed at all by the Division Bench comprising two learned Judges of this Court which delivered the judgment in *Avtar Singh and Others Vs. Jagjit Singh and Another,* and hence, to the extent, that the judgment in *Avtar Singh's* case takes the view that the principle of *res judicata* is applicable to an erroneous decision on jurisdiction, it cannot be regarded as good law. In our opinion a Court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of *res judicata*. It is well settled that there can be no estoppel on a pure question of law and in this case the question of jurisdiction is a pure question of law."

In *Pandurang Ramchandra Mandlik (Since Deceased) by his Lrs. and Another Vs. Shantibai Ramchandra Ghatge and Others,* , it was held:

"It is true that Section 11 is now made applicable by the Explanations and interpretation to certain proceedings giving more extensive meaning to the "word "suit". In its comprehensive sense the word "suit" is understood to apply to any proceeding in a Court of justice by which an individual pursues that remedy which the law affords. The modes of proceedings may be various but that if a right is litigated between parties in a Court of justice the proceeding by which the decision of the Court is sought may be a suit. But if the proceeding is of a summary nature not falling within the definition of a suit, it may not be so treated for the purpose of Section 11. In the absence of the details of the proceeding concerned in the instant case, it could not be said that it was of the nature of a suit and not a summary proceeding. Besides, assuming that *Mamlatdar* in deciding the application in 1962-63 to have been a Court of exclusive jurisdiction for the purpose of Section 11 C.P.C., its decision rejecting the application would not be an evidence on the question of tenancy merely because it could be inferred from that decision."

In *Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others,* , the Apex Court held:

".....It would be appropriate here to quote the following passage from "*res judicata*" (sic) *Spencer Bower and Turner*, 2nd Edition, page 92:-

"Competent jurisdiction is an essential condition of every valid *res judicata*, which means that, in order that a judicial decision relied upon, whether as a bar, or as the foundation of an action, may conclusively bind the parties, or (in the case of *in rem* decisions) the world, it must appear that the judicial Tribunal pronouncing the decision had jurisdiction over the cause or matter, and over the parties, sufficient to warrant it in so doing."

In *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,* , this Court observed as follows (at p. 2359 of AIR):

"A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit.....Similarly, by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise."

In *Richpal Singh and Others Vs. Dalip*, , the Apex Court held thus (at p. 2211 of AIR):

"A salutary and simple test to apply in determining whether the previous decision operates as res judicata or on principles analogous thereto is to find out whether the first Court, herein the Revenue Court, could go into the question whether the respondent was a tenant in possession or mortgagee in possession. It is clear in view of language mentioned before that it could not. If that be so, there was no res judicata. The subsequent civil suit was not barred by res judicata."

In *Pandurang Mahadeo Kavade and Others Vs. Annaji Balwant Bokil and Others*, , it was held that in order to operate res judicata it must be established that the previous decision was given by a Court which had jurisdiction to try the present suit, and the plea of res judicata would not be available if the previous decision was by a Court having no jurisdiction. Learned Counsel for the appellant referred to a decision of this Court in the case of *Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others*, , in support of his argument. In this case it was held that the principle of res judicata will also apply to execution proceedings. But this case has no bearing on the controversy which is before us, and, therefore, learned Counsel cannot derive any assistance from this decision. Thus, it is well settled that doctrine of res judicata does not apply to a decision of a Court or Tribunal which lacked jurisdiction."

In the light of the above legal position, we hold that the decision of the Tahsildar u/s 3 of the Inams act as to the character of the Wakf property which was upheld by the High Court of Andhra Pradesh being one passed without jurisdiction, cannot operate as res judicata and the High Court of Andhra Pradesh was justified in ignoring the said decision and in not giving effect to it."

14. As already referred to supra, it is no doubt true that in the pleading itself in C.S.No. 14/58 these lands were admitted to be inam lands. But however, it is pertinent to note that the preliminary decree was made and as far as the subject-matter of the present controversy is concerned, the only condition is subject to release by the Government. Hence, this question need not detain this Court any longer in the view of the decree in C.S.No. 14/58.

15. The mere fact that there was a plea in the plaint that these are inam lands will not in any way alter the situation in view of the series of subsequent orders referred to supra. The main ground of attack is that the Civil Court has no jurisdiction at all and in view of the inherent lack of jurisdiction, any judgment made or any order passed definitely will be without jurisdiction and hence the

same will not operate as res judicata and the findings recorded by the Division Bench on such a footing is an error apparent on the face of record. The doctrine of res judicata as embodied in Section 11 of the Code or the general principles of res judicata, always necessarily need not be taken as a pure question of law. It may be a mixed question of fact and law as well and hence the mere fact that on the applicability or otherwise of the principles of res judicata, the Court had decided one way or the other, may not amount to an error apparent on the face of record. At the best, it may amount to a finding touching the merits and demerits of the matter and definitely the remedy is elsewhere and not by way of review. In *Digambar Rao and Another Vs. Govt. of Andhra Pradesh*, , a Full Bench of this Court consisting of S.B. Sinha, Chief Justice, as he then was, V.V.S. Rao, J. and myself (P.S. Narayana, J.) at para 5 observed:

"Power of review can be classified into two groups - procedural review and substantive review. Every Court or Tribunal has inherent powers, so far as procedural review is concerned, for example in a case where an order has been passed by a Court without compliance of the principles of natural justice, the Court may recall such an order."

Strong reliance was also placed on *Delhi Administration Vs. Gurdip Singh Uban and Others*, , *M/s. Avijit Tea Co. Pvt. Ltd. Vs. M/s. Terai Tea Co. and others*, , and *Dhurandhar Prasad Singh Vs. Jai Prakash University and Others*, . In *Parsion Devi and Others Vs. Sumitri Devi and Others*, the Apex Court held:

"It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 CPC. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September, 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

Again, in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, , while quoting with approval a passage from *Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma and Others*, , this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 CPC.

Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there

is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

Considered in the light of this settled position we find that Sharma, J., clearly overstepped the jurisdiction vested in the Court under Order 47, Rule 1 CPC. The observations of Sharma, J., that "accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope of Order 47, Rule 1 CPC, There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J., found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J., did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long-drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J., and get it set aside but it was not open to them to seek a "review" of the order of Gupta, J., on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J., cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997."

In *Madicherla Ramanamma and Ors. v. V. Naga Prathap and Anr.*, 2003 (3) ICC 751, it was held by one of us (P. S. Narayana, J.) that where the decision of a Larger Bench was not brought to the notice of the Court by mistake and where clear legal position established by a binding authority is overlooked, it is an error within the meaning of Order 47, Rule 1 of the Code, In *Palakurthy Venkateswarlu Vs. Noroju Manorama @ Satya Manorama and Others*, , it was held that review is neither an appeal nor rehearing of the matter disposed of earlier. In *Nicholas Piramal India Limited Vs. Cultor Food Science Inc. and Others*, , it was held by a Division Bench of this Court that when there is an error apparent on the face of record and when law is not properly interpreted, the Court should review its earlier judgment and the Court is not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for the sake of justice and

interpretation of law inconsistent with the earlier decisions delivered by a co-ordinate Bench and Larger Bench would amount to an error apparent on the face of record and omission to notice correct legal position also will amount to an error apparent on the face of record and that the word "error" need not necessarily be limited to errors of fact and errors of law also would come within the meaning of Rule 1 of Order 47 of the Code. In *Dasari Uma Maheswara Rao and Another Vs. Somasi Venkata Ramachandra Murthy and Others*, , one of us (P.S. Narayana, J.) while dealing with the maintainability of review application and limitations imposed by law, held that most of the contentions raised are concerned with procedure and technicalities and they cannot be said to be an error apparent on the face of record for interference in review application and several of the grounds raised are matters to be questioned before regular forum and not by filing a review application. In *B.F. Pushpaleela Devi Vs. State of A.P. and Others*, , the Larger Bench held that the words "for any other sufficient reason" must be one sufficient to the Court to which the application for review is made and they cannot be held to be limited to the discovery of new and important matter or evidence or the occurrence of a mistake or error apparent on the record and that the ground of review must be something which existed at the date of the decree and the rule does not authorize the review of a decree which was right when it was made on the ground of the happening of some subsequent event. It was further held that it is a condition precedent that no Superior Court should have been moved for self-same relief before filing of review petition. It was also further held that the error must be one which strikes one on merely looking at the record and which would not require any long drawn process of reasoning on a point where there may conceivably be two opinions.

16. A careful reading of the judgment in O.S.A. No. 19/2001 and Batch would clearly disclose that apart from the aspect of *res judicata*, other reasons also had been recorded. At any rate, these contentions may be construed as those touching the merits and demerits of the matter and definitely may not attract the ingredient "error apparent on the face of record". As already stated *supra*, though the Review Applications can be maintained despite the summary disposal of the Special Leave Petitions by the Apex Court, the attainment of finality of the *Us* also being one of the important facets of justice delivery system, a party who had made a vain attempt by approaching the Apex Court by Special Leave and also made yet another unsuccessful attempt by filing the Review Applications which were dismissed, cannot be permitted to raise the same grounds in the present Review Applications on the ground of lack of jurisdiction of the Civil Court and non-applicability of the doctrine of *res judicata*, both in law and on the ground of equity too. It is definitely opposed to all canons of justice.

17. In any view of the matter, for the foregoing reasons, the Review Applications are devoid of merits and they shall stand dismissed accordingly. No order as to costs.