



2026:AHC:29082

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 95 of 2026

Sachin Kumar

.....Appellant(s)

Versus

Smt Nidhi Dohre And Another

.....Respondent(s)

Counsel for Appellant(s)	: Naveen Kumar, Raj Kumar Gupta, Satish, Shanu Bhatt
Counsel for Respondent(s)	: Gulab Chand Bharati, Ishwar Chandra Srivastava, Kaushlendra

A.F.R.

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal has been filed under Section 96 CPC against the impugned judgment and decree dated 19.10.2024 passed by the Additional Civil Judge (S.D.) Court No.10, Ghaziabad in O.S. No.544 of 2020 (Sachin Kumar Vs. Smt. Nidhi Dohre and another), whereby the plaintiff's suit for the relief of mandatory injunction for directing the defendant No.2 Agrawal Associates (Promoters) Ltd, for executing the sale deed of the disputed property solely in favour of the plaintiff and for restraining the estranged wife-defendant No.1 from creating any hindrance, has been dismissed.

2. The appeal is admitted.

3. The factual matrix is that the plaintiff-appellant, Sachin Kumar, and defendant No.1, Smt. Nidhi Dohre, are husband and wife, whose marriage was solemnized on 14.02.2015 in accordance with Hindu rites and rituals. After the marriage, they resided at Flat No. C-306, Neelgiri Apartment, Kaushambi, Ghaziabad.

4. It is the case of the plaintiff that in the year 2017 he booked flat No. K/C.A.1002, having a carpet area of 723.761 square feet, Type-4, in Block (A) on the tenth floor in Aditya World City, village Shahpur Bamheta, Ghaziabad, for a total consideration of Rs.26,11,607/- from defendant No.2. It was further averred that, since defendant No.1 was his wife, due to love and affection, he included her as a joint/benami owner

of the said flat at the time of booking of the flat. Accordingly, an advance amount of Rs.1,46,250/- was paid through cheque on 15.11.2017, and thereafter, on 21.11.2017, the remaining amount was paid from the plaintiff's bank account No. 072201501425 to defendant No.2. Subsequently, on 06.01.2018, an allotment letter with respect to the flat, hereinafter referred to as disputed property, was issued by defendant No.2.

5. It was further averred that the disputed property was purchased by obtaining a loan from Indiabulls Housing Finance Limited, Delhi, in which defendant no. 1 was co-borrower, since in the allotment letter she was benami joint owner. It was further averred that on 17.02.2018, an amount of Rs.22,56,536/- was paid by cheque/DD No. 663631, and further, on 27.03.2018, an amount of Rs.1,33,867/- was paid by cheque/DD No. 699666 to defendant No.2 by plaintiff. It was also averred that the housing loan was being repaid by the plaintiff alone through EMIs of Rs.22,097/-, from his salary account.

6. It is the case of the plaintiff that his wife/defendant No.1 has not paid any amount towards the purchase of the disputed property and that only due to love and affection he included her as a benami co-owner at the time of allotment, whereas he is the real and absolute owner of the property. Therefore, he claims entitlement to have the sale deed of the disputed property executed solely in his favour.

7. It was further averred that subsequently the intention of defendant No.1 turned malafide and ideological differences arose between the husband and wife, due to which on 05.12.2018 the defendant No.1 left the matrimonial home and deserted the plaintiff. Thereafter, criminal litigation was also initiated by the estranged wife against the plaintiff. It was also averred that the plaintiff filed a suit under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which is pending before the competent court. It was also averred that the plaintiff was in possession of the disputed property since 09.04.2019, which was handed by defendant no.2.

8. In this background, the plaintiff requested defendant No.2 to execute the sale deed of the disputed property solely in his favour. However, when

defendant No.2 refused to do so, the plaintiff filed the present suit seeking the following reliefs:-

- (i) That a decree of mandatory injunction be granted in favour of the plaintiff and against the defendants, directing defendant No.2 to execute the sale deed of the disputed property solely in favour of the plaintiff, and defendant No.1 be restrained from causing any hindrance therein;
- (ii) That the cost of the suit be awarded to the plaintiff against the defendants; and
- (iii) Any other relief which the Court may deem fit and proper in the facts and circumstances of the case.

9. The written statement was filed by defendant No.2 before the Trial Court, wherein it was averred that the disputed property is in joint ownership of the plaintiff and defendant No.1 and, therefore, defendant No.2 was legally bound to execute the sale deed in favour of both joint allottees. It was further averred that the plaintiff had no cause of action to file the suit against defendant No.2. Indiabulls Housing Finance Ltd. is a necessary party to the suit. The plaintiff and defendant no.1 are liable to pay outstanding amount of Rs. 4,64,189/- to it.

10. It is apparent from the record that defendant No.1 failed to appear before the Trial Court, and consequently substituted service was effected upon her through publication in a local newspaper, which was deemed sufficient. Thereafter, by order dated 06.02.2023, the suit was proceeded ex-parte against defendant No.1.

11. The Trial Court concluded that since the disputed property was purchased jointly by plaintiff and defendant No.1, the plaintiff was not entitled to seek execution of the sale deed solely in his favour, being bound by the terms and conditions of the agreement. The Trial Court further held that the plaintiff failed to produce any documentary evidence to establish payment of the entire sale consideration to defendant No.2. It was also held that, as the allotment of the disputed property was made jointly, defendant No.2 cannot be directed to execute the sale deed solely in favour of the plaintiff. On these grounds, the suit was dismissed.

12. Aggrieved by the said judgment and decree, the plaintiff has filed the present appeal.

13. It is undisputed that the disputed property stands in the joint names of the plaintiff and defendant No.1. The assertion of the plaintiff is that he purchased the property benami in the joint name of his wife purely out of love and affection and that the entire consideration was paid by him alone. The plaintiff seeks execution of the sale deed exclusively in his favour on this basis.

14. It is also apparent that several litigations relating to divorce, maintenance, and criminal proceedings regarding demand of dowry are pending between the husband and wife before different courts. The core dispute pertains to property rights between the spouses, and jurisdiction for adjudication of such disputes vests in the Family Court constituted under the Family Courts Act, 1984.

15. Section 7 of The Family Courts Act, 1984, reads as under:-

7. Jurisdiction.—(1) *Subject to the other provisions of this Act, a Family Court shall—*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage

or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

16. Explanation (c) of Section 7(1) of the Family Courts Act, 1984 provides that suits or proceedings between the parties to a marriage with respect to the property of the parties or of either of them, are only cognizable by the Family Court.

17. In the present case, the suit was not instituted before the Family Court but was adjudicated by the Court of the Additional Civil Judge (Senior Division), Court No. 10, Ghaziabad, which lacked inherent jurisdiction to entertain and decide the matter. In view of the above patent defect, this Court is not required to examine the impugned judgment on merits.

18. Learned counsel for the plaintiff/appellant submitted that the findings recorded by the trial court, be set aside, otherwise they will operate as res judicata.

19. The Apex Court in the case of ***Prem Kishore and others vs Brahm Prakash and others (2023) 19 SCC 244***, reiterating the essential principles for application of res judicata, held as under:-

33.(iii) *To determine whether a suit is barred by res judicata, it is necessary that (a) the “previous suit” is decided, (b) the issues in the subsequent suit were directly and substantially in issue in the former suit; (c) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (d) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit;....*

(emphasis supplied)

20. The Apex Court in the case of ***Sushil Kumar Mehta vs Gobind Ram Bohra (Dead) Thr. LRS. (1990) 1 SCC 193 (By 3 Judges)***, held as under:-

26. *Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which*

are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as *res judicata* in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as *res judicata* even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of *res judicata* is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would operate as *res judicata*. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as *res judicata*. **Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not *res judicata* in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of *res judicata* does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction.** Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction.

(emphasis supplied)

21. Accordingly, the judgment and decree passed by the Trial Court is without jurisdiction and is a nullity, in the eye of law. On this ground alone, the impugned judgment and decree is liable to be set aside. It is apparent that any finding recorded by a court lacking inherent jurisdiction, does not operate as *res judicata*, between the parties.

22. Since the dispute relates to property rights between husband and wife, the suit is exclusively cognizable by the Family Court.

23. In view of the aforesaid facts and circumstances, the appeal is liable to be allowed.

24. Accordingly, the appeal is allowed. The impugned judgment and decree dated 19.10.2024 is hereby set aside.

25. Original Suit No. 544 of 2020 is restored to its original number, and the Trial Court is directed to return the plaint to the plaintiff under Order VII Rule 10 CPC for presentation before the competent Family Court.

26. The concerned Family Court is directed to decide the suit afresh, within a period of six months, from the date the plaint is presented to it, without affording unnecessary adjournment to either of the parties, in accordance with law, on merits.

(Sandeep Jain,J.)

February 10, 2026
Himanshu