# SUPREME COURT OF INDIA

Janaki S. Menon

Vs.

Dr. V.R.S. Krishanan

C.A.Nos.13216-17 of 1996

(K. Ramaswamy and S. P. Kurdukar, JJ.)

04.10.1996

## ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. These appeals by special leave arise from the order of the High Court of Kerala made on November 1, 1995 in CRP Nos. 1745 and 1980 and 1995. The case has a chequered history, details of which need no repetition. Suffice it to state that the late V. Madhava Raja owed certain dues towards income-tax, wealth tax and agriculture income-tax. On his demise, when a partition suit, viz. OS No.1/64 was filed for division of the properties by metes and bounds among the sharers, an attempt was made by the State to have the estate attached for recovery of the tax dues. Pursuant to an agreement between the parties, the Court passed an order avoiding attachment and directed the Joint Commissioner to recover the dues from the estate and pay over the same to the Income-tax and other other Government dues. On an application, final decree was passed on July 15, 1967 in which the appellants had purchased 4/13th share. In the final decree proceedings for recovery of dues of

the State certain properties came to be identified and ultimately Devi Vilas Palace was also agreed to be sold by order of the Court dated January 28, 1983 for recovery of the arrears. Several attempts were made to sell out the properties to the co-sharers for realisation of the tax dues of the State remained unsuccessful. Consequently, by order of the Court dated April 8, 1992, direction was given to sell the property by public auction. After due publicity, the property in dispute was sold on July 15, 1992 for a sum of Rs.31,15,000/-. Under the terms of the sale, 1/4th of the bid amount was required to be deposited forthwith and the balance amount was to be deposited within 15 days thereafter. In default, 1/4th amount was to be forfeited. In the meanwhile, pending the litigation, the matter reached twice to the Court. SLP (C) No. 8040/92 came to be filed in this Court wherein this Court passed an interim order directing stay of the confirmation of the sale. Resultantly, the auction-purchaser-respondents filed an application in the Court on June 26, 1992 seeking permission to withdraw from the auction. Pending that application, they filed another application on June 29, 1992 for extension of time to deposit 3/4th amount. Ultimately, by order dated September 19, 1992, this Court had dismissed the special leave petition with liberty to the executing Court to confirm the sale already made etc. In the meanwhile, the Court passed vague orders on auction-purchaser's applications for permission to withdraw from auction and for extension of time. Auction purchaser filed a revision in the High Court. The learned single Judge further directed the trial Court to consider the matter in the light of the direction issued by this Court in the special leave petition.

4. The appellants also filed an application under Order 21, Rule 90, CPC to set aside the sale. All these matters were heard together and by order dated August 16, 1995, the executing Court rejected the objections to the sale and extended time for payment of the balance amount. The matter was then carried in revision to the High Court and the High Court dismissed the revision petitions. Thus, these appeals by special leave.

5. Shri D.D. Thakur, learned senior counsel for the appellants, has contended that it is clear from the record that the arrears for recovery of the tax were liquidated as on the date of the sale. Therefore, the property was not liable to be sold. This Court having considered the contention, passed an order on November 27, 1995 directing the respondents to place on record whether any liability as on the date of the auction, viz., June 15, 1992 was subsisting. In pursuance thereof, a certificate dated December 6, 1995 was produced in which the Income-tax Officer, Ward - 2, Palghat had certified that a sum of Rs.5,15,824/- was still due and recoverable from the estate of Venugopala Verma Raja, Kollengode estate. In view of these facts, the question arises : whether the objections raised by the appellants are tenable ?

6. It is true that in the order passed by the executing Court the plea that the property was not liable to be sold since the arrears had already been liquidated as on the date of the sale, was not properly considered on the mistaken view that this Court had already directed whether or not the sale should be confirmed and the sale that was sanctioned by the executing Court was upheld by this Court in yet another previous order. But in view of the certificate issued by the Tax Recovery Officer, admittedly, the amount of Rs.5 lakhs and odd was due and recoverable from the estate of the deceased Venugopal Verma Raja. Shri Thakur has placed reliance on S.222 of the Income-tax Act and the procedure prescribed in Schedule II of that Act for the recovery of the arrears of the

income-tax, wealth tax etc. Since that procedure was not followed and Rule 9 of the Rules being a bar to the jurisdiction of the civil Court, proceedings taken for recovery of the amount were without authority of law. We find no force in the contention. Section 222 and Schedule II are relatable to the procedure to be adopted by the Tax Recovery Officer for recovery of arrears of tax from the assessee or the estate of the assessee. In this case, the Tax Recovery Officer had not proceeded under the Act. It is seen that when an attempt was made by the State, as stated earlier, to proceed against the estate, by consensus and consent of the parties, the property was directed to be sold to liquidate the arrears due to the State. Income-tax and other dues are first charge on the estate of the deceased. Therefore, they had rightly proceeded to recover the arrears of the tax from the estate before partition of the properties. Resultantly, the Income-tax Officer had not invoked the provisions of Section 222 and Schedule II of the Act to recover the same. Therefore, the need to proceed under the Act was obviated. The executing Court was well within its power to proceed with the recovery of the tax due and to pay over the same to the State.

7. Shri Thakur sought to place reliance on two documents in which there was a mention that the amounts had been adjusted and thereby sought to draw an inference therefrom that no amount was due from the estate of Venugopala Varma Raja. We do not find any force in his submission. These letters do indicate that out of the total amount recoverable from the estate, a sum of Rs.6,60,000/- was collected from the Joint Commissioners appointed by the civil Court and the sum was appropriated towards specified amounts outstanding towards expenditure tax and wealth tax. As regards the agriculture income-tax, certain properties were sold and a sum of Rs.12,000/- and odd had remained surplus. For refund thereof, one of the defendants to the suit, viz., 7th defendant made an application and thereon refund of the amount was ordered. These two documents would not indicate that there was no amount due from the assessee. As seen earlier from the certificate issued by the Income-tax Officer on December 6, 1995, an amount of Rs.5,15,000/- and odd was still due and recoverable from the estate.

8. It is then contended that since the property is valuable property and was sold for a meagre amount, this Court may interfere and direct the appellants to pay interest on the 1/4th amount deposited and also some compensation to the auction-purchaser. Having considered the contention, we find on the facts in this case that it would not be justifiable on the part of the Court to interfere with the sale. It is seen that on the earlier occasion, the executing Court had unsuccessfully limited the sale inter se between the parties. This Court in the first round of the present litigation, by several orders tried to save the estate but the same proved fruitless. This Court had on the second occasion, directed to consider whether or not confirmation of sale would be made. This Court had gone into that question. Even the tax liability was one of the issues raised in this case by some of the judgment debtors and this Court had not agreed with the contention that there was no liability subsisting towards arrears of the tax. Considered from this back drop, viz., the nature of the litigation which has been going on and several opportunities given by this Court to have the matter settled by negotiation by way of sale between the parties to reach an amicable settlement, having rendered futile, we do not think it is a fit case warranting interference. We do not find any procedural infraction. Otherwise, no court sale would successfully be proceeded with in execution.

9. The appears are accordingly dismissed, but in the circumstances without costs.

10. We are informed that the amount due has already been deposited. Therefore, it is open to the executing Court to have the sale confirmed. Six months' time from today is granted to the appellants for vacating the palace, portion of which is occupied by the appellants, subject to their filing usual undertaking within a period of six weeks from today.

Appeals dismissed.