

R. P. A. Valliammal

Vs

R. Palanichami Nadar and Others

SLP (C) No. 3336 Of 1997

03.02.1997

ORDER

1. Delay condoned.

2. This special leave petition has been filed against the judgment of the High Court of Madras, made on 7-5-1996 in CRP No. 46 of 1996. Admittedly, the petitioner's mother had filed an application under Order XXI, Rule 64 CPC to set aside the execution of sale of two items of properties. The petition ultimately came to be dismissed and became final. After her demise, the petitioner filed application under Section 47 of the CPC contending that the property could not be brought to sale for several reasons. In the High Court, one of the grounds raised was that the properties were sold for a grossly inadequate price and sale of both the properties was excessive execution. It was stated that the decree was only for a sum of Rs. 10,000 while two properties valuing Rs. 40,000 and another Rs. 1,00,000 have been brought to sale, and therefore, they are in excess of the decree in execution. The High Court has negatived the contention on the ground that since the title of the petitioner had been negatived on an earlier occasion and had become final, it could not be gone into for the third occasion. Even though the petitioner had one-sixth share, as contended, in view of the prohibition contained under Order 21, Rule 93 CPC and since objection in respect of the excessive execution was not raised before the proclamation was settled the objection cannot be countenanced. Shri B. Kanta Rao, learned counsel for the petitioner contends that in view of Section 47 of the CPC, the petitioner is entitled to raise the objection at any stage and, therefore, the view taken by the High Court is not correct in law. We find no force in the contention. Section 47 postulates that all questions arising between the parties to the suit in which the decree was passed, or representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit. Explanation 1 added thereto by the Amendment Act, 1976 postulates that for the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit. The opportunity to object to executability of the decree could be taken only once and repeated applications appear to be unwarranted. It is not in dispute that the petitioner's mother had already agitated the right title to the property and claimed that to the extent of her right, the execution was not valid in law. That right having been negatived and having become final, the petitioner cannot have any higher right than the mother herself had. The petitioner having allowed the orders to become final, it would not be open to the petitioner to raise the contentions thereafter. Even otherwise also, as held by the High Court, the objection as to excess execution has not been raised. Though Order 21, Rule 90(3) CPC may not be strictly construed so as to put a fetter on the court, due to nonraising of the objection before proclamation of sale and the objection could be raised even at a later stage, but since the title has already been lost and has become final, the petitioner cannot agitate the executability of the decree in the absence of any legal title to question the correctness of the execution. Under these circumstance, we do not think that we would be justified

to exercise the power under Article 136 of the Constitution.

3. The special leave petition is accordingly dismissed.