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R.P.A. VALIAMMAL

v.

R. PALANICHAMI NADAR AND ORS.

FEBRUARY 3, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

C

Code of Civil Procedure, 1908 : Section 47—Explanation I Order 21 Rules 64, 90(3) and 93—Decree—Execution of—Objections as to—Application for setting aside—Execution of sale filed by petitioner's mother—Dismissal of application and the same became final—After his mother's death petitioner filed an application under Section 47—Ground of excessive execution raised in High Court—High Court held that since the title of petitioner had been negated on earlier occasion and had become final it cannot be gone into afresh—Appeal before Supreme Court—Held 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 negated and become final, the petitioner cannot have any higher right than the mother herself had—The petitioner having allowed the orders to become final, it was not open to him to raise the contentions thereafter—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—Held no interference under Article 136 was called for.

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 3336 of 1997.

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From the Judgment and Order dated 7.5.96 of the Madras High Court in C.R.P. No. 46 of 1996.

B. Kanta Rao for the Petitioner.

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The following Order of the Court was delivered :

Delay condoned.

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This special leave petition has been filed against the judgment of the High Court of Madras, made on May 7, 1996 in CRP No. 46/96. 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. A
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
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 con-
tended, 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 their 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 Amend-
ment 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 applica-
tions appear to be unwarranted. It is not in dispute that 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 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 H

- A Court, due to non-raising 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 circumstances, we do not think
- B. that we would be justified to exercise the power under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

T.N.A.

Petition dismissed.