

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).7235-7239/2016  
(Arising out of Special Leave Petition(C) No(s). 30092-30096/2009)

K.P. TESSY & ORS.

APPELLANT(S)

VERSUS

P. RATNA GANDI DEAD THR. LRS & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

These appeals challenge the order dated 23.03.2009 passed by the High Court of Kerala in Execution First Appeal Nos. 38/2008, 39/2008, 40/2008, 43/2008 and 44/2008 preferred by respondent no. 1 herein who is now no more and represented by legal representative. For the purpose of deciding the controversy in these appeals, it is not necessary to state the factual matrix in detail. Only those facts are to be stated that are relevant for deciding the controversy.

The father of respondent nos. 2 to 4 (hereinafter referred to as 'decree holders') had filed a suit against the mother of the appellant which was decreed in his favour. The money decree in the sum of Rs.3,15,500/- was passed. This decree has attained finality.

However, since the mother of the appellant (hereinafter referred to as 'judgment debtor') did not honour the decree, the decree holders were forced to file the execution proceedings. In the said execution proceedings property known as lodging house under the name and style 'Kerala Bhawan', Calicut (hereinafter referred to as 'the suit property') was attached. This property was put to auction and respondent no.1 (hereinafter referred to as 'the auction purchaser') who is also the son of the decree holder, purchased the said property in the auction as his bid in the sum of Rs.12,60,000/- was found to be the highest.

It so happened that the suit property was a joint property. Much before passing of the decree, a suit for partition had been filed. There were seven owners of the suit property and a compromise decree had been passed wherein each of the seven persons was given  $1/7^{\text{th}}$  share. In this manner, the three appellants herein got  $1/7^{\text{th}}$  share in the suit property. Together, they own  $3/7^{\text{th}}$  share in the suit property. However, at the time when this preliminary decree in the partition suit was passed, these appellants were minors. Though, a preliminary decree is passed, final decree has not been passed and the shares of the aforesaid persons have not been divided by metes and bonds till date. The appellants filed objections to the aforesaid shares on the ground that they were not the judgment debtors and in the execution proceedings their share in the suit property has already been sold. It was further

mentioned that insofar as the judgment debtor is concerned, she owns only 1/7<sup>th</sup> share in the suit property and, therefore, entire property could not have been put on auction. The Trial Court accepted the aforesaid plea and objections of the appellants and set aside the sale. However, in appeal filed by the auction purchaser against that order, the High Court vide the impugned judgment reversed the order of the Trial Court. The reason given is that since the suit property was put to sale and much time expired, the said sale should not be disturbed or interfered at this juncture. We find that this is an extraneous reason given for setting aside the sale. Merely because some time has elapsed in the meantime, would not mean that in execution proceedings property which belongs to the third party got sold and third party has no right to challenge the said sale.

As mentioned above, the appellants were minors at the time when the decree was passed in favour of the decree holders. At the most, only 1/7<sup>th</sup> share in the said property which belongs to the judgment debtor could be disposed of by way of auction to satisfy the decree.

We, accordingly, set aside the impugned order and allow these appeals holding that in the decree in question share of the appellants could not have been attached or sold. However, we make it clear that since 1/7<sup>th</sup> share belongs to the judgment debtor, her share could have been sold. Therefore, while restoring the order of

the Trial Court, it is modified to the extent that the auction purchaser shall be entitled to claim 1/7<sup>th</sup> share in the suit property.

The appeals stand disposed of accordingly.

.....J.  
[A.K. SIKRI]

.....J.  
[N.V. RAMANA]

NEW DELHI;  
JULY 29, 2016.

ITEM NO.53

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).  
30092-30096/2009

(Arising out of impugned final judgment and order dated 23/03/2009 in EFA No. 38/2008 23/03/2009 in EFA No. 39/2008 23/03/2009 in EFA No. 40/2008 23/03/2009 in EFA No. 43/2008 23/03/2009 in EFA No. 44/2008 passed by the High Court Of Kerala At Ernakulam)

K.P. TESSY &amp; ORS.

Petitioner(s)

VERSUS

P. RATNA GANDI DEAD THR. LRS & ORS.  
(with interim relief and office report)

Respondent(s)

Date : 29/07/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Huzefa Ahmadi, Sr. Adv.  
Mr. K. Rajeev, Adv.  
Mr. Shinoj K. Naraynan, Adv.

For Respondent(s) Mr. Romy Chacko, Adv.  
Mr. Ranjith K. C., Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are disposed of in terms of the signed order.

Application(s) pending, if any, shall stand disposed of accordingly.

(ASHWANI THAKUR)  
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)  
COURT MASTER

(Signed order is placed on the file)