

C.R.P.(PD)(MD).No.173 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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RESERVED ON: 14.03.2025

DELIVERED ON: 29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(PD)(MD).No.173 of 2022
and CMP(MD).No.762 of 2022**

Morris RajPetitioner/Petitioner/Respondent
/Defendant

Vs

1.Reetha Mary ...Respondent/Respondent
/Decree Holder/Plaintiff

George (since deceased)

2.Delsey Jaba

3.G.Jijilin Jeba Shebija

4.G.Geotrin Jeba Singh ...Respondents 2 -4/Respondents 3-5
Legal heir of Auction Purchaser/Third party

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 15.03.2021 passed in E.A.No.43 of 2009 in E.P.No.51 of 2006 in O.S.No.22 of 2005 on the file of the District Munsif, Eraniel.



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For Petitioner : M/s.Sharath Chandran

For Respondents : Mr.J.John Jayakumar for R1 & R2

: No appearance for R3 & R4

ORDER

The instant revision petition has been filed by the judgment debtor in O.S.No.22 of 2005 on the file of the District Munsif Court, Eraniel challenging the dismissal of an application filed under Section 5 of Limitation Act read with Section 151 of C.P.C to condone the delay of 539 days in filing an application under Order 21 Rule 90 of C.P.C.

(A) Factual Matrix:

2.The first respondent in the revision petition has filed the above said suit for the relief of recovery of money based upon a pronote dated 09.01.2004. The suit was decreed exparte on 28.10.2005. The decree holder had filed E.P.No.51 of 2006 to attach and bring the property for sale. The sale was conducted on 06.08.2007. The brother of the decree holder was the sole bidder and he was declared as the successful bidder on the said date. The sale was confirmed on 23.08.2007 and a sale certificate



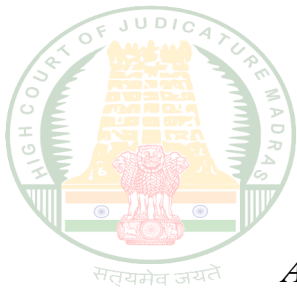
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was issued on 02.05.2008. The auction purchaser had filed E.A.No.233 of 2008 for taking delivery of the property. The judgment debtor had filed E.A.No.43 of 2009 to condone the delay in filing an application and E.A.No.44 of 2009 under Order 21 Rule 90 of C.P.C to set aside the sale on the ground of material irregularity. Both these applications came to be dismissed by way of a common order on 15.03.2021. The present revision petition has been filed challenging the order passed in E.A.No.43 of 2009. These facts are not in dispute.

3.The Executing Court had dismissed E.A.No.43 of 2009 primarily on the ground that Section 5 of Limitation Act is not maintainable in filing an application under Order 21 Rule 90 of C.P.C and the judgment debtor has not made out a case of irregularity in the conduct of sale to entertain such an application.

4.The revision petitioner has raised the following issues:

a)The judgment in O.S.No.22 of 2005 is an non-speaking one and it does not conform with Section 2(9) of C.P.C read with Order 21 Rule 4 of C.P.C. He relied upon a judgment of the Hon'ble Supreme Court reported in **(2024) 1 MLJ 563 (SC) (Asma Lateef and another Vs. Shabbir**



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Ahmad and others) and *AIR 1999 SC 3381 (Balraj Teneja and another Vs. Sunil Madan and another)* in support of his contention.

b)The property that is attached and sale is having an extent of 11 ¼ cents in a prime locality in Eraniel, Kanniyakumari District. However, the property has been sold only for a sum of Rs.1,50,400/-. The docket order of the Courts below would show that the Court has not called for a valuation report or guideline value before fixing the price.

c)The property worth of Rs.150,400/- has been sold for releasing E.P amount of Rs.59,550/-. The Executing Court has not applied its mind to examine whether the entire property must be sold or a portion thereof which would be sufficient to satisfy the decree.

(B)Contentions of the counsels appearing on either side:

5.The learned counsel for the petitioner had relied upon the judgement of the Hon'ble Supreme Court reported in *(2005) 10 SCC 235* (S.Mariyappa Vs. Siddappa); *(2006) 2 MLJ 289* (Balakrishnan Vs.Malaiyandi Konar); *(2024) 3 MLJ 433* (Bhikchand Vs. Shamabai



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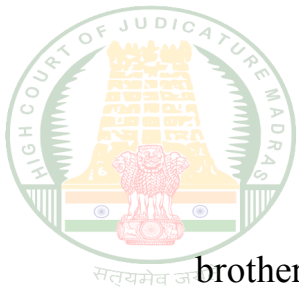
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Dhanraj Gugale) to contend that only a portion of the property that is required to satisfy the decree should be sold in the Court auction.

6.The learned counsel had further contended that when there is non-compliance of Order 21 Rule 64, the bar under the provisions of Order 21 Rule 90(3) C.P.C cannot be invoked. He had further contended that when there is a statutory violation, the Court cannot ignore the same and confirm the sale which would perpetuate the illegality. He had further contended that the Court can exercise its *suo moto* power to set aside the sale even if the application to set aside the sale has not been filed within a period of 60 days as contemplated under Article 127 of the Limitation Act.

7.The learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court reported in **(1995) 3 SCC 579** (Nani Gopal Paul Vs.T.Prasad Singh and others); **(1998) 2 MLJ 314** (Subramanian Vs.Sadaya Padayachi) ; **(2024) 4 MLJ 698** (Kumar @ Kumaran Vs.Bose Ponnambalam and others) and **(1994) 1 SCC 131** (Desh Bandhu Gupta Vs.N.L.Anand).

8.The learned counsel for the petitioner had further submitted that there are several glaring illegalities in the conduct of entire sale and a fraud has been played upon the Court. He had further pointed out that the



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brother of the decree holder was the sole bidder and he was declared as the successful bidder. He had further pointed out that the report of the Nazir filed in Form-70 shows that the sale proclamation was received by him only on 06.08.2007. However, it is reported that the affixture of proclamation was effected on 21.07.2007. The sale has been conducted on 06.08.2007 at 2.00 p.m when the sale proclamation is said to have been received by the office of the Nazir. The Court has not called for any valuation report or guideline value before fixing the price. When the material irregularities stare at the face of the Court, an application to set aside the sale under Order 21 Rule 90 cannot be dismissed citing Article 127 of Limitation Act. Hence, he prayed for allowing the revision petition.

9.Per contra, the learned counsel for the respondent/auction purchaser had contended that the defendant had remained exparte in the suit as well as in the execution proceedings. The judgment debtor had an opportunity to raise an objection with regard to the valuation of the property when notice was served upon him. When he had voluntarily kept himself away from the execution proceedings, he cannot later challenge the same after the sale was confirmed alleging irregularities in fixing the valuation of the property.



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10.The learned counsel for the respondent had further contended that the Court has taken into consideration the valuation fixed by ameen and the property was sold in Court auction fixing the upset price accordingly. Merely because a relative of the decree holder had purchased the property that would not vitiate the sale or would result in substantial injury to the judgment debtor. When there is no irregularity or fraud in the conduct of sale, the sale cannot be set aside merely on the ground that the brother of the decree holder had participated in the auction.

11.The learned counsel for the respondent had further contended that as per Article 127 of the Limitation Act, an application to set aside the sale in Court auction proceedings should be filed within a period of 60 days from the date of sale. The sale had taken place on 06.08.2007 and the present application to condone the delay has been filed only in June 2009. Section 5 of the Limitation Act is not applicable to the proceedings initiated under Order 21. Therefore, the Executing Court has rightly rejected the application filed by the revision petitioner to condone the delay of 539 days. Hence, he prayed for dismissal of the revision petition.

12.Heard both sides and perused the material records.



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(C)Discussion:

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13.The judgment debtor in a suit for recovery of money has challenged the validity of the exparte decree on the ground that it does not confirm Section 2(9) read with Order 20 Rule 4 of C.P.C. The judgment has been delivered on 28.10.2005. The present revision petition has been filed on 25.01.2022 after a period of 15 years. Even though there is no limitation for entertaining a revision petition under Article 227 of Constitution of India, the judgment debtor has to explain the delay of more than 15 years in filing such an application on the ground of validity of the exparte decree. There is no whisper whatsoever with regard to the reason for such a delay.

14.That apart, when the judgement debtor is having an effective and alternative remedy of filing an application under Order 9 Rule 13 of C.P.C or filing an appeal before the Appellate Court, this Court cannot entertain a revision petition under Article 227 of the Constitution of India on the above said grounds.

15.The Hon'ble Supreme Court in a judgment reported in ***(2019) 9 SCC 538 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others)*** in

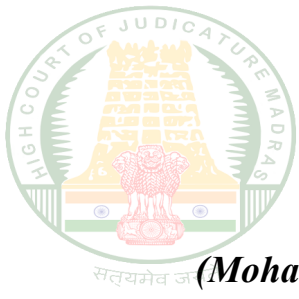


paragraph No. 12 has held as follows:

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“12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai Vs. Ram Chander Rai, pointed out in Radhey Shyam Vs.Chhabi Nath that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.”

16.The learned counsel for the respondent had relied upon a judgment of the Hon'ble Supreme Court reported in **(2022) 10 SCC 477**



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(Mohamed Ali Vs. V.Jaya and others) wherein the Hon'ble Supreme

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Court in paragraph No.19 has held as follows:

“19.Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the exparte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the exparte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India.”

17.In view of the judgments of the Hon'ble Supreme Court extracted above, this Court is not inclined to consider the grounds raised by the judgment debtor with regard to the validity of the exparte judgment passed in O.S.No.22 of 2005.

18.The judgment debtor had filed E.A.No.43 of 2009 to condone the delay in filing an application under Order 21 Rule 90 of C.P.C. The said application has been dismissed by the trial Court. Challenging the same, the present civil revision petition has been filed. In view of the

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exclusion found in Section 5 of the Limitation Act, Section 5 of the Limitation Act is not applicable for filing an application under Order 21 of C.P.C. Therefore, the Executing Court had rightly rejected E.A.No.43 of 2009.

19.It is also to be noted that the judgment debtor has also filed E.A.No.44 of 2009 under Order 21 Rule 90 of C.P.C to set aside the sale on the ground of material irregularity. Even though the application is clearly time barred and the order of the Court in E.A.No.44 of 2009 has not been challenged before this Court, in the interest of justice, the Court has gone into all the allegations made by the learned counsel appearing for the revision petitioner challenging the Court action sale.

20.The learned counsel appearing for the revision petitioner has relied upon a decision of the Hon'ble Supreme Court reported in **(1995) 3 SCC 579** and **(2024) 4 MLJ 698** to the effect that the compliance of Order 21 Rule 64 is a duty imposed on the Court and cannot be gotten over by taking recourse to Order 21 Rule 90(3) of C.P.C. The learned counsel has also relied upon a judgement of the Hon'ble Supreme Court reported in **(1994) 1 SCC 131** wherein the Hon'ble Supreme Court has held that where mandatory requirements have not been complied with. The learned counsel



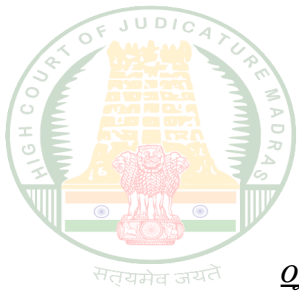
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has also relied upon a judgement of the Hon'ble Supreme Court reported in **(2024) 3 MLJ 433** wherein the Hon'ble Supreme Court has held that the noncompliance of Order 21 Rule 64 of C.P.C would result in sale being declared as illegal and without jurisdiction.

21.Now the issue that arises for consideration is whether there was any egregious breach of procedure contemplated under Order 21 Rule 64 of C.P.C which has resulted in material irregularity.

22.The learned counsel for the petitioner had relied upon a judgement of Hon'ble Supreme Court reported in **1989 Supp (2) SCC 693 (Ambati Narasayya Vs. M.Subba Rao and another)** wherein the Hon'ble Supreme Court in Paragraph No.7 has held as follows:

“7.It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision.



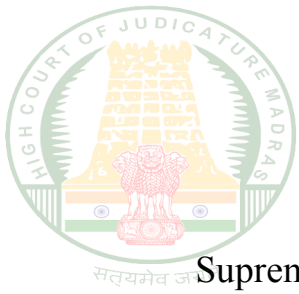
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of law only such portion of the property should be sold. This, in our opinion, is not just a discretion, but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction.

23.Relying upon the said judgment, he contended that when there is a violation of Order 21 Rule 64 of C.P.C, the sale conducted by the Court is illegal and without jurisdiction.

24.The learned counsel appearing for the revision petitioner had also relied upon a judgment of this Court reported in ***1998-1-L.W-550 (Subramaniam and five others Vs. Sadaya Padayachi and five others)*** especially paragraph Nos. 14 and 15 and contended that when there is an excessive execution, the sale is void and the period of limitation prescribed for filing under Order 21 Rule 90 of C.P.C would not take away the powers of the Court in setting aside the sale.

25.The learned counsel for the petitioner also relied upon a judgment of the Hon'ble Supreme Court reported in ***(1995) 3 SCC 579 (Nani Gopal Paul Vs.T.Prasad Singh and others)*** wherein the Hon'ble



Supreme Court in paragraph No.4 has held as follows:

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“4. We are of the view that we can take suo motu judicial notice of the illegality pointed out by the Division Bench, committed by the single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the court Receiver as approved by the learned single Judge. Confirmation of sale was illegal. Though, as contended by Sri. Ganesh that normally an application under Order 21 Rule 89 or 90 or under Section.48 CPC need to be filed within limitation to have the sale conducted by the court set aside and that procedure need to be insisted upon, we are of the view that this court or appellate court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting court sales. We are informed and it is not disputed that the appellant had deposited only Rs.5 lakhs and balance amount was assured to be deposited only after delivery of possession. That also would be illegal.”

26.Relying upon the judgment of the Hon'ble Supreme Court and our High Court, the learned counsel for the petitioner has contended that when there is violation of Order 21 Rule 64 of C.P.C and there is excessive execution, the sale is illegal and it is without jurisdiction and



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therefore, even if an application under Order 21 Rule 90 of C.P.C is not filed within 60 days as contemplated under Article 127 of Limitation Act, the Court can interfere to set aside the sale. He had further contended that the bar under Order 21 Rule 90(3) of C.P.C cannot be invoked if the sale is ex facie illegal.

27. In the light of the above said legal submissions made by the learned counsel for the petitioner, let us consider whether these judgments are applicable to the facts of this case by extracting the relevant portions in the affidavit filed in support of the condone delay application and the application filed under Order 21 Rule 90 of C.P.C.

28. The relevant paragraph in the affidavit filed in E.A.No.43 of 2009 (to condone the delay in filing an application under Order 21 Rule 90 of C.P.C) is extracted as follows

“7.I submit that as stated above due to my ignorance of facts I have not seriously objected the legal proceedings of this Hon'ble Court. Now only I realize the collusive attitude and the fraud done by the decree holder and her husband. I state as stated above I have no other alternative accommodation. My wife Helen Pushpalatha is the daughter of the Decree Holder's husband Masilamony's sister. So under these circumstances only I believed the words

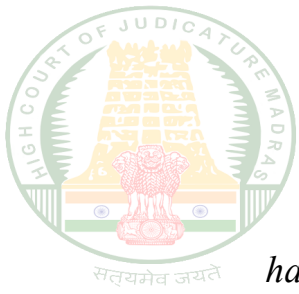


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of Masilamony, the husband of the decree holder. The sale is a fraudulent one due to my ignorance and the relationship only I have not seriously contested the earlier proceedings. I am having some other debts also. I am having a fair chances of success to set aside the impugned sale conducted on 06.08.2007. The impugned sale is a fraudulent one and the auction purchaser is the person set up by the decree holder who is the brother of the decree holder. The auction purchaser has no real knowledge about the sale. The distance between my house and the house of the auction purchaser is not less than 30 kilo metres. The sale price is very very low.”

29.The relevant portion of the affidavit in E.A.No.44 of 2009 (application filed under Order 21 Rule 90 of C.P.C) is extracted as follows:

“7.I submit that as stated above due to my ignorance as facts I have not seriously objected the legal proceedings of this Honourable Court. Now only I realise the collusive attitude and the fraud done by the decree holder and her husband. I state as stated above I have no other alternative accommodation. My wife Helen Pushpalatha is the daughter of the decree holder's husband Masilamony's sister. So under these circumstances only I believe the words of Masilamony, the husband of the decree holder. The same is a fraudulent one due to my ignorance and the relationship only I have not seriously contested the earlier proceedings. I am



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have some other debts also. I am having a fair chance of success to set aside the impugned sale conducted on 06.08.2007. The impugned sale is a fraudulent one and the auction purchaser is the person set up by the decree holder who is the brother of the decree holder. The auction purchaser has no real knowledge about the sale. The distance between my house and the house of the auction purchaser is not less than 30 kilo meters. The sale price is very very low.”

30.A perusal of the averments filed in these two affidavits, would clearly indicate that the revision petitioner had received notice at every stage of the proceedings. The only ground alleged for not appearing before the Court is that due to ignorance of facts, the petitioner has not seriously objected to the legal proceedings. Though it is contended that the sale is a fraudulent one, no particulars have been furnished. The valuation of the property or the upset price fixed to the property have not objected to. Therefore, it is clear that the petitioner having received notice under Order 21 Rule 66(2) of C.P.C has not chosen to appear before the Court raising objection with regard to settling of terms of proclamation of sale. It is contended in the revision petition that the Court has not called for any valuation of the report or relying upon the guideline value. However, even before this Court, no documents have been placed on record to establish



the value of the property in the year 2007.

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31.A perusal of the sale proclamation reveals that the upset price was fixed at Rs.1,50,000/- and the property has been sold for Rs. 1,50,400/-. At no point of time, the judgment debtor had raised any objection with regard to the valuation of the property or fixation of the upset price.

32.The Hon'ble Supreme Court in a judgment reported in **(1999) 9 SCC 276 (Ram Maurya Vs. Kailash Nath and others)** in paragraph No. 2 has held as follows:

“2.....The executing Court in its order had held that the judgment debtor/objector did not furnish adequate materials to substantiate the allegations of fraud and material irregularity. Even if we assume here for the sake of argument that there was material irregularity in conducting the sale of the property, we do not find any pleading by the objectors in their objections that on account such material irregularity they were put objectors in their objections that on account of such material irregularity they were put to substantial injury. In the absence of such pleading, it was not open to the executing Court to set aside the auction.....”



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33. In view of the judgment of the Hon'ble Supreme Court cited supra, it is clear that unless adequate materials are placed before the Executing Court with regard to the valuation of the property or excessive execution, the sale cannot be set aside on the ground that there was a material irregularity in the conduct of the sale. Only in cases, where the Court records themselves reveal irregularity/ excessive execution, the sale can be set aside ignoring the bar under Order 21 Rule 90(3) of C.P.C or the limitation prescribed under Article 127 of the Limitation Act.

34. The learned counsel for the petitioner had further contended that the Court has not called for any valuation report or guideline value. Further Form -70 of the Nazir will clearly disclose that even before he had received a certified copy of proclamation of sale from the Court, he had made publication relating to the sale.

35. Form -70 has been omitted in the year 1969 itself from the Civil Rules of Practice applicable to Madras High Court. What is pointed out by the learned counsel for the petitioner is only Form 71 which is relatable to Rule 196 of Civil Rules of Practice. As per Rule 196, it is the report to be submitted by the Nazir to the Court after the sale has taken place. A perusal of Form-71 reveals that the auction notice was published



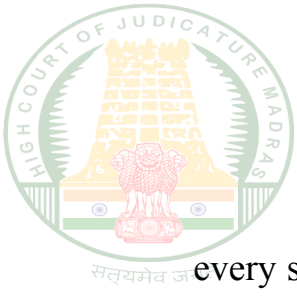
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in the Court, in the Panchayat board office and in the newspaper on 21.07.2007 and the sale was conducted on 06.08.2007. Therefore, it is clear that the Nazir has conducted sale only after notice. Therefore, the contention of the learned counsel for the petitioner is not factually correct.

36.It is the further contention of the petitioner that there was only a single bidder and that too he is the brother of the auction purchaser. When the valuation of the property or the upset price having not been disputed, merely because a relative of the decree holder had purchased the property, that cannot be a ground to set aside the sale.

37.The Hon'ble Supreme Court in a judgment reported in ***AIR 2001 SC 2220 (Rajender Singh Vs.Ramdhar Singh and others)*** has held that mere inadequacy of price is not a ground to set aside the auction sale. Therefore, the contention raised with regard to the valuation of the property without any records, does not deserve any consideration.

38.A judgment debtor who had received notice at all the stages of the proceedings, cannot expect the Court or the decree holder to knock at his doors and cordially invite him to participate in the execution proceedings. Once the judgment debtor had received notice in the execution proceedings, it is for him to appear before the Court and defend



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every stage of the proceedings. After the sale was confirmed and when the auction purchaser was arranging to take delivery of the property, the judgment debtor cannot raise from his slumber and contend that there was excessive execution and ignoring the period of limitation prescribed under Article 127 of Limitation Act, his contention should be heard by the Court.

39.In view of the above said deliberations, it is clear that the revision petitioner has not made out any case for interference from this Court to set aside the sale on the ground of excessive execution or fraud in conducting the sale, especially when there is no pleadings or any document before this Court to establish the same.

40.In view of the above said deliberations, there are no merits in the revision petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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To

- 1.The District Munsif,
Eraniel
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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