

(2022) 03 GUJ CK 0010

In the Gujarat High Court

Case No : R/Special Civil Application No. 13388 Of 2015

Drupadsinh Kshtriya

APPELLANT

Vs

Gangaben Narharisinh Kshtriya & 6 Other(S)

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Hindu Adoption And Maintenance Act, 1956 — Section 10, 16
Indian Succession Act, 1925 — Section 57(a), 57(b), 213, 213(1)
Code Of Civil Procedure, 1908 — Section 115, Order 6 Rule 17
Hindu Succession Act, 1956 — Section 17

Citation : (2022) 03 GUJ CK 0010

Hon'ble Judges : Dr.Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Trusha K Patel, Ashok R Rathod, Arti Inamdar

Final Decision : ?Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Rule.

2. This petition under Article 227 of the Constitution of India is filed by the petitioner praying for to quash and set aside the order dated 10.07.2015 passed below Exh. 233 in Special Execution Petition No. 332 of 1978 by the learned 7th Additional Senior Civil Judge, Vadodara. By the said application (Exh. 233), the petitioner - applicant had prayed to declare the proceedings that were carried out by Narharsinh and Premsinh, void and without any legal rights, after the demise of original decree holder namely Rukshmaniben Kshtriya on 18.02.1980.

3. Facts in nutshell of the case on hand are that a suit being Regular Civil Suit No. 456 of 1970 came to be filed before the learned Civil Court concerned at Vadodara which came to be decreed in favour of one Rukshmaniben. The said judgment and decree carried in appeal before the learned District Court by filing Civil Appeal No. 90 of 1996, wherein, the learned District Judge, Vadodara was

pleased to confirm the said judgment and decree passed in the suit. Against which, Second Appeal (Stamp) No. 4961 of 1978 was filed, which came to be disposed of vide order dated 26.04.1979. Judgment creditor – Rukshmaniben filed the Special Execution Petition No. 332 of 1978 before the concerned learned Court below at Vadodara for the execution of the decree passed in Regular Civil Suit No. 456 of 1970, which is pending. In the said execution petition, the petitioner herein had filed the aforesaid application, which came to be rejected and hence, the petitioner is before this Court.

4. Heard, learned advocate Ms. Trusha K. Patel for the petitioner and learned advocate Ms. Arti Inamdar for the respondent No. 5.

4.1 The learned advocate for the petitioner submitted that the learned trial Judge has failed to consider the fact that the alleged Will of Madhavsinh, which was executed somewhere in the year 1939 in favour of Rukshmaniben, was not probated and the same was not genuine one. She submitted that without the Will being probated, the decree would be a nullity. She further submitted that in the civil revision application filed before this Court, the Court was pleased to keep the question as to the need to obtain the Probate open. She further submitted that it may be that for a Will executed by a Hindu qua the immovable property situated in the State of Gujarat, Probate is not necessary, however, the rights vested by virtue of that Will must be established, which is not the case herein.

4.2 The learned advocate for the petitioner further submitted that in the event of death of the original decree holder Rukshmaniben, the execution proceedings cannot be pursued and the claim of one Narharsinh that he was the power of attorney holder of said Rukshmaniben, could not survive upon her demise. Further, Premsinh has not produced any authority/ document to show that he was empowered/entitled to pursue the litigation of deceased Rukshmaniben.

4.3 The learned advocate for the petitioner would further submit that when the Adoption Deed was executed, the petitioner herein was above 15 years and hence, the same would be hit by Section 10 of the Hindu Adoption and Maintenance Act, 1956. Furthermore, the said Adoption Deed was not registered and hence, the same could not be presumed to be legal in the eyes of law. Despite such observations, the learned trial Judge has disallowed the application filed by the petitioner and thus, has erred materially.

4.4 The learned advocate for the petitioner further submitted that as per settled law, executing Court normally would not go behind the decree, but if the said decree was found to be nullity, then same could be challenged and interfered with at the subsequent stage/proceedings.

4.5 Moreover, the learned advocate for the petitioner submitted that the learned trial Judge has failed to appreciate the contents of Section 213 of the Indian Succession Act, wherein, it is specifically stated that no right as executor or legatee can be established in any Court of Justice unless a Court of competent jurisdiction in India has granted Probate of the Will under which, the right is

claimed or has granted the letter of administration.

4.6 Thus, making above submissions, it is urged that this petition may be allowed and impugned order may be set aside.

4.7 In support of her case, the learned advocate for the petitioner has relied upon following decisions:

i) Minaxiben Shashikantbhai Patel v. Dist. Collector, Gandhinagar, 2007 (1) GLR 277;

ii) Hem Nolini Judah (since deceased) and after her Legal Representative Marlean Wilkinson v. Isolyne Sarojbhashini Bose and Others, AIR 1962 SC 1471;

iii) Manishaben Ashishkumar Patel v. Pushpaben, Wd/o. Arjunbhai Kalidas Patel, 2013 GLHEL HC 229675.

5. Per contra, learned advocate Ms. Arti Inamdar for the respondent No. 5, while resisting this petition, submitted that the suit in question is already decreed and appeal there-against, was also rejected and it is in the execution petition, such an application was preferred, which is rightly dismissed by the learned Court below. It is submitted that the suit was decreed on the basis of the so-called unprobated Will, however, at the relevant time, no challenge was made qua the same and the validity thereof.

5.1 The learned advocate for the respondents further submitted that in the second appeal filed before this Court, undertaking and consent terms were submitted by the petitioner herein himself, which clearly state that they would hand over the vacant and peaceful possession of the suit premises to the respondents on 31.12.1981, within four weeks from that day and thereafter, the second appeal was withdrawn by the petitioner.

5.2 The learned advocate further submitted that execution proceedings were stayed due to the proceedings at the High Court and the District Courts. Further, it is submitted that the contentions raised in the present petition are being taken for the first time, which is not open to the petitioner at this stage. Besides, the genuineness of the so-called Adoption Deed is already verified and the same proved after due inquiry. Further, the petitioner being above 15 years of age, decree in question is binding to him. Further, pedigree produced by the petitioner in the execution proceedings itself suggestive of the fact that the present petitioner himself has declared him the adopted son and entered into the compromise and therefore also, there is no question of interference.

5.3 The learned advocate for the respondents further submitted that the Will is proved in the original suit itself and hence, even otherwise, there is no need of getting the Probate of the Will besides the fact that the same is not mandatory so far as the State of Gujarat is concerned.

5.4 Making above submissions, it is requested that this petition, being devoid of any merits, deserves to be dismissed.

5.5 In support, the learned advocate for the respondents has relied upon a decision of the Apex Court in *Clarence Pais and Others v. Union of India*, AIR 2001 SC 1151 as also decision of this Court in *Minaxiben Shashikantbhai Patel v. Dist. Collector, Gandhinagar*, 2007 (1) GLR 277.

6. The Court has considered the submissions advanced by the learned advocates for the respective parties and also perused the material on record vis-a-vis the impugned order dated 10.07.2015 passed below Exh. 233 in Special Execution Petition No. 332 of 1978 by the learned 7th Additional Senior Civil Judge, Vadodara. By the application Exh. 233, the petitioner had prayed for to declare the proceedings that were carried out by Narharsinh and Premsinh, void and without any legal rights, after the demise of original decree holder namely Rukshmaniben Kshtriya on 18.02.1980. The said application came to be rejected and accordingly, the petitioner is before this Court by this petition.

7. At the outset, it would be worthwhile to refer to a decision of the Apex Court in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, (2010) 8 SCC 329, wherein, the Court has considered in detail the scope of interference by this Court to hold and observe that Article 227 can be invoked by the High Court *Suo motu* as a custodian of justice. An improper and a frequent exercise of this power would be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. The observations of the Hon'ble Supreme Court, read as under:

"57. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469]].

58. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P . and others vs. Dr. Vijay Anand Mahara j - AIR 1963 SC 946, page 951].

59. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.

60. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. {See *Surya Dev Rai (supra)*, para 25 page 690 and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath vs. Ahmad Ishaque and others* - [AIR 1955 SC 233, para 20 page 243]}.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within

the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L.Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public

interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”

7.1 Thus, exercise of power under Article 227 of the Constitution of India should be with a view to keep the tribunals / Courts within the bounds of their authority, to ensure that law is followed by tribunals / Courts by exercising jurisdiction which is vested in them and/or when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised. Further, High Courts cannot, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it.

7.2 Nonetheless, since much has been argued on the issue at controversy, it is deemed proper to deal with the same.

7.3 Considering the rival submissions and the material on record, following aspects have emerged and weighed by the Court:

- i) Regular Civil Suit No. 456 of 1970 came to be decreed in favour of Rukshmaniben on 27.02.1976;
- ii) Civil Appeal No. 90 of 1976 preferred there against was dismissed, meaning thereby, the judgment and decree was confirmed;
- iii) against the aforesaid, Second Appeal (Stamp) No. 4261 of 1978 was filed before this Court, came to be disposed of vide order dated 26.04.1979;
- iv) plea of Probate was kept open by the Court in Civil Revision Application No. 1146 of 1980 while dismissing the said application as withdrawn by order dated 22.09.1980 with clarification that, “if it is otherwise open to him (the petitioner herein) to do so”. Thus, the Court has never held that the respective party is not entitled to any right accrued by way of such Will for want of Probate;
- v) the relevant provisions of the Indian Succession Act, 1925 qua the Probate if referred to, they are as under:

“S. 213 Right as executor or legatee when established:

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will

under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

(2) This section shall not apply in the case of Wills made by Muhammadans or Indian Christians, and shall only apply-

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.

S. 57 Application of certain provisions of Part to a class of wills made by Hindus, etc.

The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such Will or codicil."

vi) Thus, while by virtue of Sub-section (1) of Section 213 of the said Act, it is provided that no right as executor or legatee can be established in any Court of Justice unless Probate or Letter of Administration is granted, however, as provided in Sub-section (2) Clause (i) thereof, the same shall apply in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of Section 57. Now, as per Clause (b) to Section 57, all such Wills and codicils made outside those territories and limits that is to say of Bengal, Madras and Bombay, so far as it relates to immoveable property situate within those territories or limits. So, it is abundantly clear that the provisions of Section 213 shall not apply to the territories, outside those territories. The Apex Court in the decision in Clarence Pais and Others (supra) (paragraph 6) so also this Court in the decision in Minaxiben Shashikantbhai Patel (supra) (paragraph 10) have held that Probate will not be required to be

obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories.

vii) Adoption Deed qua the present petitioner was found to be genuine and proved upon inquiry in Civil Application No. 1970 of 1978 in Second Appeal No. 4261 of 1978 by order below Exh. 1 dated 15.09.1979;

viii) the Court is conscious of the fact that there cannot be estoppel against the provisions of law and therefore, if the Adoption Deed is treated as illegal due to the crossing of 15 years of age at the relevant point of time, the question arises as to under what circumstances, the petitioner had given consent for vacating the disputed premises within four weeks subsequently when the Adoption Deed was declared as genuine upon inquiry held by the order of this Court only. The petitioner could very well have challenged the same at the respective time only and not before this Court for the first time in the present proceedings;

ix) in the second appeal filed before this Court, undertaking and consent terms were submitted by the petitioner herein himself, which clearly state that they would hand over the vacant and peaceful possession of the suit premises to the respondents on 31.12.1981, within four weeks from that day and thereafter, the second appeal was withdrawn by the petitioner;

x) the petitioner himself has submitted the pedigree in the execution proceedings showing him as an adopted son of Vasantlilaben;

xi) so far as the say of the petitioner that on demise of Rukshmaniben, power of attorney becomes void and Power of Attorney holder namely Narharsinh has no right, is concerned, it may be that on demise of the executor, the power of attorney becomes void, however, the fact remains that in the case on hand, the power of attorney holder is none other than the heir (i.e. Narharsinh) of the deceased executor and as a descendant, he is entitled to the property of the deceased, in accordance with law;

xii) observations made in the impugned order in paragraph 22 are relevant, which say:

"...At the time of Execution of adoption deed, the judgment-debtor namely Drupadbhai was above 15 years of age. Moreover, the adoption deed is not registered hence, under Sec. 16 of the Hindu Adoption and Maintenance Act, there is no any presumption against the said adoption deed. This is not facts in issue and/or issue to decide this application but it is mentioned just because the judgment -debtor Drupadsinh has filed one application in second appeal before the Hon'ble High Court for joining him as legal heirs in Civil Application No. 1970/1978. He narrated as adoptive son of Vasantlilaben and in the present application, he claimed to be an adoptive son of Vasantlilaben as shown in pedigree on page no.2 of this application but the judgment -debtor has filed one application vide Exh. 271 under Order- 6, R-17 of C.P.C. and Sec. 17 of the Hindu Succession Act for amendment in the present application and by way of

application, the judgment-debtor wants to amend "not adoptive son" and that application was decided on merits and the application for amendment was rejected with cost of Rs.1000/- . At this juncture, the judgment – debtor has not challenged the legal heirship with the present decree-holder but he challenged the proceedings which is being proceeded by way of Power of Attorney which are given by Rukshmaniben to Narharbhai but this Court is of the opinion that if Narharbhai is the legal heir of decree-holder, then the execution proceeding can be proceeded as the legal heirs without any execution of POA according to the provision of C.P.C."

8. Thus, considering the aforesaid aspects and in the totality of the facts and circumstances of the case, this Court is of the opinion that there is no substance in the present writ petition, which requires indulgence and interference at the hands of this Court.

9. The learned advocate for the petitioner has relied upon certain decisions. There is no dispute with regard to the ratio laid down in the same, however, least is to say that in view of the prayer made in the impugned application Exh. 233 to the effect: to declare the proceedings that were carried out by Narharsinh and Premsinh, void and without any legal rights, after the demise of original decree holder namely Rukshmaniben Kshtriya on 18.02.1980 vis-a-vis the aforesaid observations the said decisions would be of no avail to the petitioner.

10. In view of the aforesaid discussion and observations, this writ petition fails and is dismissed accordingly. Rule is discharged. Interim protection/relief, if any, shall stand vacated forthwith.

11. Before parting, the Court deems it proper to refer to some glaring aspects of the matter, which are summarized as under:

- i) original suit is of the year 1970 (RCS No. 456/1970);
- ii) the said suit was decided 27.02.1976;
- iii) Civil Appeal No. 90 of 1976 preferred there-against was dismissed;
- iv) Second Appeal (Stamp) No. 4261 of 1978 was filed before this Court, came to be disposed of vide order dated 26.04.1979, wherein, undertaking and consent terms were submitted by the petitioner herein himself, stating to hand over the vacant and peaceful possession of the suit premises to the respondents within four weeks;
- v) the decree holder (Rukshmaniben) got the suit property by virtue of the Will, which is stated to have been proved in the original suit itself;
- vi) plea of Probate was kept open by the Court in Civil Revision Application No. 1146 of 1980 while dismissing the said application as withdrawn by order dated 22.09.1980;
- vii) provisions of Section 213 r/w. Section 57 of the Indian Succession Act, 1925

qua probate;

viii) Adoption Deed qua the present petitioner is also proved to be genuine after due inquiry;

ix) the petitioner, on one hand, filing civil application for joining him as heir of deceased Vasantlilaben and on the other hand he given application Exh. 271 in the execution petition disowning his heirship and thereby, appears to have been keen on stretching the proceedings in any way;

x) more than 50 years have been elapsed after filing of the main suit, which is decreed in the year 1976 and the execution petition is of 1978 and pending since then.

11.1 The above is suggestive of the fact that on one or the other count, the petitioner wants to drag the proceedings.

11.2 Ours is an adversarial system which is aimed at doing the substantial justice to the parties at litigation. The said concept is based on the term, "audi alteram partem" (no one should remain unheard)". But, there are instances, where some used to take undue advantage of such a divine system and the present petitioner appears to be the one.

11.3 At this juncture, reference can be made to a very recent decision of the Apex Court in M. Chinnamuthu (Dead) v. Kamaleshan @ Shanmugam (Dead) Through LRs, rendered in Special Leave to Appeal (C) No (s). 2198/2022 on 18.02.2022, the facts of which, are quite analogous to the present one, wherein, the Court has observed as under:

"The present proceedings initiated by the judgment-debtor are nothing but an abuse of process of law and the Court. It is very unfortunate that an order which was passed in favour of the respondent judgment-creditor for eviction of the petitioner passed on 28.08.1989 is yet not permitted to be executed by the judgment-debtor by initiating the proceedings one after another. It is very unfortunate that even after a period of 33 years, the judgment-creditor in whose favour the order is passed in the year 1989 is not able to enjoy the fruit of the litigation and the decree passed in his favour. It is rightly said that in our justice delivery system, the real litigation starts only after the decree is passed and the judgment-creditor has to wait for number of years for enjoying the fruit of the decree and the litigation. If such a delayed tactics is permitted, the litigant would lose the confidence in the justice delivery system. Every litigation has to put to an end at a particular time. The judgment-creditor is entitled to enjoy the fruit of the litigation within a reasonable time. As observed herein above, this is a clear example of the abuse of the process of law and the Court and not permitting the judgment-creditor to get the benefit under the decree which is passed in his favour in the year 1989.

It is also to be noted that even before the original judgment-creditor enjoy the fruit of the decree in his favour, unfortunately he died. During his lifetime, he

could not enjoy the fruit of the decree. Even the original respondent has also died during the pendency of the proceedings. The present Special Leave Petitions stand dismissed with cost which is quantified at Rs.25,000/- (Twenty Five Thousand only) to be paid by the petitioner(s) with the Tamil Nadu State Legal Services Authority, Chennai within a period of four weeks from today.

The Executing Court is directed to finally decide and dispose of the execution proceedings within a period of six months from the date of receipt of the present order. All concerned are directed to cooperate with the learned Executing Court to finally decide and dispose of the execution proceedings at the earliest and within the time as stated herein above.

11.4 Accordingly, in the considered opinion of the Court, when the petition is dismissed, the Court would be failing in its duty if some exemplary cost is not imposed upon the petitioner. Accordingly, the petitioner is directed to pay a cost of Rs.25,000/- (Rupees Twenty Five Thousand only), which shall be deposited before the Gujarat State Legal Services Authority within 15 days from today, which shall be the *condicio precedent* for taking out any further proceedings by the petitioner in this regard.

11.5 The Executing Court is directed to finally decide and dispose of the execution proceedings as early as possible but not later than six months from the date of receipt of the present order without being influenced by the order of this Court. All concerned are directed to cooperate with the learned Executing Court to finally decide and dispose of the execution proceedings at the earliest and within the time as stated herein above.

[A. C. Joshi, J.]

After the judgment and order is passed, Ms. Trusha K. Patel, learned advocate for the petitioner submitted that interim protection granted by the Court was in operation since long and accordingly, she requests to continue the same for a further period of six weeks with a view to enable the petitioner to move the higher forum. However, in view of the detailed observations made in the present judgment and order, the request is declined.