

**(2015) 01 KAR CK 0285**

**In the Karnataka High Court**

**Case No :** Regular First Appeal Nos. 105, 106 and 107 of 2009

C.M. Raju

APPELLANT

Vs

Parvathi

RESPONDENT

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**Date of Decision :** 02-01-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 102, Order 21 Rule 21, Order 21 Rule 99, 102, 151  
Karnataka Rent Act, 1999 — Section 27(2)(a)  
Transfer of Property Act, 1882 — Section 52

**Citation :** (2015) 01 KAR CK 0285

**Hon'ble Judges :** Anand Byrareddy, J.

**Bench :** Single Bench

**Advocate :** V.B. Shivakumar, for the Appellant; H.P. Leeladhara, Advocates for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Anand Byrareddy, J.—Heard the learned counsel for the appellants and the learned counsel for the respondents.

2. These three appeals are filed by several objectors who had entered appearance in execution proceedings instituted by the respondent - decree holder, in the following background:

The appellants claim to have purchased portions of property bearing No. 24 situated at II Main Road, Hanumanthapura, Bangalore. It is claimed that the property is a building consisting of several tenements and each of these appellants claim to have purchased a portion of the same under registered sale deeds. The appellant in R.F.A. 105/2009 claims to have purchased the property under a sale deed dated 12.05.2002; the appellant in R.F.A. 106/2009 claims to have purchased the property under a sale deed dated 4.10.2002 and the appellant in R.F.A. 107/2009 claims to have purchased the property under a sale deed dated 4.10.2002. It is further claimed that the property has been assessed,

in respect of each of the appellants, to property taxes and that essential amenities pertaining to the property have also been provided in favour of the respective appellants. However, the first respondent who was claiming as the owner of the entire property consisting of several tenements, including the portions purchased by the appellants, is said to have instituted eviction proceedings in HRC No. 904/1977 re-numbered as HRC 951/1980 as against Respondents 2 and 3 who were said to be the tenants under the said respondent. HRC No. 951/1980 was filed under Section 21(1)(a)(b) and (f) of the Karnataka Rent Control Act, 1961. That petition having been allowed under Section 21(1)(a) was said to have been affirmed in a revision petition filed before this Court. Thereafter, a second eviction petition is said to have been instituted invoking Section 27(2)(a) and (r) of the Rent Act, 1999, numbered as HRC 160/2006. That Revision having been allowed and decreed, execution was taken out of the said eviction order on 4.10.2007 pursuant to which, the present appellants filed objections in the Executing Court invoking Order XXI Rules 99 to 102 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC", for brevity). The said objections having been enquired into, the court below has framed the following point for consideration namely, whether the objectors had acquired any right, title or interest in the petition premises so as to resist or obstruct the execution of the decree passed in HRC No. 160/2006. 3. On a consideration of the facts and circumstances with the position of law, the court below has come to the conclusion that from a bare reading of Section 102 of Order XXI of the C.P.C., it is clear that a transferee induced by a Judgment Debtor is presumed to be aware of the proceeding before the Court of law and that he should be careful before he purchases the property which is the subject matter of litigation. And further that the provision recognizes the doctrine of lis pendens as contemplated under Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act", for brevity). In particular, the court has referred to the sale deeds under which the respective appellants claim their title, namely the sale deed executed by one Madurai, S/o. Devashikamani, in favour of the respective appellants, where there is a specific reference to the eviction petition filed earlier in 1977 and it is noticed that the original eviction petition filed in HRC No. 951/1980 was pending from the year 1977 till 4.11.1988. It is during the pendency of the petition that the appellants had purchased the undivided 1/7th share of the petition property which was the subject matter of the said eviction petition and hence, the court has formed an opinion that Section 52 of the TP Act would come into play and any subsequent transfers would also be hit by the same principle. Though it was sought to be denied that the appellants had any knowledge of the eviction proceedings pending as on the date of the purchase of the property, the court below has held otherwise. The Court below has also held that the objectors would not be entitled to seek shelter under the doctrine of estoppel, on the contention that the respondents had not raised any objection to the demolition or reconstruction of the property which, according to the appellants, was a circumstance which would indicate that the respondents had acquiesced in the transfer of property in favour of the present

appellants, apparently as the eviction order did not address that aspect. It is that order dismissing the objections filed by the appellants which is under challenge in the present appeals.

4. The learned counsel for the appellants would contend that on a bare reading of Section 52 of the TP Act, it is evident that it is only a transfer made of the property in question by a defendant during the pendency of a suit or other proceeding which is contemplated under the said provision and it does not contemplate a circumstance when one of the plaintiffs or the petitioners executes such a deed of transfer and that the same would not apply to such a transfer. This contention is not tenable as the section clearly speaks of "any right to immovable property which is directly and specifically in question" and the same being dealt with by "any party to the suit or proceeding". Hence, the admitted circumstance that the transfers have taken place in the knowledge of the eviction proceedings in respect of the very same property, is not in dispute. If this be so, the object of Section 52 of the TP Act would be rendered otiose if the argument canvassed to the effect that since the transfer is by one of the petitioners in the eviction petition and that such a transfer would not attract the rigour of Section 52, cannot be accepted. If this argument is accepted, the very object of the provision would be diluted. Hence, in the admitted circumstances that the appellants had willfully purchased the property notwithstanding their knowledge of the eviction proceedings, which is evident from the very recitals contained in the sale deeds that are executed in their favour, it cannot be said that the court below has committed any error in holding that they were not in a position to raise objection to the eviction order being executed in respect of the premises.

The further contention that the subject matter of the eviction petition was no longer existent since on purchase of the property by the appellants, the same had been demolished and reconstructed and hence, the very property that was the subject matter of the eviction proceedings was non-existent, is an added circumstance which is canvassed. Insofar as this contention is concerned, the Executing Court could not go behind the decree in examining that contention, it is hardly possible for this Court in appeal to address the same. Accordingly, the appeals do not merit consideration and are dismissed.