
(2009) 03 KAR CK 0015
In the Karnataka High Court
Case No : Regular First Appeal No. 74 of 2007

Smt. Nancy Pais

APPELLANT

Vs

Sri S. Surendra and Sri N. Srinivasa

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 58, 47
Limitation Act, 1963 — Section 4

Citation : (2010) ILR (Kar) 629

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : D.N. Nanjunda Reddy, for B. Ramesh, for the Appellant; G. Janardhan Advocate for R1, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—This appeal arises out of an order in Ex. Case. No. 15122/2006 dated 19.12.2006 on the file of the 13th Addl. City Civil Judge, Mayohall, Bangalore.

2. Brief facts of the case are as under:

The first respondent had filed a suit in O.S. No. 10327/1997 before the 13th Addl. City Civil Judge, Bangalore, for injunction restraining the second respondent from interfering with his peaceful possession and enjoyment of the suit schedule properties. In the suit, the first respondent contended that the second respondent had executed an agreement to sell dated 27.11.1996 in respect of the suit schedule properties in his favour and that he was put in possession of the said properties in part performance of the said agreement. The second respondent filed his written statement denying the plaint averments. On the basis of the pleadings of the parties, the court below framed necessary issues, on 1.9.2005, the parties filed an application under Order 23 Rule 3 of the CPC reporting settlement of the matter. On the same day, two cheques dated 26.8.2005 and 26.11.2005 for Rs. 14,35,000/- and Rs. 15,00,000/- were handed

over to the second respondent. At the request of the second respondent, the court below adjourned the suit to 28.11.2005 without recording the compromise so that the second respondent could report the realisation of the cheques on that day. The second respondent did not report the encashment of the said cheques on 28.11.2005. Therefore, the matter was posted to 17.12.2005 and thereafter to 19.12.2005. On 19.12.2005, the first respondent deposited a sum of Rs. 29,35,000/- in the Court. The matter was again posted to 19.1.2006 and on that day, the first respondent sought for recording of the compromise and pass the compromise decree since the second respondent disputed the total consideration payable for sale of the said property. Thereafter, the court below held an enquiry on the said application and passed a judgment and decree on 18.7.2006 in the following terms:

Suit of the plaintiff O.S. 10327/1997 is decreed in terms of the Compromise Petition dated 1.9.2005.

Draw decree accordingly.

Issue cheque for Rs. 29,35,000/- with accrued interest there under to the defendant if he were to file voucher.

Defendant is called upon to execute regular registered Sale Deed concerning the suit schedule property as agreed under the terms of compromise petition within 30 days from today, lest plaintiff would be at liberty to adopt future course of action.

3. Since the second respondent did not obey the decree, the first respondent filed an Execution Petition on 21.08.2006 in Ex. Case. No. 15122/2006 for the execution of the sale deed. On 23.08.2006, notice was issued to the 2nd respondent along with a copy of the draft sale deed. On 17.11.2006, the court below gave time to the 2nd respondent to make submission as to why the 1st respondent should not get the sale deed executed through Court. On 28.11.2006, the appellant filed an application under Order 21 Rule 58 read with Section 47 and Order 21 Rule 101 of CPC requesting the court below to hold an enquiry with regard to her right in respect of the said property. The court below dismissed the said application on 1.9.12.2006. The learned Judge further directed for execution of the sale deed in favour of the 1st respondent through Court. Accordingly, a sale deed was executed on 21.12.2006 and sent to the office of the Sub Registrar for its registration. The execution petition was closed on 23.12.2006. Is stated above, in this appeal, the appellant has challenged the order of the Executing Court dated 19.12.2006, whereby her application raising objection for execution of the decree has been dismissed.

4. I have heard Sri D.N. Nanjunda Reddy, learned Senior Counsel for Sri B. Ramesh, learned Counsel for the appellant and Sri G. Janardhan, learned Counsel for the first respondent. Though the second respondent was served, he has remained un-represented.

5. Learned Senior Counsel appearing for the appellant would contend that the basis for filing of the suit by the first respondent against the second respondent is an agreement to sell dated 27.11.1996. The suit tiled by the plaintiff is for bare injunction. The plaintiff has not sought for specific performance of the said agreement. On 1.9.2005, the respondents filed an application under Order 23 Rule 3 of the CPC reporting settlement of the matter and on 18.7.2006, the court below decreed the suit in terms of the application. It is argued that the aforesaid decree is a nullity and is not enforceable in law. It is further argued that when the application for compromise was filed, the remedy of the first respondent to seek specific performance of the agreement dated 27.11.1996 was barred by time. Article 54 of the Limitation Act, 1963, prescribes three years time for specific performance of the contract in case the date is fixed for performance. If no such date is fixed, three years period from the date when the plaintiff has notice that performance is refused. Therefore, the agreement dated 27.11.1996 could not have been the basis for decreeing the suit. It is further argued that while considering the application for compromise, the court below ought to have considered as to whether it is time barred though limitation has not been set up as a defence in view of Section 3 of the Limitation Act. It is further submitted that the compromise entered into between the parties cannot cure the bar of limitation having regard to Section 18 of the Limitation Act. Since the decree in O.S. No. 10327/1997 is a nullity, the sale made by the second respondent in favour of the appellant is valid. It is contended that when the decree is void, its invalidity could be set up whenever and wherever it is sought to be enforced. Secondly, the learned Senior Counsel would contend that the appellant has purchased the property in question under a registered sale deed dated 16.2.2006 from die second respondent. He is a bonafide purchaser for value without notice of the aforesaid litigation between the respondents. Since the purchase of the property by the appellant is not under challenge, the court below ought to have allowed the application objecting for execution of the decree. It is further argued that the court below without holding a proper enquiry has dismissed the application.

6. On the other hand, learned Advocate appearing for die first respondent submits that the first respondent was put in possession of the property under the agreement for sale dated 27.11.1996. This has been admitted by him in the application reporting settlement of the matter under Order 23 Rule 3 of the CPC. The second respondent did not come forward to record compromise with a view to extract higher consideration than what was agreed upon by them. The court below after holding an enquiry has decreed the suit. It is submitted that the compromise was neither void nor voidable as contended by the appellant. The decree passed by the court below is perfectly valid and enforceable. Since the second respondent was interfering with his possession of the said property, he had to file the aforesaid suit for injunction. The suit filed by him was maintainable though he has not sought for specific performance of the agreement for sale. Order 23 Rule 3 of the CPC as amended by Act No. 104/1976

which has come into effect from 1.2.1977, provides for recording a compromise in respect of the subject matter of the suit and also in matters falling outside the subject matter of the suit but concerning the parties. A compromise entered into between the parties is nothing but a contract between the parties superimposed with the seal of approval of the Court. The subject matter of the suit was slightly different from the subject matter of the compromise. There was a reduction of area of the property in the compromise when compared to the suit schedule property. New terms and conditions have also been imposed in the compromise. The only objection of the second respondent before the court below for execution of the sale deed was with regard to the consideration payable by the first respondent. The second respondent has not denied his signature in the application for compromise. The decree has not been passed on the basis of the agreement dated 27.11.1996. Therefore, Article 54 of the Limitation Act has no application to the facts of this case. It is further argued that the sale made by the second respondent in favour of the appellant is hit by the doctrine of lis pendens embodied in Section 52 of the TP Act. The appellant is not a bonafide purchaser for value without notice of the litigation. The appellant has not investigated the title of the 2nd respondent before purchase of the property. The title deeds of the property are with, the first respondent in accordance with the terms of the application for compromise. She should not have paid more than Rs. 93 lakhs to the second respondent without insisting upon the 2nd respondent for delivery of the original title deeds. It is argued that the plea of bonafide purchase for value without notice is not available to a purchaser when the sale is hit by the doctrine of lis pendens. It is further argued that since the appellant has purchased the property from the second respondent during the pendency of the litigation, he cannot resist or obstruct the execution, having regard to Order 21 Rule 102 of the CPC. In view of the admitted position that the appellant is a purchaser pendente lite, it is unnecessary to hold a detailed enquiry. He prays for dismissal of the appeal.

7. Having regard to the arguments of the learned Counsel made at the Bar, the points for consideration in this appeal are as under:

- (i) Whether the judgment and decree passed by the court below in O.S. No. 10327/1997 dated 18.7.2006 is a nullity?
- (ii) Whether the purchase of the property by the appellant from the second respondent as per the sale deed dated 16.2.2006 is hit by the doctrine of lis pendens u/s 52 of the Transfer of Property Act?
- (iii) Whether the plea of bonafide purchase of the property for value without notice of the litigation is available to the appellant?
- (iv) Whether the appellant is entitled to resist the execution of the judgment and decree in O.S. No. 10327/1997 dated 18.7.2006?

Re. Point No. (i):

8. The main contention of the appellant is that the decree in O.S. No. 10327/1997 dated 18.7.2006 is a nullity and is not enforceable in law. The plaintiff filed the aforesaid suit for injunction on 21.3.1997 without seeking specific performance of the agreement. In the suit, an application for a compromise was filed by the parties on 1.9.2005. By then, the remedy of the first respondent to seek specific performance of the agreement was barred by time having regard to Article 54 of the Schedule to the Limitation Act. The court below ought to have dismissed the said application although limitation was not set up as a defence, having regard to Section 3 of the Limitation Act. A contract, which ceases to be enforceable by law becomes void when it ceases to be enforceable. The court below could not have recorded a compromise in respect of a void contract having regard to Order 23 Rule 3 of the CPC read with its explanation as amended by Act No. 104/1976, which has come into effect from 1.2.1977. Therefore, the purchase of the property by the appellant as per the sale deed dated 16.2.2006 from the second respondent is valid.

9. It is true that a decree passed without jurisdiction is & nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied on even at the stage of execution and even in collateral proceedings. The Apex Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, has held that a defect of jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. In *Sunder Dass Vs. Ram Prakash*, , the Apex Court has held that Execution Court can go behind the decree if it is pleaded that the decree was a nullity by the reason of Court passing it lacking inherent jurisdiction to pass it In *Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others*, the Apex Court has drawn a distinction between "void" decree and "illegal, incorrect or irregular" decrees. It is held that a void decree can be challenged at any stage even in execution or collateral proceedings. On the other hand, an erroneous or illegal decision, which is not void, cannot be objected to in execution or collateral proceedings.

10. Section 2(j) of the Indian Contract Act, 1872, states that a contract, which ceases to be enforceable by law becomes void when it ceases to be enforceable. Therefore, the statutory remedy to enforce the contract is lost because of the limitation though the right does not extinguish. The Court can compromise a suit when it is proved to its satisfaction that a suit has been adjusted wholly or in part by any lawful agreement or a compromise, under Order 23 Rule 3 of the CPC. The explanation to the said provision states that an agreement or compromise, which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said Rule.

11. Section 3 of the Limitation Act limits the time after which the suit or other proceedings should be barred. It makes the question of limitation a material one for determination in every case irrespective of whether the question is raised by

the parties or not. A suit, appeal or application, if time barred, has to be dismissed after the prescribed period even though limitation has not been pleaded in defence except when such limitation is extended by the provisions of Sections 4 to 24 applicable to such suits, appeal or application as the case may be. Article 54 of the Schedule to the Limitation Act provides the period of limitation for filing a suit for specific performance of a contract. The period of limitation is three years from the date fixed for performance or if no such time is fixed, when the plaintiff has notice that performance is refused. But, in the present case, the question is whether Article 54 has application at all? If the first respondent had lost the statutory remedy to enforce the agreement dated 27.11.1996 because of the limitation prescribed in Article 54, the Court could not have recorded the compromise on the basis of the said agreement. Such a compromise cannot be a lawful agreement between the parties.

12. However, that is not the position in the present case. The extent of the land, which is the subject matter of the suit is slightly different from the land which is the subject matter of compromise. The area of the land, which is agreed to be sold in the compromise is slightly lesser than the area which is agreed to be sold in the agreement dated 27.11.1996, which is the subject matter of the suit. New terms and conditions have been agreed upon in the compromise. Order 23 Rule 3 of the CPC as amended on 1.2.1997 provides for compromise of the suits between the parties in respect of not only the subject matter of the suit but also matters falling outside the subject matter of the suit but concerning the parties. A judgment by consent is intended to stop the litigation between the parties just as much as a judgment resulting from a decision of the Court and the consent decree is also executable even it apprehends matters falling outside the subject of the suit but concerning the parties. The Apex Court in the case of Byram Pestonji Gariwala Vs. Union Bank of India and others, has held that a compromise in writing and signed by a Counsel representing the parties, is valid and binding on the parties and is executable even if the compromise relates to matters concerning the parties, but extending beyond the subject matter of the suit. After the amendment of the CPC in the year 1976, a consent decree is executable in terms thereof even if it comprehends matters falling outside the subject matter of the suit but concerning the parties.

In Gurpreet Singh Vs. Chatur Bhuj Goel, the Apex Court has held that the whole object of amendment of Rule 3 of Order 23 by adding the words "in writing and signed by the parties" is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.

In Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others, the Apex Court has held that a consent decree operates as an estoppel and is valid and binding unless it is set aside by the Court which passed the consent decree by an order on an application under the proviso to Rule 3 of Order 23. Therefore, the only remedy available to a party to a consent decree to

avoid such consent decree, is to approach the Court which recorded the compromise and made a decree in terms of it and establish that there was no compromise. In that event, the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between the parties superimposed with the seal of approval of the Court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.

13. It is true that the plaintiff filed the suit for injunction on 21.3.1997. He has not sought for specific performance of the agreement. The appellant is not justified in contending that the said suit was not maintainable. In the plaint, it is contended that he was put in possession in part performance of the agreement to sell dated 27.11.1996 and that he has been in possession and enjoyment of the said property since then. In the application for compromise, the parties have agreed that the first respondent has been in possession and enjoyment of the suit schedule property from the date of the agreement. It is well established that a suit of a transferee, who is in possession in part performance u/s 53-A for the possessory remedy of an injunction protecting his possession is mere a defensive suit in which plaintiff is merely using the shield of passive equity. A Division Bench of this Court in *Smt. Mahadevamma v. B.S. Lingaraju and Ors.* ILR 1981 Kar 1410, has held that suit for injunction by such transferee against the transferor basing his suit u/s 53-A of the Transfer of Property Act is maintainable.

14. The application for compromise was filed by the respondents in the suit on 1.9.2005. A compromise decree was passed on the basis of the said application on 18.7.2006. A compromise decree is a creature of an agreement on which it is based and is subject to all incidents of such agreement. It is a contract with the command of the Judge super-added to it. In other words, it is a fresh contract entered into between the parties superimposed with the seal of approval of the Court. After the amendment of Rule 3 of Order 23 of CPC, there is no bar for the Civil Court to record a compromise not only in respect of the subject matter of the suit but also extending beyond the subject matter of the suit. Since the compromise entered into between the parties is nothing but a fresh contract, Article 54 of the Limitation Act has no application. Thus, the compromise decree passed by the court below is valid and is enforceable in law. Point No. (i) is answered accordingly.

Re. Point No. (ii):

15. As has been stated above, the first respondent filed the suit O.S. No. 10327/1997 on 21.3.1997 for possessory remedy of an injunction protecting his possession on the basis of the agreement to sell dated 27.11.1996. In the said suit, parties filed an application for compromise on 1.9.2005. The suit was decreed on 18.7.2007. During the pendency of the application for the compromise, the appellant purchased the property by a deed of sale dated 16.2.2006 from the second respondent. The first respondent filed Ex. Case. No.

15122/2006 in the court below for execution of the decree on 21.8.2006. The question for consideration is whether the sale is hit by the doctrine of lis pendens u/s 52 of the Transfer of Property Act?

16. The doctrine upon which the Section 52 of the Transfer of Property Act is based is that it would plainly be impossible that any action or suit could be brought to a successful termination if alienation pendente lite were permitted to prevail. The principle underlying the object of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. It is in accordance with the principle of equity and good conscience or justice. The transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens being a principle of public policy, no question of good faith or bona fide arises. The effect of Section 52 is not to wipe out a sale pendente lite altogether but to subordinate it to the rights based on the decree in the suit. As between the parties to the transaction, it is perfectly valid. In the case of transfer, which is hit by the doctrine of lis pendens u/s 52, the question of good faith, which is essential to be established before an equitable relief can be granted in favour of a subsequent vendee is totally irrelevant.

In *Dutt maharaj v. Sukur Mohommed*, it has been held that the broad purpose of Section 52 of the Transfer of Property Act is to maintain status quo unaffected by the act of any party to the litigation pending its determination.

In *Amit Kumar Shaw and Another Vs. Farida Khatoon and Another*, the Apex Court has held that Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This Section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit.

In *Sanjay Verma Vs. Manik Roy and Others*, the Apex Court has held that the principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the T.P. Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree, which may be passed in the suit unless the property was alienated with the

permission of the Court.

The Apex Court in a recent decision in *Guruswamy Nadar v. P. Lakshmi Ammal (D)* by LRs and Ors. 2008 AIR SCW 3583 has held as under:

Normally, as a public policy once a suit has been filed pertaining to any subject matter of the property, in order to put an end to such kind of litigation, the principle of *lis pendens* has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end.

17. In the present case, the second respondent has sold the property in question in favour of the appellant when the court below was holding an enquiry on the application filed by the respondents under Order 23 Rule 3 of the CPC. The court below has decreed the suit. It is not the case of the second respondent that he has taken permission of the Court for alienation of the property. Though the appellant has asserted that the decree in question is a collusive decree, the same has not been established by her. Therefore, the sale deed executed by the second respondent in favour of the appellant dated 16.2.2006 is clearly vitiated by the doctrine of *lis pendens*, and not binding on the first respondent. Point No. (ii) is answered accordingly.

Reg. Point No. (iii):

18. Learned Senior Counsel appearing for the appellant has contended that the appellant is a bonafide purchaser of the property for value without notice of the litigation between the respondents. Therefore, the purchase made by the appellant requires to be protected. The appellant has admittedly purchased the property during the pendency of the litigation. She has paid more than Rs. 93 lakhs for the purchase of the said property, which is clear from her sale deed dated 16.2.2006. It appears that she has purchased the property without verification of the title of the property. It is not understandable as to how she can purchase the property when the title deeds are with the first respondent/deed holder, which is clear from the terms of the application for compromise. In this connection, it is apposite to quote a passage from the decision of the Madras High Court in the case of *S. Arunachalam Asari (died) and Others Vs. Sivan Perumal Asari and Another*, wherein it is held as under:

A person, who purchases the property ought to insist upon the handing over of the title deeds by the vendor and should not lightly accept any explanation given by the vendor for his not immediately handing over the title deeds or his oral promise that the title deeds would be handed over later on.

It has been further held as under:

The vendee was guilty of gross negligence in not having insisted upon the

handing over of the title deeds to him at the time of the sale deed. The fact that the encumbrance certificate, which he obtained did not disclose the mortgage (as it was unregistered at that date) was not sufficient to hold that he was a bona fide transferee in good faith without knowledge of the prior mortgage. If he had demanded the title deeds at the time of sale, he would have come to know that the deeds were handed over to the mortgagee. The vendee therefore could not be said to be a bona fide transferee in good faith without the knowledge of the mortgage.

19. A transferee pendente lite need not be made a party to the suit. She is bound by the decree in as much as she was a party to the suit. Section 52 of the Transfer of Property Act has an overriding effect and is not subject to Section 19(b) of the Specific Relief Act. Though Section 19(b) of the Specific Relief Act protects a transferee for value without notice, a transferee pendente lite is not entitled for such a protection. In *Guruswamy Nadar's case* (supra), the Apex Court has held as under:

Therefore, the question before us in this case is what is the effect of the *lis pendens* on the subsequent sale of the same property by the owner to the second purchaser. Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3.5.1975 for specific performance of the agreement and the second sale took place on 5.5.1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position, then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case, it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of *lis pendens* will govern the present case and the second sale cannot have the overriding effect on the first sale. The principle of *lis pendens* is still settled principle of law.

In the light of the aforesaid discussions, I hold that the appellant is not entitled to plead that she is a bona fide purchaser for value without notice of the litigation. Point No. (iii) is answered accordingly.

Reg. Point No. (iv):

20. Though the application filed by the appellant in the execution case is under Order 21 Rule 58 read with Section 47 and Order 21 Rule 101 of the CPC, the learned Counsel for the appellant agrees that in essence, it is an application for resistance or obstruction to possession of the property. In the application, the appellant contends that she is in possession of the property having purchased the same from the second respondent under a deed of sale dated 16.2.2006. Order 21 Rule 102 of the CPC states that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for possession of immovable property by a person to whom the judgment debtor has transferred the property

after the institution of the suit in which the decree was passed or to the dispossession of any such person. This Rule recognizes the rule of lis pendens. Rules 97 to Rule 101 of Order 21 contains the provision enabling the Executing Court to deal with the situation when a decree holder entitled to possession of the property encounters obstruction from any person. If the resistance was made by a transferee pendente lite of the judgment debtor, the scope of adjudication would be whether he is such a transferee. If the finding is in the affirmative, the Execution Court has to hold that he has no right to resist the execution having regard to the language employed in Rule 102. The Apex Court in *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another*, while considering a similar plea raised by a sub-tenant has held thus:

No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

It is further held as under:

It is clear that executing Court can decide whether the resistor or obstruction is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21, Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course, the Court can direct the parties to adduce evidence for such determination if the Court deems fit necessary.

21. In the present case, admittedly, the appellant purchased the property from the second respondent during the pendency of the suit. If that is so, holding a detailed enquiry or collection of evidence for adjudication of her right under Rules 98 to 100 of Order 21 of the CPC does not arise. The appellant has no right to resist or obstruct the execution of the decree in view of the clear language contained in Rule 102 Order 21 of the CPC. Point No. (iv) is answered accordingly.

22. There is no merit in this appeal and it is accordingly dismissed. Having regard to the facts and circumstances of the case, direct the parties to bear their own costs.