



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## The Doctrine of Lis Pendens - Conditions and Confliction with Independent Rights of Transferee and Judgement debtor

Vaishali Uday Kanekar<sup>a</sup>

<sup>a</sup>Maharashtra National Law University, Mumbai, India

*Received* 18 January 2023; *Accepted* 20 January 2023; *Published* 03 February 2023

---

*The article deals with the application and scope of the doctrine of Lis Pendens, when read under Section 52. of the Transfer of Property Act. When the doctrine of Lis pendens limits and restrains the right of the third party, the transferee who is a subsequent purchaser of the pending suit property is hit by the limitations of the act. As a result, his independent rights to the property become limited and subject to the decree passed in the pending suit. The Hyper technical interpretation of Section 52 can cause damage to the rights of a third party who is a bona fide purchaser for value, without knowledge of the original contract, especially if the suit property was purchased from a Judgement Debtor. Thus, creating a loophole for collusion and deception of the transferee, as the court refrains from providing a helping hand to the third-party purchaser. It is assumed under Section 52 that a transferee knows the pendency of the suit. This article deals with areas and conditions under which Section 52. The Transfer of Property Act can be diluted. Thus, finding protection for the independent rights of the Transferee.*

**Keywords:** *rights, judgement, debtor, lis pendens.*

---

### INTRODUCTION

The transfer of property act, act no.4 of 1882 deals with laws relating to the transfer of property. According to this act, Section 5 states that 'transfer of property' means, an act by which a living

person conveys property, in present or in future, to one or more living persons, or to himself, and one or more other living persons and to transfer property is to perform such act. In this act, even a company or association, or body of individuals is to be considered and incorporated as a living person, subject to the effect of any law at the time being. As per Section 7 of the act, any person who is competent to contract and entitled to the transferable property, or can authorize the disposition of any property either absolutely or conditionally is considered as a person competent to transfer. Thus, even if the transferability of the property deals with any limitations or restrictions on the right to transfer the person, the person is competent to transfer, as long as he fulfills the criteria of eligibility.

The transferability of property involved in an active lawsuit is addressed in Section 52 of the Transfer of Property Act. The property cannot be transferred or used in any other way by any party to the suit or proceeding to affect the rights of any other party thereto under any decree or order which may be made therein, except with the court's permission and for the duration of any term the court may impose. This means that any right to immovable property is directly and specifically in question. A lawsuit's pendency is considered to begin on the day the institution or plaint is presented, and it can last until the lawsuit is decided. It can continue until the suit is:

- disposed of by final order or decree along with complete satisfaction or discharge of such whenever the TOPA is not applicable such provisions thereof which are based on justice equity and good conscience are applied;
- an order has been obtained, or
- an order has become unobtainable because of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

### **DOCTRINE OF LIS PENDENS IN SEC.52 OF THE TRANSFER OF PROPERTY ACT**

Section 52<sup>1</sup> of the Transfer of Property Act functions upon the doctrine of 'Lis Pendens'. It is a Latin phrase where 'Lis' means litigation and 'Pendens' means continuing or ongoing or

---

<sup>1</sup> Transfer of Property Act 1882, s 52

pendant. It is based on the maxim *ut pendant nihil innovetur* which means, during the pendency of the suit or litigation nothing new should be introduced or nothing should be changed. This principle was introduced in the case of *Bellany v Sabine*. Here, Lord Turner observed that, if the transfer is made of any immovable property of the suit which will decide the right to the title on that property Sec. 52<sup>2</sup> does not hold the transfer void but the transferee is subject to the decision of the pendente lite.

The doctrine of *Lis pendens* was introduced based on just and equitable restitution of the rights of either party. This prevents one party from endangering the interests of another party, regardless of the strength or weakness of the merits of the suit. When a suit transfer of property is hit by Section 52 of the Transfer of property act, the rights of the 3<sup>rd</sup> party pendente lite remain impleadable. The 3<sup>rd</sup> party to the pendente lite is bound by the final decree passed in the pendente lite or the pending suit. This final decree is binding in nature, as a result, the transferee cannot deprive the successful plaintiff of the fruits of the decree if the purchased property is pendente lite.

For the pendency to terminate, the decree must be executed in the favor of the decree-holder. With the passing of the preliminary decree, the status of the suit remains pending until a final decree is executed. Even though by making the decree there is no 'lis' or litigation in balance, once the application for execution is filed and the proceeding commenced, the property subject matter in dispute still falls within the meaning of the 'proceeding' concerning the property<sup>3</sup>. Thus, during such instances, if the property is transferred to a 3<sup>rd</sup> party, the transferee will still be recognized as a pendent lite.

As per the above section, the rights for the transferee, who is not a party to the pending suit has no independent rights to the suit property, which is directly and specifically the subject matter of the suit. The transferee purchaser is also bound by the final decree and any order passed during the pendency of the suit. For the application of the doctrine of *Lis Pendens*, certain

---

<sup>2</sup> *Ibid*

<sup>3</sup> *Narendrabhai v Gandevi* AIR (2002)

conditions need to be fulfilled. These conditions laid down as per *Dev Raj Dogra and others v Gyanchand Jain and others*<sup>4</sup>, build upon the meaning of Section 52 as follows:

For the application of the doctrine, a court of competent jurisdiction must be hearing the right to immovable property. The lawsuit should not involve collusion, and it must concern a right that is directly or specifically at issue. Lastly, any transfer of this immovable property engaging with this immovable property during the course of the lawsuit is banned unless authorized by the court, if the suit's proceedings have an impact on the rights of either party.

### **NATURE, PRINCIPLE, AND EFFECT OF LIS PENDENS**

According to Lord Turner in, *Bellamy v Sabine*, "It is, as I think, a doctrine common courts of both law and equity, and rests, as I apprehend, upon this foundation, - that it would be impossible that any action should or could be brought to a successful termination if alienation pendente lite were permitted to prevail". The broad idea behind the doctrine is to refrain either of the parties, to act or abstain from action, which may result in harm to the rights of the other party, even before the effectual of the court's final decree. Any Fasli Entry (entry in records of rights) is meaningless and does not have a legal effect. It is done during the pendency of a suit by either of the parties<sup>5</sup>. This doctrine also aims to avoid any further impleads of the aggrieved party, directing the court to go through the same procedure. The doctrine of Lis pendens is based on the idea that no party to the suit can alienate the disputed property in a way that would impact the other party; otherwise, no legal action or legal proceeding could be successfully concluded. The alienation of the property may hamper the rights of either party to the suit property. The court may direct, upon the plea of any party to the suit, refraining from alienation or transferring rights of those in possession of the suit property. As a result, no other party to the suit or proceeding may engage in any other transactions involving the litigation's subject matter, including the transfer of its rights. It grounds the fact that the said suit arises in the first place due to the nature of jurisdiction and control over the subject matter.

---

<sup>4</sup> *Dev Raj Dogra and Ors v Gyan Chand Jain and Ors* (1981) SCR (3) 174

<sup>5</sup> *Sefali Roy Chowdhury v A.K Dutta* AIR (1976) SC 1810

However, it is to be noted that Section 52 does not prevent any party from dealing with property, it merely lays down a condition that the suit property which is a subject matter to the suit should not be alienated, hampering the rights of the other property, unless such alienation is permitted by the court. In *Krishnabai v Savatram*, the court determined that section 52's major goal is to preserve the status quo while the case is being decided, untouched by any actions of the parties. It adds a restriction to the transferee's rights to the subject property of the lawsuit, but it does not fully nullify any party to the claim. A sale pendente lite allotment will be subordinated to the rights based on the judgement entered in the case as a result of section 52's effect rather than being eliminated.<sup>6</sup>

### **PROTECTION OF RIGHTS OF 3<sup>RD</sup> PARTY TRANSFEREE**

During the *Lis pendens*, the original suit concerns the original plaintiff/s and the original defendant/s. Either of the party has the suit property which is directly or substantially the subject matter of the suit pending. However, as stated above, the mere pendency of the suit doesn't prevail any party from dealing with the suit. This enables the owner of the pendant suit property to sell it to subsequent purchasers. If any party to the original suit feels that their rights to the suit property are threatened, they can appeal for interim injunctions or temporary injunctions. As per Rule 1 of Order 39, of the Civil Procedure Code, the court has the power to restrain transfer pendente lite by granting temporary injunctions. Albeit, regardless of the court having such power, it does not imply that the court is bound to exercise the same. In most cases, the position is only applied when the court considers that the protection provided by Section 52. to the parties is inadequate. Thus, when the suit property is held notwithstanding Section 52, an injunction restraining pendente lite transfer can be granted by the competent court authority. (*Muktakezi v Haripada*)<sup>7</sup>

However, when the suit property is transferred by either of the original parties to the suit, to the subsequent purchaser, during the pendency of the case, the transferee becomes a third party to the pending suit. In addition, after the transfer of the suit property, the transferees' right to

---

<sup>6</sup> *Krishnabai v Savatram* AIR (1927) BOM 93

<sup>7</sup> *Muktakezi v Haripada* AIR (1988) Cal 25

the property becomes limited and subject to the decree passed in the original suit. As a result, it renders the transferee inoperative insofar as the other parties to the suit. The transfer becomes subject to the decision in the original suit. The third party to the case, during the pendency of the suit, cannot be considered a party to the original suit. In, *Hari Narain v Man Chand* it was held that the second sale cannot have the overriding effect on the first sale, thus rights of the third-party transferee remain secondary.<sup>8</sup>

The person who is purchasing the suit property, which is the subject matter to the pending suit becomes the Judgement Debtor since he has no independent right to property. The judgement Debtor to Lis pendens also has no right to resist, obstruct or object to the execution of the decree passed in the original suit. A judgement debtor is defined as any individual against whom a decree or an order susceptible of enforcement has been made in Section 2 of the Civil Procedural Code 1908 (CPC)<sup>9</sup>. Therefore, only the transferee will receive the property title if the immovable property is bought from the decree-holder. During the initiation of the pendant suit, the burden of proof lies on the party dependent upon Lis Pendens. They have to prove that the suit was instituted before the execution of the deed of transfer<sup>10</sup>. When the transferee purchases the suit property from the judgement debtor, he is bound by the decree passed in the pendant suit. He does not have any right or title to the suit property. As a result, he has to initiate separate suit proceedings for relief or compensation, against the transferor of the suit property. This further complicates and endangers the transferee's rights, especially if he is a bona fide purchaser who did not know about the pendent suit.

### **SECTION 19 (B) OF THE SPECIFIC RELIEF ACT, 1963**

The transferee pendent lite is not protected in a pendant suit, especially if the suit property is transferred by a judgement debtor. He shall have to deal with the matter in a separate suit. When a bona fide purchaser in good faith, purchases a suit property for value (market value), through a registered sale deed or an agreement of sale, the question arises whether he can seek specific

---

<sup>8</sup> *Hari Narain v Man Chand* (2010) 13 SCC 128

<sup>9</sup> Civil Procedural Code 1908, s 2

<sup>10</sup> *Narayana Pillai v Kunju Amma* AIR (1990) Ker 177

performance of a such contract. When the right to any suit property of a bona fide purchaser for value is challenged, he can seek relief, for the specific performance of the contract under the Specific Relief Act 1963. Section 19(b) states that anyone else claiming under him by a title after the contract, excluding a transferee for value, has paid his money in good faith and without knowledge of the original contract. A transferee pendente lite is bound by the decree. Hence cannot take the plea that he is a bona fide purchaser for value without notice of litigation.<sup>11</sup> As per, Rule 102 Order 21 CPC -

*Nothing in Rules 98 and 100 shall apply to resistance or obstruction in the execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of a suit.*<sup>12</sup>

A transferee from a judgement debtor is therefore assumed to be aware of the legal processes. Before purchasing a property that is the subject of a lawsuit, he should exercise caution. According to Section 19(b), it is the responsibility of the future purchaser – specifically, the subsequent buyer of suit property – to inquire about the title or interest of the person in actual possession as of the date the sale transaction was performed in the buyer's favour. Any title that a person is now in actual possession of is assumed to be constructive notice of that person's ownership rights. A future buyer must enquire about any additional interests, the type of possession, and the title that the person in possession had at the time the property was purchased.<sup>13</sup> Thus Section. 52 has an overriding effect on a transferee for value who has paid his money in good faith and without notice of the original contract.<sup>14</sup>

### **DILUTION OF SEC.52 CONCERNING SEC.19 B OF SPECIFIC RELIEF ACT**

There are various instances when Section 52 of the Transfer of property act is not attracted. For example, when the decree-holder remained callous and indifferent in seeking ratification of the void decree, which was inexecutable in the present form, the auction purchaser will not be

---

<sup>11</sup> *Indragjeet v Jagjit* AIR (2005) PH 216

<sup>12</sup> Civil Procedural Code 1908, Or 21 r 102

<sup>13</sup> *R.K Mohammad Ubaidullah v Hajee C. Abdu Wahak* AIR (2001) SC 1958

<sup>14</sup> *Raja Ram v Shanti Devi* (1997) 2 AII.WC 1289

bound by the subsequently amended decree since he was not a party to that amendment proceeding.<sup>15</sup> However, when the transferee is a bona fide purchaser of value, who bought the suit property without notice of the original contract, his rights are directly and substantially related to the suit property. According to Justice A. B Chaudhari of the Bombay High court, "then the rights of the person like the petitioner who stood deceived, can certainly be worked out by the Court ultimately by passing the decree instead of asking such a person to go and to file another suit. In my opinion, that would also save the multiplicity of litigation or avoidable second litigation. Such a person like a petitioner in that event would be able to put up his case for a bona fide purchaser for value without any notice or knowledge and of deception practised on him."<sup>16</sup> Based on the above observation, it can be held that a bona fide transferee without notice of contract can be made a party to the pendent suit. In the above observation, a bona fide purchaser is, with accordance to the black laws dictionary, a purchaser who honestly, openly, and without deceit brought an immovable property at market value, without having any prior knowledge about the pendente Lite. The trial court's first decision in *Shrikrushna Narayan Tupkari v Mahadeo and Others* was that the appellant (a subsequent purchaser of a suite property, pendente lite) was not a party to the action and hence was not bound by the decree under Section 52<sup>17</sup> of the Transfer of Property Act. Thus, he is not a 'necessary party' to the suit.

An essential party is a person or entity, as defined by Order 1, Rule 10 of the Civil Procedure Code<sup>18</sup>, without whom no order may be made effectively. A proper party must be present for a decision to be made on the issue at hand for an effective order to be made in their absence. The addition of parties is typically not a matter of the court's original jurisdiction but instead involves judicial discretion that must be used in light of all the relevant facts and circumstances of a specific case.<sup>19</sup> A transferee pendente lite can be made a proper or necessary party to the suit. This rule gives the court the authority to add or remove any party from the case on the justification that doing so will be necessary for the court to effectively decide the case and resolve

---

<sup>15</sup> *B.V Vasitha v Sha Poonamchand* AIR (1997) Kant 306

<sup>16</sup> *Shrikrushna Narayan Tupkari v Mahadeo and Ors* (2014) 02 BOM CK 0048

<sup>17</sup> Transfer of Property Act 1882, s 52

<sup>18</sup> Code of Civil Procedure 1908, Or 1 r 10

<sup>19</sup> *Ramesh Kundanmal v Municipal Corporation of Greater Bombay* (1992) 2 SCC 524



any outstanding issues. As a result, it is a matter of the court's discretion rather than a substantive right. A party must be subject to relief concerning the issues at issue in the proceedings to be considered a required party to the suit, and no effective decree can be issued in the absence of such a party.

In *Amit Kumar Shaw v Farida Khatoon*, it was observed that the interest of the transferee is secured only if the defendant is vitally interested in litigation, in comparison to the plaintiff whose entire interest is vested in the pendente lite. As a result, they might conspire with the plaintiff. Lis pendens transferees are not required to be joined as parties, but Order 22 Rule 10<sup>20</sup> allows an alienee pendente lite to do so at the court's discretion<sup>21</sup>. Proceedings which are collusive in nature, where the court passes an order, then such order may not be binding upon the transferee. Here collusion can be defined as a secret arrangement between 2 persons (Original parties who no longer have interest in the suit property) to obtain a decision of a judicial tribunal for a sinister purpose. Thus, the doctrine of Lis pendens doesn't apply since the inception of collusion for either decree or proceeding.

### **INDIAN REGISTRATION (BOMBAY AMENDMENT ACT) ACT NO. 14 of 1939**

For the dilution of Section 52<sup>22</sup>, apart from being a bona fide purchaser for value, the transferee has to prove that he had no notice of the pending suit. Ethically, the vendor or the transferor is responsible for informing the purchaser of the pendente lite. In application, it is presumed under section 52<sup>23</sup>, that the transferee has prior knowledge of the pendente lite. However, when the transferee in good faith, purchases the suit property at market value and is non-related to the transferee, then his primary source of information is the transferor. Thus, often after the purchase of such property, when the transferee realizes the pendency of the suit, his independent rights to the property remain challenged by Section 52 of the Transfer of Property

---

<sup>20</sup> Code of Civil Procedure 1908, Or 22 r 10

<sup>21</sup> *Amit Kumar Shaw v Farida Khatoon* (2005) 11 SCC 403

<sup>22</sup> Transfer of Property Act 1882, s 52

<sup>23</sup> *Ibid*

act. The question arises whether there is any onus on the court to provide notice to the purchaser of the pendente lite.

The Indian Registration (Bombay Amendment Act)<sup>24</sup> states a statutory principle to eliminate the advances by dishonest or mischievous parties and protect the bona fide purchaser. For section 52 to operate, the purchaser must be notified of the pendency of the subject suit property, the proceedings of which are to be registered under the Indian Registration Act 1908, along with the developments within the same. Under normal circumstances, the registration office issues a 'non-encumbrance' certificate to the purchaser of immovable property. If the pendency of the suit is registered under the Indian Registration Act 1908, then the office shall notify the purchaser during the issuance of the certificate. Thus, post notification, the transferee cannot complain about the loss by the operation of Section 52. This amendment act provides a remedy to the bona fide purchaser for value without notice. Albeit the drawback of the act is that it only applies to the areas within Greater Bombay and not the rest of the state of Maharashtra. It is observed that the act benefits the people at large, yet it does not apply to the entire state.

## CONCLUSION

The doctrine of Lis pendens prevails over *res judicata*. Similarly, the basic foundation of Section 52 of the Transfer of Property act, which embodies the doctrine of lis pendens, is in the public policy nature of the principle applied. It aims to avoid multiple ligations in different or same jurisdictions, which deal with the same subject matter. This provision also enables the court to control the proceedings, in the interests of the parties whose rights are concerned. However, the stringent application of the doctrine of Lis pendens renders void, the bona fide purchaser for value without notice, of his independent rights to the suit. A petitioner who is a transferee pendente lite cannot seek impleadment in the final decree proceeding as a matter of right without taking leave of a court.<sup>25</sup> The Indian Registration, Bombay Amendment Act 1939 has a wide scope of application, albeit it is limited to the Greater Bombay region. Apart from that, in most of the Supreme court judgements it was held that issuance of notice is a statutory provision

---

<sup>24</sup> Indian Registration (Bombay Amendment Act) 1939

<sup>25</sup> *Naganand v Gowramma* AIR (2013) Kant 137

and not mandatory. The said notice can endanger and can be used to challenge the rights of the plaintiff of the pendente lite. Thus, it is assumed that the transferee pendente lite knows the pendency of the suit.

The judgement of Justice A B Chaowdhary initiates an attempt to include a third-party transferee, whose rights are directly and substantially challenged in the pending suit. By establishing that a bona fide purchaser for value is a necessary party to the suit, it is at the court's discretion to join them as a party to the suit. The agreements of sale must be registered to discourage the generation and circulation of black money in the real estate sector. It also prevents the undervaluation of documents for stamp duty. To conclude, we can observe the institution of the Transferee as a necessary party or proper party to the suit can provide him with the ability to put forth a strong core of his independent rights to the property, unlike a situation where he is dependent on the original party who may not have any longer, any interest in the suit property subject matter to the case. Thus the onus lies not only on the court's interpretation of Section 52<sup>26</sup> and Section 19(b)<sup>27</sup> but also on the legislature to build statutes safeguarding the interests of the third-party Transferee. This would decrease the multiplicity of cases filed under the same subject matter and also provide a balanced outlook that entertains the interests of all the parties to the suit property subject matter to the suit.

---

<sup>26</sup> Transfer of Property Act 1882, s 52

<sup>27</sup> Specific Relief Act 1963, s 19(b)