



A STUDY ON THE DOCTRINE OF LIS PENDENS

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ABSTRACT

Transferring or disposing of property is the most important right the owner can possess. However, in certain circumstances, he may be restrained from alienating his property for a specific period, like while a suit or proceeding regarding such property is pending. Such a circumstance is known as the Doctrine of Lis Pendens and is embodied under section 52 of the Transfer of Property Act, of 1882. However, there are certain situations where this doctrine is applicable and not applicable to the transfer of a property. This article will examine the essentials for applicability of the doctrine of Lis Pendens as embodied in section 52 of the Transfer of Property Act, 1882, and shall also examine the judicial interpretation of certain words of the section. Further, this article will also explore the various situations in which the doctrine is applicable and the situations in which the doctrine is not applicable.

Keywords: Lis Pendens, Transfer, Lawsuit, Property.

INTRODUCTION

The doctrine of lis pendens, also known as the "doctrine of pending litigation," is a legal principle that deals with the effect of a pending lawsuit on a property or subject matter involved in the dispute. "Lis pendens" is a Latin term that translates to "a suit pending. Lis pendens doctrine is based on the idea that it would be unfair to allow transactions during a dispute. The doctrine aims to protect the rights and interests of individuals by maintaining the current state and upholding the court's authority and the individuals participating in the legal dispute. Essentially, when a lawsuit is initiated concerning a specific property, a notice of lis pendens is usually filed in the public records for the location of the property where it is situated. This notification is intended to alert potential buyers, lenders, and other interested parties of the existence of the potential risk. The lawsuit that is waiting to be resolved involves the property.

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It aids in verifying any future property transactions that are dependent on the result of the legal action.

The doctrine of Lis Pendens has its origin in Lord Justice Turner in **Bellamy Vs. Sabine, 1857**¹ Where the Court observed the following:

“This is a doctrine common to law and equity courts, which I apprehend, because, if alienation pendente lite was allowed to prevail, it would simply not be possible for any action or suit to be resolved successfully. In any case, the Plaintiff will be responsible for the Defendant who alienated the property before the judgment or the decree and must be obliged, according to the same course of action, to initiate these proceedings de novo.”

SECTION 52 IN THE TRANSFER OF PROPERTY ACT, 1882

Transfer of property pending suit relating thereto-

During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with 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 under the authority of the Court and on such terms as it may impose.

Explanation.—For this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained or 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.²

¹ (1857) 1 De G & J 566

² Section 52 of The Transfer of Property Act, 1882

ESSENTIAL CONDITION FOR THE APPLICATION OF THE RULE UNDER SECTION 52 OF THE TRANSFER OF PROPERTY ACT, 1882

The essential conditions that are required to be fulfilled to apply the doctrine are as follows-

- 1) There is a pendency of a suit or proceeding.
- 2) The suit or proceeding must be pending in a Court of competent jurisdiction.
- 3) A right to immovable property is directly and specifically involved in the suit.
- 4) The suit or proceeding must not be collusive.
- 5) The property in dispute must be transferred or otherwise dealt with by any party to suit.
- 6) The transfer must affect the rights of the other party to litigation.³

ANALYSIS OF THE ESSENTIAL CONDITIONS FOR THE DOCTRINE OF 'LIS PENDENS'

Section 52 serves the purpose of preventing the parties involved in a lawsuit from being deprived of their interests by the opposing party while the case is still unresolved, and it is rooted in principles of equity and fairness. However, it's important to note that merely mentioning an immovable property in the lawsuit is insufficient to trigger the application of this section. What activates Section 52 is the explicit and immediate involvement of property rights in the dispute. As a result, the transfer of an immovable property is restricted only when the rights related to the property are directly and substantially contested during the ongoing lawsuit.

Furthermore, for the doctrine of Lis Pendens to apply, the lawsuit must be pursued in good faith, devoid of collusion or malicious intent. If the lawsuit is found to be tainted by collusion or ill intent, the doctrine will not be applicable. Additionally, the lawsuit must be filed in a court with the requisite jurisdiction, whether it pertains to pecuniary or territorial jurisdiction.

³ Dr. H. N. Tiwari, Transfer of Property Act (7th Ed., 2017)

If the lawsuit is initiated in a court lacking the necessary jurisdiction, the principles of Lis Pendens would not come into play. The application of the doctrine of Lis Pendens is not automatic when a lawsuit involving immovable property is initiated. Certain specific requirements must be met for this doctrine to take effect.

These conditions were elucidated by the Hon'ble Justice A.N. Sen in the case of **Dev Raj Dogra v. Gyan Chand Jain**, and they consist of the following key elements:

- 1) A lawsuit or legal proceeding concerning a right to immovable property must be actively pending.
- 2) The lawsuit or proceeding should not be the result of collusion between the involved parties.
- 3) During the pendency of such a suit or proceeding, no party to the case can transfer or deal with the property in question in a way that would affect the rights of any other party involved, except with the authorization of the court. In essence, any transfer or action related to the property during the lawsuit's pendency requires court approval if it has the potential to impact the rights established by any decree or order that may be issued as part of the lawsuit.⁴

When a situation meets all the above-mentioned conditions, the doctrine will apply, and thus during the pendency of a bona fide suit, in a court of competent jurisdiction, where the rights over an immovable property are directly and substantially involved, such property cannot be transferred without the leave of the court, and if transferred without such leave, the purchaser of such property would be bound by the decree of court.⁵

Therefore, the rule of Lis Pendens under Section 52 of the Transfer of Property Act applies to property transfers that pertain to a pending suit or proceeding. This includes transfers made after the initiation of the suit or proceeding and before its resolution by a party to the case as well as to third parties. If these essential conditions are not met, the rule of Lis Pendens does not apply.⁶

⁴ Dev Raj Dogra v. Gyan Chand Jain, AIR 1981 SC 981 at 987 (India).

⁵ Balwant Singh v. Buta Ram, 2009 (4) 156 PLR 52 (P&H) (India)

⁶ <https://lawbhoomi.com/doctrine-of-lis-pendens-and-section-52-of-transfer-of-property-act/>

EXCEPTION OF THE DOCTRINE OF ‘LIS PENDENS’

While the doctrine of Lis Pendens applies when the conditions discussed above are fulfilled, there are certain exceptions to it, such as when the transfer is made with the permission of the court.

Transfer with the permission of the court-

The court in which a suit involves questions regarding the rights of an immovable property directly and specifically may grant permission to any of the parties to dispose of the property while the suit is still pending subject to any condition it may impose. This acts as an exception to the doctrine of Lis Pendens. However, the court in such situations carefully scrutinizes the facts and circumstances of each case to make sure that the rights of any of the parties are not jeopardized by such a permitted transfer. In the case of *Vinod Seth v. Devinder Bajaj*,⁷ the court after looking carefully into the facts and circumstances of the case, thought it was a fit case to be exempted from the doctrine of Lis Pendens upon furnishing of security. The court allowed the defendants to dispose of the property while the suit was still pending upon furnishing a security of Rs. 3,00,000.⁸

EFFECT OF THE DOCTRINE OF ‘LIS PENDENS’

A transfer or action taken by a party to a lawsuit during the pendency of the suit or proceeding is not automatically void. Instead, it is only considered voidable if it has the potential to impact the rights of any other party to the suit under any decree or order that may be issued as part of the lawsuit. Section 52 of the Transfer of Property Act creates a right that can be enforced to set aside a transfer made during the pendency of the suit, as these transfers are not inherently void but rather voidable. Importantly, this violability depends on the choice of the party affected by the ongoing proceeding, during which the transfer occurred.⁹

In essence, the rule of lis pendens does not aim to invalidate or automatically void the transfer but rather places it under the purview of the litigation’s outcome. According to this rule, anyone

⁷ *Vinod Seth v. Devinder Bajaj*, (2010) 8 SCC 1 at 20 and 24 (India).

⁸ DARASHAW J. VAKIL, COMMENTARIES ON TRANSFER OF PROPERTY ACT 596 (5th Ed., 2017)

⁹ Section 52 of The Transfer of Property Act

who acquires property during the pendency of a lawsuit is bound by the judgment that may be rendered against the person from whom they acquired the title, even if such a purchaser was not a party to the lawsuit or had no prior notice of the ongoing litigation.¹⁰

CASES ON THE DOCTRINE OF 'LIS PENDENS'

In **Ayvaswami vs Jayaram Mudaliar AIR 1973 SC 569**, the Court held that the purpose of this provision is not to deprive the parties of every just or fair argument but rather to guarantee that the parties submit themselves to the jurisdiction and authority of the Court which shall determine all claims that are placed before it to the satisfaction of the parties concerned.¹¹ In the case of **Hardev Singh v. Gurmail Singh, Civil Appeal No. 6222 of 2000**, the Court ruled that Section 52 of the Transfer of Property Act, would not make void or unlawful any sale of the contested properties, but only put the purchaser beyond the binding limits of the judgment on the disposition of the conflict.¹²

In the case of **Koyalee v. Rajasthan District, AIR 2009 Raj.28**, the land in question was originally registered in the name of the Plaintiff's husband. After his death, his brother realized knowing well that the wife of his brother was alive and was the sole legal heir, filed a lawsuit pursuing the Khatedari rights, and according to this, the wife had to contest that she was the sole legal heir of the recorded Khatedar. The brother further went on to transfer the land despite the lawsuit that was pending, since this was done without seeking the Court's permission the transfer was struck down under Section 52 of the Transfer of Property Act as per the Doctrine of lis pendens.¹³

The Court's positions on this pendente lite-transfers issue are explained in **Ashok Kumar v. Govindammal and Anr, 2010**. The Supreme Court of India has here reaffirmed that a pendente lite cannot be transferred for a property whose title is the subject of litigation. These transfer payments would limit the rights of the party to whom the Court would eventually have agreed that the property would be given the title. Where the right of the pendente lite transferor to the property is upheld under the decree of the Court, then the title of the transferee to the property is disregarded. However, if the title of the pendente lite transferor is acknowledged

¹⁰ <https://lawbhoomi.com/doctrine-of-lis-pendens-and-section-52-of-transfer-of-property-act/>

¹¹ AIR 1973 SC 569

¹² Hardev Singh v. Gurmail Singh, Civil Appeal No. 6222 of 2000

¹³ AIR 2009 Raj.28

only for a smaller portion of the property, only for that portion of the property can a transferor have the title. The Transfer of the title of the rest of the land, for which there is no right for the pendente lite transferor, is invalid. This means that the transferee cannot claim the title or any other interest in the rest of the property. Finally, if the transferor was found to have no right in the first place to the transferred land, then the transferor would also not have gained rights on this property.¹⁴

The Supreme Court discussed and amended the law concerning the Doctrine of lis pendens in **Har Narain v Mam Chand**,¹⁵ in compliance with Section 47(2) of The Registration Act, 1908. The lis pendens doctrine states that no fixed property may be transferred when a lawsuit relating to it is pending. Under Section 47, from the date of execution, a recorded sale deed of a fixed property is considered to exist upon registration. The Court made it clear that the fiction produced according to Section 47 does not prohibit lis pendens from functioning. Thus, if the civil action starts and is registered later, the Court held that land sales are still subject to the principle of lis pendens.¹⁶

SUGGESTIONS

While the Doctrine is required to guarantee the protection of the parties' property rights, technology must also be used to digitize all property records and prevent the property title in question from being transferred while the case is pending. To ensure that the integrity and sanctity of the data are never in doubt, this can be accomplished by fully implementing digital property records, whereby each property is assigned a property identification number. This can be combined with the fact that India has already established a Unique Identification System for all of its citizens via the Aadhaar card. Additionally, it will assist in preventing situations in which the property cannot be identified. When an encumbrance certificate (EC) is issued, it mentions any encumbrance. This can be improved, to list any pending litigations to alert the registering authority and the parties concerned.

¹⁴ Ashok Kumar v. Govindammal and Anr, 2010.

¹⁵ Har Narain v Mam Chand,

¹⁶ <https://blog.iplayers.in/doctrine-lis-pendens/>

CONCLUSION

Rather than being based on the theory of notice governed by the common law principles of justice, equity, and good conscience, the doctrine of Lis Pendens is strictly grounded in the theory of necessity. Thus, it is essential to make sure that justice is served without violating the rights of any party. The Doctrine of Lis Pendens is a legal safeguard to prevent parties from disposing of property in a manner that might undermine the outcome of a pending lawsuit. It is designed to maintain the status quo of the property until the legal dispute is resolved, thereby ensuring fairness and protecting the rights of all parties involved in the litigation. The doctrine of lis pendens refers to the legal authority, control, or jurisdiction that a court exercises over the property in question throughout a lawsuit, up until a final judgment is reached. It includes the body of laws, customs, and guidelines that control and limit how the common law maxim, which states that no changes can be made to the subject matter of a lawsuit while it is pending, is applied. The fundamental goal of the doctrine of lis pendens is to stop a lawsuit's subject matter from being transferred to a different party while it is still pending. Any ownership transfer involving immovable property must abide by the court's ruling, and the transferee is bound by the court's judgment.

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