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'SAFEGUARDING BONA FIDE PURCHASERS': A CRITICAL ANALYSIS OF LIS PENDENS UNDER INDIAN LAW

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ABSTRACT

The doctrine of **Lis pendens**, embodied in **Section 52** of the Transfer of Property Act, functions as a crucial principle in property law. As it is a known fact and an established right of any owner to transfer or dispose of the property. However, under certain situation the law can restrict him to alienate the property. This paper explores the historical development of the doctrine, beginning with its roots in the landmark English case **Bellamy v. Sabine**, and analyses its adoption into Indian legal practice through significant judgments such as **Jayaram Mudaliar v. Ayyaswamy** and **Rajender Singh v. Santa Singh**. At the same time, it acknowledges the doctrine's drawbacks, especially its potential to disadvantage Bona fide purchasers who may be unaware of pending litigation, resulting in extended legal conflicts and hardship. The paper concludes by recommending reforms that improve transparency and better protect bona fide buyers, thereby aiming to strike a balance between preserving judicial authority and safeguarding third-party interests.

KEYWORDS: *Lis pendens, ownership, suit pending, doctrine, transfer of property, Bona fide purchaser.*

INTRODUCTION

The doctrine of Lis pendens, which is derived from the Latin term which means "pending litigation," is a legal principle that deals with the transfer of property during the pendency of a suit or legal proceedings. Section 52 of the Transfer of Property Act, 1882, finds its roots in the age-old doctrine of 'Lis Pendens', which literally translates to 'pending litigation'. This doctrine is based on the common law principle of "**utile pendente nihil innovetur**," which means during the pendency of litigation, nothing new in interest should be introduced or

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*created in respect of the property.*³ The doctrine works through the idea of *constructive notice*, which implies that anyone dealing with the property is presumed to know that a legal dispute affecting the property is underway. This presumption acts as a safeguard for a bona fide purchaser or Lender.

In practice, once a lawsuit affecting the title of a particular property is filed, a notice of *Lis pendens* can be entered in the public records of the area where the property is situated. This recorded notice informs bona fide purchasers or Lender that the property is subject to ongoing litigation and that the court's final judgment may alter the rights associated with the property. Consequently, any transaction involving the property during the pendency of the suit will remain subject to the court's decision.

DOCTRINE OF LIS PENDENS UNDER SECTION 52 OF THE TP ACT

Section 52⁴ The Transfer of Property Act, 1882, deals with the doctrine of *Lis pendens*, which is Latin for "pending litigation". This section is based on the maxim 'Ut lite pendente nihil innovetur', which means that nothing new should be introduced into a pending litigation.⁵ This section embodies the principle that any transfer of immovable property, made during the pendency of a suit or proceeding that affects the property, is void against the plaintiff in the suit.

Essentially, Section 52 operates on the concept of constructive notice, ensuring that anyone dealing with the property has deemed notice of the pending legal action. If a case concerning an immovable property is ongoing between two parties, one of them decides to sell or transfer that property, the person who receives the property(purchaser) will still be bound by the final outcomes of the case, regardless of whether they know about the litigation. This forms the essence of the rule of *Lis pendens*. The principle protects the interest of both parties by preventing one litigant from altering rights in the disputed property during the pendency of the suit in a way that may harm the other side.⁶

ESSENTIAL CONDITIONS UNDER SECTION 52

³ Black's Law Dictionary (2nd edition) co. litt.344

⁴ Transfer of property pending suit relating thereto

⁵ Narendra Bhai chhanganbhai bharatia vs Gandiva people's co-op bank ltd, AIR 2002

⁶ Dr. Avtar Singh, prof (dr)Harpreet Kaur, Transfer of Property Act, Sixth Edition

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The doctrine of ***Lis pendens*** is not applicable as soon as there is suit pending in the court. The essential conditions required to be fulfilled are:

In the case of **Dev Raj Dogra vs Gyan Chand Jain⁷** and **Amit Kumar Shaw vs Farida Khatoon⁸** The Supreme Court specified the elements required for the application of section 52, which are:

- There must be a pending suit or proceeding in a court of competent jurisdiction
- The suit or proceedings pending must not be a collusive one.
- The litigation must have the right to the immovable property in dispute.
- There must be a transfer of property in dispute by any party to the litigation.
- The rights of the other party must have been affected.⁹

The doctrine applies when the situation satisfies the above-mentioned criteria, and thus during the pendency of a suit, where the rights over an immovable property are directly and substantially involved, such property can't be transferred without permission of the court, and if done. So, the purchaser of such property has to follow the decree of the court.¹⁰

However, while analyzing the conditions, certain controversies have arisen. For example, there was much debate surrounding the 'competency of the court' as to if the competency expands to include arbitral proceedings. This was later clarified in the case of **Sadara Singh vs Mohan Lal Major¹¹** and subsequently through a string of other cases¹² wherein it was held that *the doctrine is extended to Arbitration proceedings as these arbitration tribunals have legal effects since they are constituted by a competent Court of law under the provisions of the Arbitration and Conciliation Act, 1996, and are binding on the parties.*

Another issue arose regarding the 'type of transfer', specifically whether it includes involuntary transfers. Involuntary transfer means to transfer/sale made by the court. As we do the plain reading of the doctrine, it applies only to 'private' transfers made by the parties' opponents to the suit; however, the Privy Councils have settled a well-established law on this

⁷ AIR 1981 (SC) 981

⁸ AIR 2005 SC 2209

⁹ Dr. R. K. SINHA, TRANSFER OF PROPERTY ACT 194 (19th ED., 2017)

¹⁰ Bellamy v Sabine, (1857) 44 eng.rep.842

¹¹ Sardara Singh v. Mohan Lal, A.I.R 1960

¹² Iqbal Singh v. Mahendra Singh and Ors. (2019) 8 S.C.C. 344

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point that *principles of this doctrine are applicable to court sales and to execution sale purchasers*,¹³ and also due to non-payment of government revenue sales being made.¹⁴

EMERGENCY AND BASIS OF LIS PENDENS

The legal principle of *Lis pendens* in India evolved significantly through key Supreme Court rulings. Specifically, in the cases of **Jayaram Mudaliar v. Ayyaswamy and Rajender Singh v. Santa Singh**,¹⁵ The Supreme Court provided a definitive clarification of the doctrine. The court elucidated the core definition as follows: "*Lis pendens means a pending suit, and the doctrine itself is defined as the Jurisdiction, power, and control that a court acquires over property involved in a suit for the duration of the action, continuing until the final judgment is rendered*".¹⁶

Through judicial pronouncements, Indian courts have clarified the foundational basis of the doctrine of *Lis pendens* followed in India.

Jurists have proposed two principal theories to explain this doctrine: the Theory of Notice and the Theory of Necessity. The 'Theory of Notice' posits that ongoing litigation acts as constructive notice to all parties that a dispute concerning the property is pending, effectively warning third parties against purchasing the suit property. Conversely, the 'Theory of Necessity' maintains that, for a just and effective adjudication, litigants must be restricted from alienating the property during the pending suit to ensure the proper execution of the court's final decree.

The primacy of necessity was famously established in the English case of **Bellamy v. Sabine**. In that ruling, it was determined as

*"If parties to disputes aren't prevented from transferring any of the property, then it would be impossible for any action/suit to be successfully terminated. Thus, the foundation for this doctrine doesn't rest upon constructive notice; it rests entirely upon necessity, where the party to litigation shouldn't alienate the property so as to affect the opponent."*¹⁷

¹³ Nilakant Banerji vs Suresh chunder Mullick (1885) 12 IA 171 (P.C.)

¹⁴ Mathura prasad Sahu vs. Dasai Sahu and Anr (A.I.R 1922 Pat 542),

¹⁵ (1973) AIR 569 (SC)

¹⁶ (1973) AIR 2537 (SC)

¹⁷ (1857) 1. De. G 566

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Elaborating further, the concept of notice serves a public policy function by safeguarding the rights of the plaintiff. In the absence of such a doctrine, defendants could repeatedly defeat the plaintiff by transferring the property before the pronouncement of judgment, thereby compelling the plaintiff to initiate multiple suits for the same relief. Such a situation would undermine the principle of *res judicata*,¹⁸ as the doctrine of Lis pendens operates as an extension of that principle. Consequently, to protect the rights of the plaintiff, the doctrine based on necessity has been accepted. A similar approach, affirming that the doctrine is grounded in expediency and necessity to ensure final and effective adjudication, has been adopted by Indian courts, notably in *Faiyaz Husain Khan v. Prag Narain*.

EXCEPTIONS OF THE DOCTRINE OF 'LIS PENDENS'- UNDER SECTION 52

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

Transfer with the permission of the court

The court in which a suit which 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 in order to make sure that the rights of any of parties are not jeopardized by such a permitted transfer.¹⁹ In the case of *Vinod Seth v. Devinder Bajaj*,²⁰ 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.

EFFECT OF THE DOCTRINE OF 'LIS PENDENS'- UNDER 52 OF THE TRANSFER OF PROPERTY ACT, 1882.

¹⁸ *Digambar Rao Hanmantrao Deshpande v. Rang Rao Ragunathrao Desai* (1949) 51 BOMLR 623

¹⁹ DARASHAW J. VAKIL, COMMENTARIES ON TRANSFER OF PROPERTY ACT 596 (5th EDITION.,2017)

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

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The doctrine of Lis pendens does not render a transfer of disputed property invalid in itself; rather, it subjects the transferee to the binding final decision of the pending litigation.²¹ Rights may still vest in the purchaser, but such rights remain subordinate to the decree ultimately passed by the court. A transfer effected during the pendency of a suit is therefore not void but is voidable at the instance of the party whose interests are adversely affected.²² Although the doctrine restricts alienation of property while litigation is ongoing, it does not automatically invalidate the transaction. Instead, the purchaser who acquires the property during the subsistence of the suit is bound by the result of that litigation.²³ Consequently, the doctrine does not annul such transfers outright; it operates only to limit the extent of the right, title, and interest that may be recognised in favour of the transferee. The underlying principle of Lis pendens is that no act of one litigating party during the pendency of the suit should be permitted to prejudice the rights of the opposing party.²⁴

RIGHT OF THIRD PARTY UNDER SECTION 52

The aim of Lis Pendens is to preserve the *status quo*, regardless of what the parties do. However, it falls short of its intended equitable and just foundations and also of the issues it causes to genuine buyers of the contested property.²⁵

According to the plain language of Section 52, it does not permit the transfer of property during litigation, but this prohibition is not absolute because any transfer made during this period would be illegal. In cases like **Sarvinder Singh vs. Dalip Singh**,²⁶ the transfer was deemed unlawful, but subsequent cases established certain restrictions on the doctrine that held the transfer valid while the litigation was pending. Cases like **Nanubhai Ammal vs. Sharma Rao**,²⁷ **Vinod Seth vs. Devinder Bajaj**,²⁸ and **Hardev Singh vs. Gurmail Singh**²⁹ validated transfers such as private sale by mortgagee, friendly suit, transfer made by someone not a party to the litigation, or when proceedings are of a collusive nature. This rule has had a significant negative impact since the transfer made is not deemed void and has been susceptible to exploitation by dishonest parties to the lawsuit. Without telling the potential

²¹ Thomas press (India) Ltd vs. Nanak Builders and Investors Pvt.Ltd., AIE 2013 SC 2389

²² A.M.K Mariam Bibi vs. M.A Abdul Rahim, 200 AIHC 661 at 662

²³ Ibid

²⁴ Usha Rani Banik vs. Haridas Das, AIR 2005 Gau 1 at 4

²⁵ ayaram Mudaliar v. Ayyaswamy, AIR 1973 SC 569.

²⁶ AIR 1997 SC 187

²⁷ AIR 1956 SC 593

²⁸ (2010) 8 SCC 1.

²⁹ AIR 2007 SC 1058.

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buyer about the ongoing legal battle, they transfer the disputed property, which causes the innocent buyer inconvenience.

The major overlooked aspect under this section is that, since the current legislation aims to maintain and protect the rights of the party and not be affected by such alienations made by other claimant, it is entirely ignorant of the interests of potential purchasers. As a result, buyers are subject to the court's decision and have no recourse until the case is decided.³⁰ Furthermore, the problem persists because most purchasers are unaware of the impending suit, and even if they were bona fide buyers, their plea is still not maintainable because the doctrine in the section is based upon public policy, as was reiterated in the case of **Abdul Chaininomin vs. Bishaheri Kom**.³¹ Additionally, the buyer is unable to initiate proceedings against the transferor or assert an independent claim to the property and above the rights of the transferor, who is the original party to the suit.

It can be argued that the section has actually led to the neglect of the rights of such bona fide buyers while simultaneously protecting the rights of the party to the original suit and, further, in the greater interest of necessity to reduce the burden of courts. The reason for such problem faced by the buyers is due to nonrequirement under the section, where the purchaser could have any prior knowledge about the pending suit and as declared "*Absence of notice is immaterial*". Courts have also made recognition towards the same in the 1958 case of **Saila Dassi vs. Nirmala Dassi**³² highlighting about pendentelite purchaser's application for impleadment should normally be allowed or considered liberally. In **Bhanumani Sahu vs. State of Orissa**,³³ the court stated that "being a trite law it requires justice for pendent-lite purchaser under section 52 of TPA and opportunity to protect their right should also be given by adding them as proper party, as their interest in subject matter of suit becomes substantial. The purchaser should be entitled with same legal rights and obligations as given to transferor during the litigation.

The Court acknowledged the difficulties, losses, and needless litigation brought about by the lack of a mechanism for purchasers to check whether a property is subject to a pending suit, decree, or attachment in the of **T. G. Ashok Kumar vs. Govind Ammal**.³⁴ In the Indian

³⁰ *Nagubai Ammal v. B. Shama Rao*, AIR 1956 SC 593

³¹ (1904) ILR 28 Mad 399

³² 1958 SCR 1287 (SC)

³³ AIR 1974 Ori 197 (Orissa High Court).

³⁴ AIR 2011 SC 260

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context, the property acquired by a buyer, even in good faith, will be subject to the court's judgment regardless of whether the buyer is aware of the ongoing legal action or not.

Furthermore, the doctrine is not applicable everywhere, so it cannot be claimed that there is little or no opportunity to protect the interests of genuine purchasers in these circumstances. In the UK, the foundation of the doctrine is still the principle of necessity, but in order to protect the interests of the transferee, it also mandates that the plaintiff register any property action or proceeding that is pending in court. The provision states "that a pending land action shall not bind a purchaser without express notice, unless it is for the time being registered under this section" in order to protect bona fide buyers and prevent fraud in the absence of notice.³⁵

The states of Maharashtra and Gujarat in India have implemented similar changes to address the issue faced by innocent purchasers, much like the legislation in the UK.³⁶ The Section mandates that notice of pendency of suit must be registered under **Section 18** of the **Indian Registration Act, 1908**,³⁷ in order for the rule laid down in Section 52 to operate. The changes so introduced emphasize the principle of Estoppel to prevent injustice being meted out to the other party. Estoppel bars a party from denying or alleging a certain fact as a result of that party's prior behaviour, allegation, or denial. The amendment also brings about the Doctrine of Notice, which gives a bona fide buyer of a property precedence over any prior equitable interests. The term bona fide refers to the plaintiff's failure to register a Lis Pendens, which causes the buyer to be unaware that the property is not subject to the court's future ruling.

CONCLUSION

Through the Indian cases and judicial pronouncement discuss in the paper, it can be said that there lies much difference between the scope and practical implementation of the doctrine. At the same time, to prevent misuse, parties should not be allowed to transfer the property even during the period provided for registration of such notice. A reasonable time limit of 90 days

³⁵ Sir William Holdsworth, *A History of English Law* 603 (7th ed. 1956)

³⁶ *Maharashtra Land Revenue Code (Second Amendment) Bill, 2025; State Govt Regularises Land Parcels Restricted Under Fragmentation Act*, *Times of India* (Nov. 5, 2025),

³⁷ *The Registration Act*, No. 16 of 1908,

has been suggested for registration, keeping in mind the diverse conditions across the country.

The doctrine of Lis pendens, as contained in Section 52 of the Transfer of Property Act, is based on the legal maxim "*Ut lite pendente nihil innovetur*", which means that nothing new should be introduced while a case is pending. The main objective of this doctrine is to prevent multiple litigations by restricting the transfer or dealing of disputed property during the pendency of a suit. It is a beneficial principle founded on public policy and the need for final and effective adjudication.

This doctrine plays an important role in the proper administration of justice. If parties are freely allowed to transfer disputed property during litigation, it would seriously affect the execution of court decrees and undermine judicial efficiency. Therefore, completely removing this principle is neither practical nor desirable. However, the present provision does not protect bona fide purchasers who buy property in good faith during the pendency of a suit without knowledge of the dispute. To ensure fairness, it has been suggested that Section 52 should be amended to require mandatory registration of a notice of pendency of suit under the Registration Act. This would put prospective purchasers on notice about ongoing litigation.

At the same time, to prevent misuse, parties should not be allowed to transfer the property even during the period provided for registration of such notice. A reasonable time limit of 90 days has been suggested for registration, keeping in mind the diverse conditions across the country. Further, since similar principles of Lis pendens are already present in provisions like Sections 64 and 74 and Order 21 Rule 102 of the Civil Procedure Code, these safeguards should continue to operate to protect the rights of decree-holders.

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