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# Indian Law on Lis Pendens

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## ABSTRACT

*In 1882, the Transfer of Property Act came into existence. Many of the sections codified under this act were based on equitable principles. One of such section that this research paper is focusing upon is Section 52 which is titled as “Transfer of Property pending suit relating thereto.” As it is a well-known fact and an established right of any owner to transfer or dispose of the property. However under certain situations the law can restrict him to alienate the property. One such situation is incorporated under Section 52 where alienation of the immovable property is prohibited when a dispute with regards to rights of the same property is pending in a competent court of law. This section is not of a general binding nature, it only binds the specific parties involved. This notion is based on the classic old doctrine of Lis Pendens. The epistemology of this term refers to ‘pending litigation’ and it is based on a common law principle “ut lite pendente nihil innovetur” which means “during pendency of litigation, nothing new interest should be introduced or created in respect of the property.” The logic behind this doctrine is that no change in the claim should be brought as creating a new interest would mean transfer of property during the pendente-lite which would further affect rights of the parties over the property and limits the court to make a proper administration of justice for the party who originally claimed. This doctrine has been adopted by many countries in the property laws due to its principle based upon the foundations of justice, equity and good conscience which aims at maintaining the status quo of parties and moreover to remain unaffected by act of parties to the pending litigation. However in light of different case laws and judicial pronouncement made in India, the doctrine has been modified where limitations have been created and further with practical implementation of the said doctrine it cannot be said that no loopholes can be found and one of the major loopholes the paper focuses is upon the rights of innocent buyers during such pendency.*

## I. INTRODUCTION

In 1882, the Transfer of Property Act came into existence. Many of the sections codified under this act were based on equitable principles. One of such section that this research paper is focusing upon is Section 52 which is titled as “Transfer of Property pending suit relating

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*thereto.*” As it is a well-known fact and an established right of any owner to transfer or dispose of the property. However under certain situations the law can restrict him to alienate the property. One such situation is incorporated under Section 52 where alienation of the immovable property is prohibited when a dispute with regards to rights of the same property is pending in a competent court of law. This section is not of a general binding nature, it only binds the specific parties involved. This notion is based on the classic old doctrine of *Lis Pendens*. The epistemology of this term refers to ‘pending litigation’ and it is based on a common law principle “*utlile pendente nihil innovetur*” which means “during pendency of litigation, nothing new interest should be introduced or created in respect of the property.”<sup>2</sup> The logic behind this doctrine is that no change in the claim should be brought as creating a new interest would mean transfer of property during the *pendente-lite* which would further affect rights of the parties over the property and limits the court to make a proper administration of justice for the party who originally claimed. This doctrine has been adopted by many countries in the property laws due to its principle based upon the foundations of justice, equity and good conscience which aims at maintaining the status quo of parties and moreover to remain unaffected by act of parties to the pending litigation.

### **(A) Scope and Objective**

The scope of the paper is to critically analyse the development, jurisprudence and amendments of the doctrine, pertinent problems and loopholes of the said doctrine in India still existing and compare the laws of the same doctrine with laws of other jurisdiction. This is done to address these problems and arrive at a workable solution both on real and theoretical levels.

### **(B) Research Problem**

How has the validity of transfer of property during *Lis-Pendens* affected innocent buyer’s rights?

## **II. EMERGENCE AND BASIS OF LIS PENDENS**

The development of the said doctrine in India can be seen when Supreme court elucidated its definition in cases *Jayaram Mudaliar v. Ayyaswami* and *Rajender Singh v. Santa Singh*<sup>3</sup>: “*Lis-pendens means a pending suit and the doctrine of lis-pendens has been defined as the jurisdiction, power or control which a Court acquires over property involved in a suit pending the continuance of the action, and until final judgement therein.*”<sup>4</sup>

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<sup>2</sup> *Black’s Law Dictionary* (2nd Edition) Co. Litt. 344.

<sup>3</sup> [1973] AIR 569 [SC].

<sup>4</sup> [1973] AIR 2537 [SC].

Further through judicial pronouncement made by Indian courts it clarified the basis of the doctrine that India would follow:

Since there are two theories coined by jurists to explain the basis of this doctrine, 'Theory of Notice' and 'Theory of Necessity' The former theory states that pending litigation will serve as a constructive notice of dispute being pending on the said land to everyone. Thus this could be considered as a warning to third parties against buying the suit property. While other theory 'necessity' says that for proper and fair adjudication it necessarily restricts the litigants from alienating the property during pending suit so that it doesn't interfere with the proper execution of the courts decree.

The significance of this law and clarification on basis of the doctrine were fully expounded in *Bellamy v. Sabine case* where it held:

*"If parties to dispute aren't prevented from transferring any of the property, then it would be impossible for any action/suit to be successfully terminated. Thus..foundation for this doctrine doesn't rest upon constructive notice; it rests entirely upon necessity, where..party to litigation shouldn't alienate the property so as to affect the opponent."*<sup>5</sup>

To elaborate more on this, the idea of notice is taken because of the public policy role to protect plaintiff's right. In absence of this necessity the plaintiff would be consistently defeated by defendants, who would keep transferring the property prior to the judgement if he thinks the case wouldn't be in his favour, thus as the title keeps transferring and plaintiff would have to go to different places and file different suits for claiming same possession. This would further harm the concept of *res-judicata* since *lis-pendens* is also an extension of the law of *res-judicata*<sup>6</sup> Hence to protect petitioner's right the doctrine based on necessity was accepted.

The similar view has been solidified in India for this doctrine i.e. based upon expediency and necessity for final adjudication in *Faiyaz Husain Khan v. Prag Narain*.<sup>7</sup>

### III. ANALYSIS OF THE RESEARCH PROBLEM

With India adopting this doctrine to ensure that justice will be well served and that no person's right will be curbed. However as we do the analysis of the said doctrine of India, in light of different case laws and judicial pronouncement made, the doctrine has been modified where limitations have been created and further with practical implementation of the said doctrine it cannot be said no that loopholes or problems can be found.

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<sup>5</sup> [1857] 1 De.G 566

<sup>6</sup> Digambarrao Hanmantrao Deshpande v. Rangrao Ragunathrao Desai [1949] 51 BOMLR 623

<sup>7</sup> [1907] 29 All 389.

The problems with regards to this section in India can be seen from a very long time where first before 1929 the issue regarding the meaning of the phrase ‘pendency of suit’ was raised. Thus to clarify this position an amendment was passed in 1929 where an *Explanation* has been added to said section to explain the word ‘pendency’ i.e. period of *lis-pendens* commences from the time suit is filed and continues until the verdict has been declared.

Further in case *Dev Raj Dogra v. Gyan Chand Jain* while interpreting the section it has laid down conditions to fulfil the application of the said doctrine<sup>8</sup>:

- There should be pendency of suit/proceedings
- The court should have competency to hear the matter.
- The suit must not be collusive
- The main issue regarding rights of immovable property should be directly and specifically in question in the proceedings
- The transfer should have been completed during the pendency and further defeating the rights of other party to suit.

Time and again many issues have aroused with respect to these specific conditions some of which are as highlighted below:

A controversy earlier existed with ‘competency of the court’ i.e. whether doctrine of *lis-pendens* is applicable to arbitral proceeding as the section states ‘Court’ ‘Suit’/‘Proceeding’ but is ambiguous in defining them and what it excludes and includes?

Thus to clarify this position the High Court’s firstly in case *Sardar Singh v. Mohan Lal Major* and latter reiterated in other cases<sup>9</sup> also that “*the doctrine is extended to Arbitration proceedings as these Arbitral Tribunal have legal effects since it is constituted by competent Court of law under provisions of Arbitration and Conciliation Act, 1996 and is binding on the parties.*”<sup>10</sup>

A point of debate also aroused was with regard to ‘type of transfer’, more specially does definition of *lis* covers involuntary transfers? Involuntary transfer means transfer/sale made by the court. As we do plain reading of the doctrine it applies only to ‘private’ transfers made by

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<sup>8</sup> [1981] AIR 981 (SC)

<sup>9</sup> *Hanmantagouda Nagangouda Hiregoudar v Shivappa Dundappa Manwi*, [1940] 42 Bom LR 1123 [19], *Iqbal Singh v. Mahender Singh and Another* – [2012] SCC 5852 (Del), *Swaran Singh v. Arjun Singh and Others* – [2013] SCC 26883(P&H)

<sup>10</sup> [1990] AIR 254 (P&H) 254

the parties opponents to the suit, however the Privy councils have settled a well-established law on this point that “*principles of this doctrine are applicable to court sales and to execution sale purchasers*”<sup>11</sup> And also due to non-payment of government revenue sale being made<sup>12</sup>.

Further next issue that aroused was what happens if the transfer is made *pendentelite*. According to the plain language of Sec.52 it doesn't allow the transfer of property during litigation but this bar is not an absolute one where if any transfer made would be void or illegal. Earlier SC in cases like *Sarvinder Singh vs. Dalip Singh*<sup>13</sup> have held the transfer would be illegal but after this several decisions that have been established in which Indian courts have drawn limitations to the said doctrine and overturned this case where the transfer during the pending litigation can be held valid some of which are as follows:

In *NagubaiAmmal v. Sharma Rao* it stated that “*the phrase “affect the rights...made therein” clarifies that transfer is good except to the extent that it doesn't conflict with rights of the parties to litigation. Thus it is in this view that the transfer is valid*”<sup>14</sup>

In *Vinod Seth v. Devinder Bajaj* it held “*the power to exempt the property from the operation of Sec.52 is subject to the power of court to such conditions as it may deem fit and without affecting the rights of other party*”<sup>15</sup>

In *Hardev Singh v. Gurmail Singh* stated “*Section 52 does not declare a pendentelite transfer by a party to the suit as void or illegal, but only makes the pendentelite purchaser bound by decision of the pending litigation.*”<sup>16</sup>

Thus, many instance where transfer has been held valid such as private sale by mortgagee<sup>17</sup>, friendly suit<sup>18</sup>, when only transfer is affected<sup>19</sup>, transfer is made by someone not a party to the litigation<sup>20</sup> or when proceeding are of collusive nature<sup>21</sup> etc.

Therefore, according to the rule stated in above cases it can be said that if a transfer has taken place, to be specific an unauthorised alienation of the immovable property is made whose rights are in question during a pending litigation, the law doesn't invalidate such transfer but the

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<sup>11</sup> *Nilkant v. Suresh Chander*, [1885] ILR 12 Cal. 414 , *Motilal v. Karrabulam*, [1897] , ILR 25 Cal. 179

<sup>12</sup> *Mathura Pmsad Sahu v. Dasai Sahu*, [1922] Pat. 542.

<sup>13</sup> [1996] 5 SCC 559

<sup>14</sup>[1956] AIR SC 593

<sup>15</sup> [2010] 8 SCC 1

<sup>16</sup> [2007] 2 SCC 404

<sup>17</sup> *Faiyaz Hussain Khan V. Prag Narain*, [1907] 29 All. 339

<sup>18</sup> *Kathir V. Mremadiss*, [1915] 38 Mad 450; *Ram Narain V. Sajid Ali Khan*, [1946] AIR Oudh 99

<sup>19</sup> *Shib Chandra V. Lachmi Narain*, [1929] 33 CWN 1091 PC.

<sup>20</sup> *Pethu Ayyar V. Sankaranarayana*, [1917] 40 Mad 955

<sup>21</sup> *Gouri Dutta V. Jijibai*, [1912] 36 Bom. 189

purchaser *pendentelite* will be obligated by the results of the litigation<sup>22</sup> because of the principle that as the result will bind the party similarly it will bind upon the person who derives his right and interest through him and moreover to maintain and protect the right of the other party which should remain unaffected because of such acts done by the other party. The hard effect of this rule has left a major problem since the transfer made is not held void it has become exposed to a lot of misuse by unscrupulous parties to suit. As they transfer the property which is in dispute without informing the prospective buyer about the pending litigation. To anyone this would come as a major shock of their life as these buyers have to face unnecessary litigation.

Thus, the major loophole of this section is that it has been completely ignorant towards the interests of prospective buyers since the present status of law states that it's only focus is to maintain and protect the rights of the party and not be altered by such alienations made by other claimant. Hence all these buyers have to subjected to court decision and there is no scope of remedy available to them until the final judgement. And moreover as seen mostly these buyers face this problem due to the lack of awareness and notice of the pending suit, therefore as they were innocent bonafide buyers still their plea upon this will not be helpful as this doctrine embodied in this section is based upon public policy the question of good faith or bona fide cannot arise as reiterated in the case *Abdul Chaininomin v. Bishaheeri kom*<sup>23</sup> also. But as this principle talks about equitable and just foundations also in these kinds of situation to address the rights of innocent buyer should become an important factor.

At present with respect to the rights of innocent buyers under this section are at disadvantage firstly as he is very limited in his options to recover the property and get back the consideration paid or any compensation if any improvements have been made by him to the property<sup>24</sup> since once he gets to know that about *lis-pendens* due to the established rule that even though he is not a party to suit but the purchaser has to be subservient to the decision that court will make regarding that property<sup>25</sup>.

Further the worst drawback is that purchaser also doesn't have the right to initiate proceedings against transferor and moreover cannot claim to have an independent right during the suit over the property and above the right of the transferor who is the original party to suit<sup>26</sup>. The reason being that authorised transfer made is violation of law and anything related to it can never hold a legally enforceable right thus the purchaser cannot get the claim adjudicated. But what about

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<sup>22</sup> JayaramMudalier v Ayyaswami and Ors [1973] AIR SC 569

<sup>23</sup> [1973] AIR Mys 131

<sup>24</sup> Hari Bachan v. Har Bhajan, [1975] AIR (P&H) 205 (210)

<sup>25</sup> Shyam Lal and Anr. v Sohan Lal and Ors. [1928] AIR All 3.

<sup>26</sup> Moti Lal v. Karab-ud-Din [1898] 25 Cal. 179

innocent purchasers who had no malafide intentions and were itself a victim of fraud. As stated in the case the “*no defence of being bona fide purchaser for value without notice can be available*”<sup>27</sup> Even being under no fault from their side still they have to face such unfairness and arbitrariness.

Thus it can be rightly said for this section that while protecting the rights of the party to original suit and further in the greater interest of necessity to reduce the burden of courts on number of trial it has actually resulted in negligence of such *bonafide* purchasers rights.

The reason being for such problem faced by these buyers is due to no requirement being under this section where the prospective purchasers could have any prior knowledge about the pending suit and as declared “*Absence of notice is immaterial*”<sup>28</sup> this problem has now become more acute major cities and towns. However if a focus on this requirement could have been made still the objective of this doctrine can be achieved as with providing these buyer any method for such awareness it would itself be ensured that interest of the parties to original suit is not frustrated due to the third party being aware that presently after paying the consideration he would not be able to get full enjoyment of the property.

Further many court also have made recognition towards the same concern, in 1958 the apex court in case *Saila Dassi v. Nirmala Dassi* had highlighted about “*pendentelite purchaser’s* application for impleadment should normally be allowed or considered liberally.”<sup>29</sup>

Due to this concern being acute in 2010, the judges in *T.G. Ashok Kumar v. Govindamma*<sup>30</sup> case quoted that due to lack of adequate mechanisms of knowing whether the suit or proceeding is pending upon that immovable property being purchased it has caused a lot of anxiety, loss and hardship to such buyers.

Only the transferor enjoys benefits from such transaction, as anyone in transferee place would be traumatize to know that after paying such consideration also still cannot gain full enjoyment of this property, they are unnecessary drag into litigations for decades and can ultimately be denied their title and moreover the present law doesn’t provide them with any remedy. Thus, to protect their interest some suitable/convenient mode should be made available where they could get prior knowledge and reduce the hardship faced.

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<sup>27</sup> Balwinder fit Kafir v. Financial Commissioner (Appeals), Punjab, [1987] AIR P&H 189-190 ; Ceean International Pvt Ltd v Ashok Surana [2003] AIR Cal 2003

<sup>28</sup> Feuyaz Hussain Khan v. Prag Narain, [1339] ILR 29 All (PC); Rappel Aujushi v. Ramakrishna, [1970] AIR Ker 188.

<sup>29</sup> [1958] AIR SC 394

<sup>30</sup> [2010] 14 SCC 370



In *Bhanumani Sahu v. State of Orissa* also it reiterated that “being a trite law it requires justice for pendente-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 obligation like transferor during the litigation which may ultimately be determined by court after the verdict.”<sup>31</sup>

Moreover the dramatic irony is that this doctrine is not universally applicable thus it cannot be said that there is no scope for *Bonafide* purchasers interest to be protected in such situations because as analysed below it is visible not only from the statues of other jurisdiction but within select states of India also through amendments they have tried to resolve this pertinent problem which still exist at national level.

The basis of doctrine adopted in UK is still based on necessity however they not only focus upon to protect the rights of plaintiff by restricting transfer during *pendetelite* but in order to protect transferee interest it obligates the plaintiff to register about property action/proceeding pending in court as the section 5(1) of the statue i.e. UK Land Charges Act, 1972 states. Further to prevent fraud and protect *bonafide* purchasers in absence of notice the provision also 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.”<sup>32</sup> Also the consequence for plaintiff not obligating to the rule of getting the property action registered will lead to land being transferred to the purchaser and the court become powerless to render the property to plaintiff even if he wins.

In light of the above established law of UK similarly within selected state of India i.e. in Maharashtra and Gujarat through state amendment they have introduced similar changes to address the problems faced by these innocent buyers due to lack of unawareness of the suit. This act was passed in 1939 in pre-independence era, thus by British legislators this advancement was initiated to have the similar law of lis-pendens as of England by adding the conditions “Allowing plaintiffs to register notices of lis pendens” and “after the notice is so registered”. Thus, the section provides that for the operation of rule laid down under Sec.52 it is a pre-requisite that notice of pendency of suit should be registered under Section 18 of Indian Registration Act,1908.

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<sup>31</sup> [2013] AIR Orissa 52

<sup>32</sup> UK Land Charges Act, 1972, s 5(7)

The rationale behind the principle improvised at state level which also highlights the jurisprudential background of law were:

Firstly due to the interest of prospective buyers being taken for granted and further their rights being totally ignored especially in context of the misery faced by *bonafide* purchasers it becomes important to induce the doctrine of notice. *Bonafide* refers to the lack of notice and knowledge about *lis-pendens*. Through such registration made it becomes the duty of such purchasers to verify about the title of the property under the concept of 'caveat emptor' and if he fails to find out it cannot be said that it was unjust for such buyer to be subservient to Court's decision.

With such amendment it is also focusing on the principle of Estoppel. It is a legal principle which bars a party from denying or acting contrary to certain fact owing to their previous actions/conducts<sup>33</sup>. The rationale is to prevent the injustice faced to the other party due to not disclosing proper facts. Hence at present also since it is the duty of seller under sec.55 of TPA to inform about pending litigation and if he still intends to fraud with not intimidating the buyer by having *malafide* intentions thus, with this amendment as a suitable mechanism of awareness is being provided to protect the interest of these third parties through registration being made for the land actions/proceeding hence it would prevent them from not only being a victim of fraud but at same time not suffer any injustice by facing unnecessary litigation.

#### IV. CONCLUSION AND SUGGESTIONS

In India problems with regard to property law are sundry. One such problems that this research paper focuses upon is the process that govern the doctrine of *lis-pendens* in India. Through the Indian cases and judicial pronouncement demonstrated it can rightly be said that there are irreconcilable difference between the scope and practical implementation of this doctrine. As it is said that this doctrine rests upon equity, good conscience and justice but in reality these foundations are lacking in its application since the present law of *lis-pendens* while protecting rights of original party to suit so that it remains affected by act of other claimant it has been negligent towards the rights and interest of *bonafide* purchasers of property *pendente-lite*. Due to no means of awareness and further no remedy available to claim upon the title of the property after paying consideration also and just being unnecessarily bound by the litigation for decades and being subservient to Court's decision which could also result in the title being ultimately

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<sup>33</sup> 'Understanding Estoppel' (*Investopedia*, 2020) <<https://www.investopedia.com/terms/e/estoppel.asp>> accessed 30 November 2020.

denied. Hence, the Indian law of *lis-pend* have been totally inadequate and unfair towards these innocent purchasers.

Therefore to address these concerns being raised for the doctrine of *lis-pendens* in India embodied under section 52 of TPA it is important to recognize and protect the interest of these bonafide purchasers by:

Firstly the present law needs an amendment at national level. The main reason for such innocent buyers facing such hardships and injustice is due to their lack of awareness and knowledge about the pending litigation on the property as the present provision provides no mechanism to obtain information regarding such suits. At present since the doctrine adopted in India is based on necessity and expediency it just protect the right of the parties to original suit however if the rigor of this classic common law doctrine can be slightly soften i.e. induce the doctrine of notice also, it can avoid the situation of unfairness being made towards the interest of these *bonafide* buyers. Hence by providing a suitable and convenient mode from where the prospective purchaser before purchasing the property can verify about title of the property it can reduce their trouble from being a victim of fraud and unnecessarily being bound to a litigation where they are not even a party to suit for decades. One method could be of adopting and amending the doctrine similar to that of law in UK or by emulating the local amendments to whole of India. In my opinion I would also agree with similar mechanism as stated by them but with a little modification that as soon as the plaintiff files the case he should compulsory register about the land action being commenced under the Indian Registration Act, 1908.

The other mechanism whose usage have become really common now-a-days by government is by linking the Aadhar cards of the parties, the government can create a computer data base which would be a more easier and convenient way for such prospective purchaser to officially check and do due diligence regarding the character of the property.

The Law commission in its 157<sup>th</sup> report<sup>34</sup> has also suggested that this section nationwide requires an amendment for which they recommended the Bombay amendment with an addition to be made of providing specific/reasonable time to the plaintiff to get the notice of pending litigation on the property registered. As it is a time consuming procedure thus the sufficient time the commission estimated is three months for getting the litigation registered under Indian Registration Act, 1908. Thus it suggested that this recommendation should be considered by the parliament so that change can be brought countrywide and further to reduce the exploitation

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<sup>34</sup> 'Law Commission of India One Hundred Fifty-Seventh Report', [http://www.registrationact.in/Pdf/Law%20Commission%20Report%20-%20S.52\\_T.P.Act.pdf](http://www.registrationact.in/Pdf/Law%20Commission%20Report%20-%20S.52_T.P.Act.pdf)> accessed 29 November 2020

being created through it by forgoing the interest of innocent buyers.

However these recommendation of law commission were never accepted but now I think it is high time with the problem being so acute thus some legal framework or mechanism should be adopted as stated some in above points because only through such modes the lacuna in this section of Property Law of being arbitrary and unfair can be removed and foundations of equity and justice can become strong where presently it lacks.

Lastly, other precautionary measure which can be taken to protect the rights and interest of innocent buyers where without the knowledge of pending suit over the property it is transferred to them by a litigant who is party to the suit and further even being a victim of fraud committed on them by the transferor no remedy is available to them for asserting or claiming an interest over the title of the property. Thus to avoid such injustice though hard to prove but if purchasers can prove their bona fide intention or with that transferors male fide intension. With proving that some remedies can be set apart for such innocent buyers like after they find out about the *pendente-lite* they could be allowed to annul the contact of transfer and further get consideration paid back made for the same property or a compensation of the same amount immediately and not wait until the final disposal of the litigation. Henceforth, if such changes are made to the *lis-pendens* doctrine of Indian law it could be well said this section now ensures justice and equality to the deserved ones where no person's rights are being curbed over another's right.

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