

# **THE DOCTRINE OF LIS PENDENS**

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## INTRODUCTION

The branch of 'Law of Property' has transposed drastically since the advent of the 'Transfer of Property Act, 1882'. Majority of the sections codified under the said act grounds on equitable principles to establish the right of any owner of a property to transfer or dispose of the immovable property with ease. However, the "Transfer of Property pending suit relating thereto" enlisted under Section 52 of the act was worded in order to restrict such right of alienation of immovable properties in instances where a dispute regards to the rights of the said property is pending in a competent court of law. The nature of this section is not 'generalized' but rather it only binds the specific parties involved. 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 "*ut lite pendente nihil innovetur*" which means '*during the pendency of litigation, nothing new interest should be introduced or created in respect of the property*'<sup>2</sup>.

## EMERGENCE AND BASIS OF LIS PENDENS

The emergence of this doctrine can be traced back to the matter of *Rajendra Singh and Ors. vs. Santa Singh and Ors.*<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 judgment therein.'*

This reasoning was further reiterated by the apex court in *Jayaram Mudaliar vs. Ayyaswami and Ors.*<sup>4</sup> Furthermore, through judicial pronouncements, two theories have emerged. First is the 'Theory of Notice' and the 'Theory of Necessity'; these theories have been formulated by jurists in order to construe the basis of this doctrine. The former theory words that pending litigation will serve as a constructive notice of dispute being pending on the said immovable property to everyone. Thus, it could be considered as a warning to third parties against buying the said property. Alternatively, the latter theory suggests that for fair adjudication, it is imperative to bound the litigants from alienating the property during the pending suit in order to ensure that there is no interference with the execution of the court's decree.

This clarification has been properly proffered in the case of *Bellamy vs. Sabine*<sup>5</sup> where it was proffered as –

*"If parties to a dispute 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."*

Based on expediency and the necessity for final adjudication, this view has been consolidated in the case of *Faiyaz Husain Khan vs. Munshi Prag Narain*<sup>6</sup>.

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

<sup>3</sup> *Rajendra Singh and Ors. vs. Santa Singh and Ors.* MANU/SC/0342/1973.

<sup>4</sup> *Jayaram Mudaliar vs. Ayyaswami and Ors.* MANU/SC/0507/1972.

<sup>5</sup> *Bellamy vs. Sabine* MANU/ERP/0808/1857.

<sup>6</sup> *Faiyaz Husain Khan vs. Munshi Prag Narain* MANU/MH/0070/1907.

In order to further understand why the notion of notice and the 'Theory of Necessity' has been so widely accepted and credited is because of public policy; to protect the plaintiff's rights. In deprivation of this, the plaintiff would be constantly vanquished by defendants who will keep transferring the title of the immovable property prior to the judgment. The plaintiff, if he wins, will be stuck in a constant circle of filing different suits in order to gain possession of the said property. This in turn would hamper the theory of *res-judicata* since *Lis Pendens* is often considered as an extension of the same.<sup>7</sup>

#### **ESSENTIAL CONDITIONS FOR THE DOCTRINE OF LIS PENDENS**

This doctrine does not apply mechanically as soon as there is a suit pending concerning immovable property, but rather there are certain essential conditions that need to be fulfilled. Hon'ble Justice A. N. Sen in the matter of *Dev Raj Dogra and Ors. vs. Gyan Chand Jain and Ors.*<sup>8</sup> had listed down three essential conditions for the implementation of the doctrine –

- i. A suit or a proceeding in which any right to immovable property must directly and specifically in question must be pending;
- ii. The suit or the proceeding shall not be a collusive one;
- iii. Such property during the pendency of such a suit or proceeding cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under any decree or order which may be passed therein except under the authority of Court. In other words, any transfer of such property or any dealing with such property during the pendency of the suit is prohibited except under the authority of the Court, if such transfer or otherwise dealing with the property by any party to the suit or proceeding affects the right of any other party to the suit or proceeding under any order or decree which may be passed in the said suit or proceeding.

Alternatively, from the language of section 52 of the Transfer of Property Act, 1882, the following conditions can be made out –

- i. There is a pendency of a suit or proceeding.
- ii. The suit or proceeding must be pending in a Court of competent jurisdiction
- iii. A right to immovable property is directly and specifically involved in the suit.
- iv. The suit or proceeding must be collusive.
- v. The property in dispute must be transferred or otherwise dealt with by any party to suit.
- vi. The transfer must affect the rights of the other party to the litigation.<sup>9</sup>

Therefore, in order for the application of the doctrine of *Lis Pendens* the aforementioned criteria need to be met, and thus during the pendency of a bona fide suit, in a court of competent jurisdiction, where the rights over immovable property are directly and substantially is 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 the court.<sup>10</sup>

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<sup>7</sup> Digambarrao Hanmantrao Deshpande vs. Rangrao Raghunathrao Desai MANU/MH/0019/1949.

<sup>8</sup> Dev Raj Dogra and Ors. vs. Gyan Chand Jain and Ors. MANU/C/0500/1981.

<sup>9</sup> DR. R.K. SINHA, TRANSFER OF PROPERTY ACT 194 (19th Ed., 2017).

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 *Sardara Singh vs Mohan Lal Major*<sup>11</sup> and subsequently through a string of other cases<sup>12</sup> wherein it was held 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.*

Another issue arose with the 'type of transfer', as to 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 point that *principles of this doctrine are applicable to court sales and to execution sale purchasers*<sup>13</sup> and also due to non-payment of government revenue sale being made<sup>14</sup>.

#### EXCEPTIONS TO THE DOCTRINE OF LIS PENDENS

While the doctrine applies when the aforementioned conditions are met, however, there exist certain exceptions wherein the courts may grant permission to any of the parties to dispose of the property while the suit is pending but subjected to the conditions that it may impose. In such circumstances, the court, carefully scrutinizes the facts and circumstances of the matter, in order to ensure that the rights of either party are not jeopardized by the permitted transfer.<sup>15</sup> Similarly, in the case of *Vinod Seth v Devinder Bajaj and Ors.*,<sup>16</sup> the court exempted the application of *Lis Pendens* upon the furnishing of security of Rs. 3,00,000.

#### CONCLUSION

After analyzing the various aspects related to section 52 of the Transfer of Property Act, 1882, one can deduce that in order to attract the doctrine of *Lis Pendens*, the suit must be regarding an immovable property that *directly* and *substantially* involves questions about its rights; this ensures that the doctrine can only be attracted when such conditions are met and cannot be misused by anyone by merely mentioning an immovable property in the plaint. Secondly, the doctrine in its pith and substance prohibits transfer during the pendency of the suit. This protects the plaintiff to the extent that if any sale or transfer of title is made during the pendency of the suit, then any such action will be invalidated and the purchaser shall become bound by the result of the litigation. So in a way, the

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<sup>10</sup> Balwant Singh vs. Buta Ram and Ors. MANU/PH/0649/2009.

<sup>11</sup> Sardara Singh vs. Mohan Lal, MANU/PH/0068/1990.

<sup>12</sup> Iqbal Singh vs. Mahender Singh and Ors. MANU/DE/5899/2012.

<sup>13</sup> Nilakant Banerji vs. Suresh Chander Mullick, MANU/PR/0030/1885; Motilal vs. Karrabuldin, MANU/PR/0019/1897.

<sup>14</sup> Mathura Prasad Sahu vs. Dasai Sahu and Anr., MANU/BH/0013/1922.

<sup>15</sup> DARASHAW J. VAKIL, COMMENTARIES ON TRANSFER OF PROPERTY ACT 596 (5th Ed., 2017).

<sup>16</sup> Vinod Seth vs. Devinder Bajaj and Ors., MANU/SC/0424/2010 .

interest which would have otherwise been of a vested nature to the purchaser becomes a contingent interest when a transfer is made pendente lite.

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