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# LIS PENDENS AND THE DILEMMA OF SAFEGUARDING THE INTERESTS OF THE BONA FIDE PURCHASERS

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## ABSTRACT

Though the doctrine of *lis pendens* intends to uphold the principles of equity, justice, and good conscience, its embodiment in its current form under Section 52 of the Transfer of Property Act, 1882, has been criticized for not having adequate safeguards for preventing mischief by unscrupulous parties that jeopardizes the ownership rights of bona fide purchasers. Hence, in this paper, we revisit this conundrum of protecting the interests of the bona fide purchasers, wherein upon thoroughly examining the gaps prevalent in the current legislation and reviewing the existing recommendations put forth in addressing this legislative gap, we conclude that legislative amendments be brought in to make purchasers aware of the potential uncertainties surrounding the title so that a balance be struck for protecting litigant rights, fostering trust in property transactions, and promoting a fair and efficient real estate market.

**Keywords:** Lis pendens, bona fide purchasers, legislative reforms, ownership rights.

## 1. INTRODUCTION

Section 52 of the Transfer of Property Act, 1882 (“TPA”), deals with the transfer of property that is a subject to an ongoing dispute or litigation. Based upon the maxim “*ut lite pendente nihil innovetur*”, the doctrine of “*lis pendens*”, as embodied under Section 52 TPA, rests upon the principles of equity, justice, and good conscience as it acknowledges the impossibility in bringing an action or suit of successful termination if alienations are permitted to prevail, thereby binding a transferee *pendente lite* by a court decree as if they were party to the suit. Though this principle intends to uphold equity, justice, and good conscience, it falls short in certain respects, disrupting not just the intended objectives of fairness and justice<sup>1</sup>, but also creating significant practical challenges for bona fide purchasers of property *pendente lite*<sup>2</sup>. Furthermore, the Supreme Court in its recent judgements<sup>3</sup> have also held that neither lack of notice for the transferee nor their good faith in the transaction are relevant, or can either be used as defences, in the application of Section 52 TPA. In this paper, we revisit the conundrum of protecting the bona fide purchasers, wherein we begin by examining the construction of Section 52 TPA, then identify the gaps prevalent within the provision that affect the bona fide purchasers, review the existing recommendations aimed at addressing this legislative gap, and conclude by offering our observations concerning the same.

## 2. SECTION 52 AND THE DOCTRINE OF LIS PENDENS

As noted earlier, the doctrine of *lis pendens* has been statutorily incorporated under Section 52 TPA<sup>4</sup> as the language of the section clearly states that during the pendency of any suit in which “*any right to immoveable property is directly and specifically in question*”, such a property “*cannot be transferred or otherwise dealt*” in a manner that affect the rights of the parties subject to such a proceeding. However, this does not render a transaction illegal or *void ab initio* since the effect of this doctrine is to render such a transfer subservient to the rights of the parties under the decree or order issued in the proceedings in question<sup>5</sup>.

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<sup>1</sup> Pratheek Maddhi Reddy, Indian Law On Lis Pendens: Hassles And Solutions, 3 Int’l J.L. & Legal Juris. Stud. 325, 326.

<sup>2</sup> Rahul Desarda & Sonali Pagariya, Doctrine of Lis Pendens and Its Continuing Conundrum in India, 11 Russian L.J. 1279, 1282 (2023).

<sup>3</sup> G.T. Girish v. Y. Subba Raju, (2022) 12 SCC 321. *See also* Shingara Singh v. Daljit Singh, 2024 SCC OnLine SC 2823.

<sup>4</sup> Raj Kumar v. Sardari Lal, (2004) 2 SCC 601.

<sup>5</sup> Jayaram Mudaliar v. Ayyaswami, (1972) 2 SCC 200.

Thus, for the application of this doctrine, the following conditions have to be met:

*“(1) A suit or a proceeding in which any right to immovable property must be directly and specifically in question, must be pending.*

*(2) The suit or the proceeding shall not be a collusive one.*

*(3) 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 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.”<sup>6</sup>*

It is imperative to note that this doctrine is based on upon the Doctrine of Necessity, or Expediency, rather than the Doctrine of Notice, wherein as per the former, litigants are bound from alienating the property during the pendency of a suit for fair adjudication of proceedings and prevention of interference with the execution of court decree, while as per the latter, pending litigation serves as a constructive notice of dispute pending upon the immoveable property in question<sup>7</sup>. Thus, it is immaterial whether the alienee was aware of the pending proceedings, or not.

### 3. ISSUES FACED BY THE BONA FIDE PURCHASERS

Since the doctrine of *lis pendens* is a principle of public policy, the question of good faith becomes irrelevant. Thus, the defence of bona fide transferee for “*value without notice*” is not available, and the sale of property *pendente lite* becomes illegal despite the transferee being unaware of the status quo<sup>8</sup>. Moreover, as has been noted by the Law Commission in its 157<sup>th</sup> Report<sup>9</sup>, such a scenario creates opportunities of mischief for dishonest parties, who frequently

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<sup>6</sup>Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 67.

<sup>7</sup>Parishi Jain, The Doctrine of Lis Pendens, Manupatra: Manupatra Articles (Mar. 13, 2023), <https://articles.manupatra.com/article-details/The-Docctrine-of-Lis-Pendens>.

<sup>8</sup>G.T. Girish v. Y. Subba Raju, (2022) 12 SCC 321.

<sup>9</sup>Law Commission of India, Report No. 157: Section 52: The Transfer Of Property Act, 1882 And Its Amendment (1998).

transfer such property to third parties without informing them of any pending suit, thus resulting in significant losses and hardships to such bona fide and unsuspecting purchasers who, in many such instances, lose the property indefinitely on account of the application of the *lis pendens* doctrine embodied under Section 52 TPA. Even the Supreme Court in *T.G. Ashok Kumar v. Govindammal*<sup>10</sup> noted the lacuna concerning the presence of a “*satisfactory and reliable*” method using which a prospective purchaser can ascertain the pendency of any suit before they decide to purchase the property, given that a prospective purchaser has no means to ascertain the pendency of any suit on the property in question, unless the same has been disclosed by the seller<sup>11</sup>. Here, the Supreme Court further observed that a purchaser who acquires a property *pendente lite*, apart from jeopardizing their ownership rights, may find themselves waiting for the conclusion of the legal proceedings, or assuming responsibility for such litigation if the seller loses interest afterwards<sup>12</sup>. Additionally, such purchasers may face challenges in being impleaded as a party in pending litigation as they may be objected on the ground of being a *lis pendens* purchaser, who is not considered a necessary party<sup>13</sup>.

#### 4. PROTECTING THE BONA FIDE PURCHASERS

In order to fully effectuate the purpose and objective of Section 52 TPA and protect the bona fide purchasers, as has been noted in *T.G. Ashok Kumar v. Govindammal*<sup>14</sup>, there needs to be a “*satisfactory and reliable*” method using which a prospective purchaser can ascertain the pendency of any suit before they decide to purchase the property. Thus, the provisions concerning registration of pendency notice and agreements to sell serve as helpful measures for facilitation in this direction.

##### 4.1. REGISTRATION OF PENDANCY NOTICES

Registration of pendency notice is an important step in preserving and upholding the primary purpose of Section 52 TPA as it not only safeguards the interests of prospective purchasers, but also eliminates the possibility of mischief against the bona fide purchasers. Here, it is important to refer to the Transfer of Property and The Indian Registration (Bombay Amendment) Act, 1939 (the “Amendment”), applicable to the erstwhile province of Bombay, or the states of

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<sup>10</sup> (2010) 14 SCC 370, ¶19.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, ¶22.

Maharashtra and Gujarat as it currently stands today. Under the 1939 Amendment, Section 52 TPA was amended<sup>15</sup>, in line with the Common Law principles of equity and Theory of Notice, wherein the transfer of a property *pendente lite* can only take place if the notice concerning the pendency of the suit in question is registered under Section 18 of the Indian Registration Act, 1908<sup>16</sup> (the “Registration Act”). Thus, the parties were given the option to register such notice so that the property could not be alienated without the Court’s permission and on the terms so imposed by the Court. Moreover, as has been noted in *Sunil D. Chedda v. Suresh Bansilal Sethi*<sup>17</sup>, the Amendment does not interfere in the application of the *lis pendens* doctrine if the pendency notice is registered in the requisite manner provided under Section 52(2) of the 1939 Amendment.

Even in other Common Law nations, such notice provisions also exist for the dual purpose of safeguarding the prospective purchasers and removal of mischief by transferors intended on cheating bona fide purchasers. For instance, in the United Kingdom, Section 5 of the U.K. Land Charges Act, 1972, provides that a pending land action, without “express” notice of the same, would not bind the purchaser of such land. Similarly, in the United States, if we look at New York, under Article 65 of the Civil Practice Law and Rules (CVP), the filing of a pendency notice concerning any ongoing suit affecting the title, encumbrance, or possession, not including summary proceedings solely for recovery of possession, of an immoveable property serves as a constructive notice for any potential purchasers of the property in question<sup>18</sup>.

Moreover, the Law Commission in its 157<sup>th</sup> Report<sup>19</sup> recommended a national level incorporation of the notice provision, akin to the 1939 Amendment. Here the Law Commission further qualified that if a purchaser is aware of the pendency of proceedings concerning a property, such a person, irrespective of their knowledge concerning the registration of the formal notice of pendency, ought to be subject to the *lis pendens* doctrine under Section 52

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<sup>15</sup> “52. Transfer of property pending suit relating thereto.- (1) 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 proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as 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.”

<sup>16</sup> *Anand Nivas (P) Ltd. v. Anandji Kalyanji's Pedhi*, 1963 SCC OnLine SC 62.

<sup>17</sup> 1993 Supp (1) SCC 231.

<sup>18</sup> NY CPLR § 6501 (2023).

<sup>19</sup> Law Commission of India *supra* note 10.

TPA<sup>20</sup>. Furthermore, in order to deal with the delays concerning the registration of notice, a three-month period was also recommended<sup>21</sup>. Hence, amendments were recommended to Section 52 TPA and Section 18 of the Registration Act to incorporate these changes. Furthermore, following the footsteps of the 157<sup>th</sup> Law Commission Report, the Karnataka Law Commission in its 12<sup>th</sup> Report also recommended State amendments to the Registration Act and the Code of Civil Procedure, 1908, wherein unlike the recommendation provided by the 157<sup>th</sup> Law Commission Report for the amendment to Section 18 of the Registration Act, the Karnataka Law Commission recommended the incorporation of the notice provision under Section 17 of the Registration Act, making the registration of such notices compulsory, in line with the recommendation provided in *T.G. Ashok Kumar v. Govindammal*<sup>22</sup>.

#### 4.2. REGISTRATION OF AGREEMENTS TO SELL

An agreement to sell, or a contract for sale, as defined under Section 54 TPA, is a contract that the sale of the immoveable property in question takes place in accordance with the terms settled between the parties. Since agreements to sell do not confer “*any right or title*” to the prospective buyer<sup>23</sup>, the absence of a provision allowing compulsory registration of these agreements enables unscrupulous property owners to enter into sale agreements, collect substantial earnest money deposits, and then sell the property to others, thereby subjecting the original agreement-holder and the subsequent purchaser to litigation<sup>24</sup>. Moreover, the absence of such a provision not only facilitates the prevalent practices of registering of sale deed for a fraction of the real consideration reflected when entering into agreements of sale and undervaluation of documents for stamp duty purposes, but also promotes the generation and circulation of black money in real estate transactions and strengthening of the influence of land mafia and musclemen dominating the real estate market in different parts of the country<sup>25</sup>. Therefore, the incorporation of a provision concerning the mandatory registration of agreements to sell would not only mitigate these issues but also eliminate these practices.

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> (2010) 14 SCC 370, ¶22.

<sup>23</sup> *Meghmala v. G. Narasimha Reddy*, (2010) 8 SCC 383.

<sup>24</sup> *T.G. Ashok Kumar v. Govindammal*, (2010) 14 SCC 370, ¶22.

<sup>25</sup> *Id.*

## 5. FINAL REMARKS AND CONCLUSION

Though the doctrine of *lis pendens*, as it stands today under Section 52 TPA, aims to protect the rights of the parties concerning the transfer of property *pendente lite* and uphold the sanctity of judicial proceedings, it has, however, inadvertently created obstacles for bona fide purchasers who purchase such properties without any knowledge of the pending proceedings, thereby becoming victims of significant losses and hardships on account of mischief by unscrupulous parties, frequently transfer such property to third parties without informing them of any pending suit. Moreover, considering the current law on *lis pendens*, such purchasers are also precluded from using lack of notice or bona fide as defences. Hence, in order to protect such purchasers from the hardships caused due to such a gap in the legislation, the need for a satisfactory and reliable method for ascertaining the pendency of any suit in which “*any right to immoveable property is directly and specifically in question*” is imperative. In order to achieve this objective, recommendations, such as the registration of the pendency notices and agreements to sell, would not only protect the bona fide purchasers by permitting the transfer of a property *pendente lite* upon registration of the pendency notice, but also mitigate surrounding fraudulent practices and mischiefs by unscrupulous property owners. Though there have been concerns that such recommendations would deter the buyers from buying the properties that are subject of disputes, however, the primary purpose of such recommendations are to caution the bona fide purchasers about the potential uncertainties surrounding the title, thus striking a balance between protecting litigant rights, fostering trust in property transactions, and promoting a fair and efficient real estate market.