
A CRITICAL ANALYSIS OF THE DOCTRINE OF *LIS* *PENDENS*

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ABSTRACT

This project provides an in-depth analysis of the doctrine of *lis pendens* that is embodied in Section 52 of the Transfer of Property Act, 1882. It provides insight into its historical development in the common law courts of England and its establishment in the Indian subcontinent. The paper also lays down the essential ingredients that are necessary for seeking the application of this doctrine along with supporting caselaws.

The project goes on to examine the major exceptions to the doctrine and evaluates its practical implications in property transactions. Particular attention is also given to the loopholes in the existing legal framework and also the relevance of this doctrine in light of evolving real estate practices and technological advancements. The project concludes by giving suggestions to improve the current framework and to fill the loopholes for a robust and coherent application of this doctrine.

INTRODUCTION

Section 52¹ of the Transfer of Property Act, 1882 deals with the doctrine of *lis pendens*. It is one of the most important principles of property law that comes into effect when litigation concerning immovable property is pending. The term *lis pendens* is derived from the Latin maxim *ut lite pendente nihil innovetur*, and it literally means “pending litigation.”² According to this doctrine, once a suit involving rights over a specific property has been instituted in a competent court, such property cannot be transferred or otherwise dealt with in a manner that may affect the rights of the other parties to the suit, except under the authority of the court. It primarily aims at maintaining the status quo and ensuring that the subject matter of the dispute remains unaffected until the final adjudication is over, thereby upholding the integrity of the judicial process. By providing constructive notice to third parties and preserving the status quo, the doctrine, to a large extent, minimises conflicts and avoids multiplicity of proceedings.³

It is to be noted that the doctrine does not render transfers made during litigation void; rather, such transfers are subject to the outcome of the suit. In other words, the transferee is bound by the decree passed by the court,⁴ and the transfer operates only to the extent that it does not prejudice the rights of the other party. This ensures that no party can defeat the claims of another by alienating the property during the pendency of litigation.

Through judicial pronouncements, two principal theories have emerged to explain the basis of the doctrine of *lis pendens*, the Theory of Notice and the Theory of Necessity. The Theory of Notice treats pending litigation as constructive notice to the world, warning third parties against dealing with the disputed property. In contrast, the Theory of Necessity emphasises that, to ensure effective adjudication, parties must be restrained from transferring the property during litigation so that the court’s decree is not defeated.⁵

HISTORICAL EMERGENCE

The origins of the doctrine of *Lis Pendens* can be traced back to the ancient Roman

¹ Transfer of Property Act, No. 4 of 1882, § 52.

² Stuti Gangopadhyay, Sahana Pisapati & Rupsa Nath, *Doctrine of Lis Pendens – “The Silent Guardian of Property Claims in Court”*, 6 Indian J. L. & Legal Rsch. 3266.

³ Dr. J. James Jayapaul, “Lis Pendens”: A Scrutiny of its Performance in Indian Courts During Transfer of Property, 6 Int’l J.L. Sci. & Innovation 880, 880–83 (2024), <https://doi.org/10.1000/IJLSI.111992>.

⁴ Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403.

⁵ Bellamy v. Sabine, 1 De G&J 566; Faiyaz Husain Khan v. Munshi Prag Narain, (1907)9 BOMLR 656.

jurisprudence. The Romans had recognised the importance of maintaining the status quo in property disputes and hence they established the principle that pending litigation should not be further complicated by transfers of the disputed property. This early concept laid the groundwork for the modern understanding of doctrine.⁶

During the medieval period, the common law courts of England embraced and refined this doctrine. It was further utilised by the Courts of Chancery to prevent fraudulent transfers during the course of litigation which are intended to frustrate the court's decision. This application by the equity courts significantly expanded the influence of doctrine.

The 1857 English case of *Bellamy vs Sabine*⁷ was instrumental in further entrenching the doctrine in English property law. The central question in this case was whether selling a piece of real estate while a lawsuit involving that property's ownership is ongoing creates any legal rights for the buyer. The court ruled that any transfer of property during the pendency of such litigation is invalid. The precise rationale behind this ruling was that the doctrine of *Lis Pendens* exists to preserve the current state or status quo of ownership until the legal dispute is resolved. Thus, parties cannot be allowed to sell or transfer property during the course of a lawsuit as otherwise it would undermine the authority of the Hon'ble court and the finality of its decisions.

As the British Empire expanded, the doctrine was introduced into many of the other legal systems around the world. The 19th and 20th century witnessed its codification into statutory law thereby marking its transition from being a purely common law principle to a clear statutory rule. In India, the principle was enshrined in Section 52 of the Transfer of Property Act, of 1882.

In India, there are 2 major cases that was significant in shaping this doctrine, *Jayaram Mudaliar v. Ayyaswami and Ors.*⁸ and the case of *Rajender Singh v. Santa Singh.*⁹ The latter defined it as the jurisdiction, power, or control which a Court acquires over a property which is involved in a suit pending the continuance of the action, and until final judgment therein.

⁶ *Supra* note 2.

⁷ *Supra* note 5.

⁸ *Jayaram Mudaliar v. Ayyaswami and Ors*, AIR 1973 SC 569.

⁹ *Rajender Singh v. Santa Singh*, AIR 1973 SC 2537.

ESSENTIAL CONDITIONS FOR ITS APPLICATION

The doctrine of *lis pendens*, does not operate automatically upon the mere existence of a suit relating to immovable property. Its application depends on the fulfilment of certain essential conditions which are given as follows:

1. There must be a pendency of a suit or proceeding. The “pendency” starts from the proper institution of the suit before a competent court with proper court fees and continues till its final disposal.¹⁰ This includes appeals, revisions, Special Leave Petitions and even writs¹¹.
2. The suit must be before a court of competent jurisdiction that is determined on the basis of territorial, pecuniary, and subject-matter jurisdiction under the Code of Civil Procedure, 1908.
3. A crucial requirement is that the litigation must directly and specifically involve the rights in the immovable property. Mere incidental mention of the property is insufficient. The dispute must substantially relate to the title, possession, or proprietary interest. Courts have consistently held that suits for partition, mortgage, pre-emption, and easement fall within this scope, whereas suits for debts, rent, or damages do not come under its purview.
4. Another essential condition is that the suit must be bona fide and not collusive proceedings instituted with mala fide intent¹², maybe to defeat 3rd party rights¹³. Collusive suit is one involving no real contest, intended to secure a pre-arranged outcome.¹⁴
5. Further, there must be a transfer or dealing with the property during the pendency of the suit. The phrase “otherwise dealt with” has been widely interpreted to include not only transfers such as sale¹⁵, mortgage, lease, or exchange, but also any act altering the status of the property such as partition, construction, or compromise affecting the property.
6. Importantly, such transfer must affect the rights of another party to the litigation, whose interests may be prejudiced. The doctrine will not be attracted if the transfer affects only

¹⁰ Anil Kumar Singh v. Pappu, 2022 Supreme(All) 23.

¹¹ Goudappa Appaya Patil v. Shivari Bhimappa Pattar, AIR 1992 KANT 71.

¹² Awadesh Prasad v. Belarani, ILR 33 Pat. 389.

¹³ Gouri Dutt v. Shaikh Mohammed, (1948)50 BOMLR 657.

¹⁴ Nagubai v. Sham Rao, 1956 AIR 593.

¹⁵ Ghulam Kubra Bibi v. Mohd. Shafi Mohd. Din, AIR 1940 Pesh. 2.

the transferor's interest and not that of the other party.

These principles were authoritatively consolidated by Justice A. N. Sen in *Dev Raj Dogra v. Gyan Chand Jain* and has become a guiding framework for understanding the operation of Section 52.

Judicial developments have also clarified that the doctrine extends beyond voluntary transfers to include involuntary transfers such as court sales and execution proceedings, as recognised by the Privy Council. Further, in *Sardara Singh v. Mohan Lal Major*, it was held that the doctrine can extend to arbitral proceedings as well.

EXCEPTIONS

Over time, courts have recognised certain exceptions to the doctrine, grounded in principles of equity, good faith, and practical necessity to mitigate hardships. Some of the exceptions are summarised as follows:¹⁶

A) Transfer with the permission of the court.¹⁷ Section 52 itself permits alienation of the disputed property if authorised by the court. In such cases, the court carefully scrutinises the circumstances to ensure that no party's rights are prejudiced.¹⁸ Such transfers fall outside the doctrine, as they are not voluntary acts intended to defeat the rights of the opposing party.¹⁹ In *Vinod Seth v. Devinder Bajaj*²⁰, the court allowed transfer of the property during pendency of the suit upon the furnishing of adequate security, thereby balancing the interests of both parties.

B) The execution of antecedent decrees. Where a decree has already been passed prior to the institution of the suit, its execution is not barred by *lis pendens*. This position was upheld in *Gouri Dutt Maharaj v. Sukur Mohammed*²¹, where it was held that execution proceedings based on prior rights cannot be invalidated by subsequent litigation.

C) Transfers in pursuance of pre-existing contractual obligations. Where a contract concerning

¹⁶ *Supra* note 2.

¹⁷ Amartya Saha, *An Introspective Analysis on the Doctrine of Lis Pendens*, 2 INT'L J. INTEGRATED L. REV. 31, 35 (2021), <https://ijilr.org/an-introspective-analysis-on-the-doctrine-of-lis-pendens/>.

¹⁸ *Supra* note 14.

¹⁹ *Jayaram Mudaliar v. Ayyaswami*, AIR 1973 SC 569.

²⁰ *Vinod Seth v. Devinder Bajaj*, (2010) 8 SCC 1.

²¹ *Gouri Dutt Maharaj v. Sukur Mohammed*, 1948 Bom LR 657 (P.C.).

the property existed prior to the institution of the suit, its subsequent execution is generally not hit by the doctrine. The rationale is that the doctrine should not defeat rights that were already in existence before the litigation commenced.²²

D) Collusive or fraudulent suits. As discussed above, if the litigation itself is not bona fide, the doctrine cannot be invoked to bind third parties.²³

E) Bona fide purchasers for value without notice. Although Section 52 is generally strict and based on constructive notice, courts have occasionally favoured innocent transferees who acted in good faith. In *T.G. Ashok Kumar v. Govindammal*²⁴, the Supreme Court emphasised the need to balance the rigid application of *lis pendens* with the protection of bona fide purchasers, though such protection is not absolute under Indian law.

F) Statutory exemptions. In *Annapurnabai v. Ruprao*²⁵, the Bombay High Court recognised that transfers under specific revenue laws may fall outside the ambit of *lis pendens*.

In this instance, it is pertinent to address certain misconceptions. The doctrine does not exempt a transferee merely because they are not a party to the suit, rather, a transferee *pendente lite* is generally bound by the decree even if not impleaded.²⁶ Similarly, the doctrine does not depend on formal notice or registration, instead, it operates on the principle of constructive notice, making subsequent transferees subject to the outcome of the litigation.

LOOPHOLES/DRAWBACKS IN THE DOCTRINE

The doctrine of *lis pendens* operates with considerable rigidity. In many instances, the doctrine prioritises the preservation of the subject matter of litigation, often at the expense of bona fide purchasers for value without notice of pending litigation. *Mohd. Ali Abdul Chanimomin v. Bisaheni Kom Abdulla Saheb Momin* held that the question of good faith is immaterial²⁷, as the doctrine is grounded in public policy. This causes hardships to innocent buyers who had unknowingly acquired disputed property. The Law Commission²⁸ had noted the common

²² *Supra* note 5.

²³ *Awadesh Prasad v. Belarani*, ILR 33 Pat. 389.; *Nagubai v. Sham Rao*, (1956) SCR 451.

²⁴ *T.G. Ashok Kumar v. Govindammal*, 2011 AIR SCW 551.

²⁵ *Annapurnabai v. Ruprao*, 9 AIR 1945 Bom 458.

²⁶ *Amit Kumar Shaw v. Farida Khatoon*, 2005 (11) SCC 403.

²⁷ *Mohd. Ali Abdul Chanimomin v. Bisaheni Kom Abdulla Saheb Momin*, (1973) AIR Mys 131.

²⁸ LAW COMM'N OF INDIA, 157th Report: Section 52, Transfer of Property Act, 1882 and Its Amendment (1998), <https://lawcommissionofindia.nic.in/reports/157.pdf>.

practice of defendants transferring property without disclosing ongoing litigation, which leaves purchasers vulnerable. In many cases, such buyers not only risk losing the property but are also denied compensation for improvements made and are bound by prior compromises or decrees affecting the property.

Recognising this issue, the Supreme Court in *T.G. Ashok Kumar v. Govindammal* highlighted the absence of an effective mechanism for verifying pending disputes and observed that this leads to “hardship, loss, anxiety and unnecessary litigation” for purchasers. The Court further went on to suggest legislative reforms, such as mandatory registration of notices of pendency under the Registration Act, as adopted in certain states (discussed in the succeeding sections), to protect bona fide buyers while also preserving the doctrine’s objectives.²⁹

Certain ambiguities still plague the interpretation of the doctrine of *lis pendens*, particularly with respect to terms such as “pendency of litigation” and “property directly in question.” Determining when litigation is deemed pending or the precise scope of the property involved is often left to judicial discretion and this results in inconsistent application across cases. This leads to confusion among the litigants and third parties who are engaged in property transactions, which is further exacerbated by the rise of digital transactions and complex, multi-party disputes.³⁰

Additionally, while Section 52 restricts transfers during litigation, such transfers are not per se void. Earlier cases³¹ held such transfers to be invalid, but later decisions³² clarified that a transfer *pendente lite* is not void but merely subject to the outcome of the litigation, thereby binding the transferee to the decree.

At its core, the doctrine seeks to prevent multiplicity of proceedings and aims to ensure finality of litigation³³. However, as discussed above, transfers are permitted with the approval of the court, often subject to conditions that are intended to safeguard the interests of the other parties.³⁴

²⁹ *Supra* note 3.

³⁰ Mr. Vasu Agarwal, *The Concept of Lis Pendens and Its Relevance in Modern Property Disputes*, 8 Indian J. L. & Legal Rsch. 2700, 2700–03 (2026).

³¹ *Sarvinder Singh v. Dalip Singh*, AIR ONLINE 1996 SC 302.

³² *Hardev Singh v. Gurmail Singh*, AIR 2007 SUPREME COURT 1058.

³³ *Prithiviraj v. A. Muneeswaran*, 2023 Supreme (Mad) 1064.

³⁴ *Vinod Seth v. Devinder Bajaj*, (2010) 8 SCC 1.

Judicial trends also reflect a growing sensitivity towards the plight of purchasers. In *Saila Bala Dassi v. Nirmala Sundari Dassi*³⁵, the apex Court adopted a liberal approach by allowing the impleadment of *pendente lite* purchasers and acknowledging their stake in the dispute. Further, in *T.G. Ashok Kumar v. Govindammal*, the Court highlighted the lack of an effective mechanism to notify prospective buyers of pending litigation which ultimately leads to financial loss, and prolonged legal uncertainty.

Thus, the rigidity of its application and the ambiguities existing in the doctrine as noted above highlight the need for reforms to the existing legal framework which is very much still crucial in maintaining the efficiency of the system.

CONTEMPORARY RELEVANCE

Lis pendens remains highly relevant even today as a safeguard against transfers of disputed immovable property and also as a device to secure the *status quo* during litigation, especially in cases of high-value real estate disputes and complex title contests.

While the doctrine is based on “necessity” rather than notice, there is much confusion about protecting reasonable third-party purchasers, leading to multiple case laws on imputable knowledge and fairness, as discussed in the preceding sections.³⁶ In urban land and redevelopment-related litigation, *lis pendens* helps prevent endless litigation chains by ensuring that any transferee *pendente lite* takes the property “subject to” the outcome of the original suit.

By preventing disputed assets from circulating freely and creating risks of layered ownerships, *lis pendens* supports title continuity, especially in the case of REIT sponsors, lenders, developers, etc. Moreover, Brokers, legal advisors, and lenders generally rely on it as a risk marker during title searches. This enables more informed pricing and transaction structuring. The doctrine complements modern compliance frameworks such as RERA, which lays emphasis the rights of the buyers across India’s real estate sector.³⁷

For digital property (e.g., virtual land in metaverses like Decentraland) *lis pendens* under the

³⁵ *Saila Bala Dassi v. Nirmala Sundari Dassi*, 1958 AIR 394.

³⁶ Rights of Third Parties under the Doctrine of Lis Pendens, IIPRD Blog (Aug. 4, 2022), <https://iiprd.wordpress.com/2022/08/04/rights-of-third-parties-under-the-doctrine-lis-pendens/>.

³⁷ Lis Pendens in Section 52 of the Transfer of Property Act, Ashwinder Singh Blog (Feb. 25, 2026), <https://ashwindersingh.com/blog/lis-pendens-transfer-property-act>.

TP Act cannot be directly applied, it governs only immovable property in the conventional sense. However, it is pertinent to note that in cases involving crypto/NFT disputes³⁸, it is seen that courts have started to treat certain digital assets as "property", potentially invoking *lis pendens*-like equitable principles to protect innocent third parties. However, practically speaking, without physical immovability, recording a *lis pendens* (typically via a memorandum under Order 39 CPC) is impractical; instead, but courts may use injunctions or blockchain notices (e.g., on-chain memos).

It is interesting to note that *lis alibi pendens* is a central concept in private international law and cross-border disputes, where one court refuses to proceed on the same cause of action pending in another jurisdiction. This avoids irreconcilable judgments from different jurisdictions. In multinational property or commercial disputes, courts very often invoke a *lis pendens* type-rationale to stay proceedings in one forum until the other forum reaches a conclusion.³⁹

CONCLUSION/RECOMMENDATIONS

To address these issues, several reforms can be implemented. A statewide computerised registry of property disputes accessible to the public authority could reduce disputes by greatly improving notice to prospective purchasers of any pending dispute against a particular property. Conversely, alternative methods such as constructive conveyances or third-party notices could allow property purchase and sale during the action without repressing litigant's rights.⁴⁰ Scholars have suggested that practices regarding *lis pendens* should be brought into step with advances in property technology and digital records, thereby rendering the doctrine less obtrusive and more flexible in respect of bona fide transactions in land.

The e-Courts project in India have made it easier to track pending litigation including those related to property. Moreover, the state of Maharashtra has implemented an online property registration system that collects information on encumbrances such as *lis pendens*. This system allows potential buyers and other interested parties to easily collect information regarding any pending cases related to the property. Additionally, with the rise of Artificial Intelligence and

³⁸ *Rhutikumari v. Zanmai Labs Private Limited*, 2025 SCC OnLine Mad 9290.

³⁹ Cross-Border Litigation and Comity of Courts: A Landmark Judgment from the Delhi High Court, Conflict of Laws (Feb. 29, 2024), <https://conflictoflaws.net/2024/cross-border-litigation-and-comity-of-courts-a-landmark-judgment-from-the-delhi-high-court/>.

⁴⁰ *Supra* note 30.

machine learning algorithms, these technologies could be utilised to analyse historical data and identify patterns that indicate a higher likelihood of litigation for certain properties.⁴¹

It is pertinent to note in this context, the Bombay Amendment of 1939 to Section 52 of the Transfer of Property Act which introduced a significant reform by making the doctrine of *lis pendens* contingent upon the registration of a notice of pendency under Section 18 of the Registration Act, 1908. It required certain details to be formally recorded including information regarding the parties involved, description of the property, nature of the suit, and the court where it is pending. This amendment addressed two major concerns discussed in the preceding sections. Firstly, it protected bona fide purchasers by enabling them to verify pending disputes through the registration records. Secondly, it also curtailed fraudulent transfers made by the litigating parties.

However, the need to go beyond the Bombay Amendment has been recognised, as practical difficulties, such as delays or inability to register due to circumstances beyond control, may still prejudice aggrieved parties. Two suggestions are generally considered to bridge this gap, one is that in exception cases, the requirement of registration can be done away with and another recommendation is that a reasonable time should be granted for registration, such as that of 3 months.⁴² The latter approach strikes a balance by safeguarding the rights of both the original owner and the prospective buyer, while at the same time ensuring procedural feasibility and fairness in property transactions.

According to Lord Denning “ *The law will stand still whilst the rest of the world goes on; and that will be bad for both*”. Thus, the doctrine of *Lis pendens*, though a provision aimed at protecting innocent third parties and preventing multiplicity of proceedings, with the arising complexities in society, is struggling to achieve its objectives. Therefore, for the doctrine to achieve its underlying objectives, many reforms are necessary that align with the emerging socio-economic needs as discussed above.

⁴¹ Understanding Lis Pendens in India: A Comprehensive Guide to Property Disputes, CENTURY L. FIRM (June 30, 2024), <https://www.centurylawfirm.in/blog/understanding-lis-pendens-in-india-a-comprehensive-guide-to-property-disputes/>.

⁴² Law Commission of India, Section 52: Transfer of Property Act, 1882 and its Amendment (1998).