
THE CONCEPT OF LIS PENDENS AND ITS RELEVANCE IN MODERN PROPERTY DISPUTES

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1. Introduction

Lis pendens falls under the doctrine laid down under Section 52 of the Transfer of Property Act, 1882, and has been considered the basic principle of property law whenever disputes in any form are taken into consideration¹. These two Latin words "lis pendens" literally mean pending litigation, and refer to a rule once the litigation over a property has commenced, there will be a restriction on any form of transfer of such property. The doctrine thus strives to maintain the status quo in order to avoid conflicts of claims by restricting transactions relative to the property in dispute, pending legal actions against it. This essay intends to discuss the applicability and role of lis pendens in modern-day property disputes in relation to the issues it has been used for, the legal requirements concerned, and its effect upon third parties and possible buyers. It seeks, in carrying out such a task, to assess how the doctrine continues to afford protection to the rights of the litigants in respect of the multidimensionality of the problems attendant on modern-day property transactions.

2. Definition of Lis Pendens

Lis pendens is one of the legal principles that prevent properties from being transferred while litigation is pending in order to protect the subject matter of a claim for fair litigation. The very term already, which translates as "pending litigation," shows that the right of property is not settled until the court has ended the case.

This doctrine bars alienation by a third party in disputed property with a view to protecting the rights of the litigants, so that the judgment passed will not be rendered infectious. The statutory underpinning of lis pendens in India is in the Transfer of Property Act, 1882; it bars the transfer of property under litigation without court consent². The essential requirements to apply the doctrine of lis pendens are that there should be a pending suit relating to the right in some

¹ Transfer of Property Act, 1882, Section 52; Singh, Avtar (2017). *Transfer of Property Act*

² Transfer of Property Act, 1882, Section 52

specific immovable property; that the suit must be pending in a court; and the transfer is done after the institution of the suit but without the permission of the court. Major relevant cases, such as *Jayaram Mudaliar v. Ayyaswamy* and *Nagubai Ammal v. B. Shama Rao*³, elaborate on all the essentials of the doctrine to intimate its applicability for maintaining a property dispute and preventing multiple claims of ownership over it.

3. Lis Pendens and Its Rationale-Historical Background

Lis pendens is based on the common law, which was initially established to prevent property transfers from getting entangled with litigation. The doctrine of lis pendens will defeat third-party acquisitions in disputed properties, so the decision of the judiciary cannot be defeated by such subsequent transfers of property, allowing conflicting claims to emerge. The doctrine basically helps to preserve judicial integrity by keeping the status of such properties until the dispute is legally sorted out. Its incorporation into Indian law through Section 52 of the Transfer of Property Act, 1882, shows the doctrine is still so relevant. In the Indian context, lis pendens strikes a balance in the rights of disputing parties in order to avoid unauthorized transactions and uphold judicial decisions that protect the rights of litigants. The adoption of this doctrine under Indian law perpetuates its application in the stabilization of property disputes, avoidance of speculative purchases, and further that property transactions do not circumvent the due process of law.

4. Legal Requirements and Conditions of Lis Pendens

The conditions for the operation of lis pendens under Section 52 of the Transfer of Property Act, 1882, are as follows: First, there should be some active litigation or suit with regard to the property, meaning that in most instances, the litigation arises from disputes in ownership or rights to the property in question⁴. Second, the litigation directly involves the title or interest in the disputed property. Lastly, any kind of transfer of the property in question during the litigation period has to be with the consent of the court; otherwise, such transfers are considered invalid under lis pendens. These conditions have been explained in various judicial interpretations most notably through cases like *Abdul Shukoor v. Arji Papa Rao* and *Guruswamy Nadar v. P. Lakshmi Ammal*. The courts, while passing these judgments, have

³ *Jayaram Mudaliar v. Ayyaswamy*, AIR 1973 SC 569; *Guruswamy Nadar v. P. Lakshmi Ammal*, (2008) 5 SCC 796

⁴ Transfer of Property Act, 1882, Section 52; *Abdul Shukoor v. Arji Papa Rao*, AIR 1963 SC 1150

made it sure that the application of the doctrine depends upon satisfaction of the above-mentioned conditions, thus making it clear that the doctrine aims at preventing fraudulent or speculative transfers that could affect the ongoing judicial proceedings. This framework, therefore, enforces the doctrine's purpose of safeguarding the rights of the litigants through the freezing of the property's status during litigation and ensures indeed that no third party tampers or contests with the final judgement.

5. Lis Pendens and its impacts on Third Parties/Buyers

Lis pendens thus ensures a huge difference to the third party and the buyer, especially to those who have no idea about the litigations concerning the property in question. The doctrine casts upon a potential purchaser the doctrine of "constructive notice," such that purchasers are considered to have legal notice of pending disputes where property is acquired while litigation is pending. This principle therefore places a burden of thorough checks on purchasers that the property does not have any legal impediments against it⁵. In *Madhukar Nivrutti Jagtap v. Smt. Pramilabai Chandulal Parandekar* (2007), while confirming the lis pendens to make certain the rights of the parties to the litigation, argued that buyers are expected to go through disputes pending over properties. On the same note, critics further complain that it may prove too inflexible in its application, most especially against bona fide purchasers who purchased property not knowing such had already been in dispute. These buyers have a high tendency to face legal consequences and even have to bear loss because of the implications of this doctrine. It has brutal consequences for those who are innocent and do not have any idea that there are legal matters pending on the property. In this way, the application leads to injustice.

6. The Relevance of Lis Pendens to Property Disputes Today

It is important to note here that the doctrine of lis pendens is largely relevant in the dynamically changing real estate market of India. In the Indian market, there is a big expansion happening because of which transactions pertaining to properties do occur quite frequently⁶. It acts as an important tool that, in essence, prevents fraudulent transfers that could defeat the adjudication of property disputes. Lis pendens basically serves to freeze the property transfers before litigation, so that there would not be any party that may take advantage of the ongoing process

⁵ Gopalakrishnan, K. (2018). "The Doctrine of Lis Pendens and Its Modern Implications." *NALSAR Law Review*

⁶ Kumar, R. (2020). "Revisiting Lis Pendens in Indian Real Estate Transactions." *Indian Journal of Property Law*

for personal ends, thus favouring fair disposition of the parties in property dispute. In cases where property dealings are more complicated, courts have applied *lis pendens* as a means to keep stability in order to avoid manipulation of ownership rights and to prevent unauthorized transactions that might undermine the decisions of the judicial system. The employment of *lis pendens* in land dealings inside metropolitan areas, which are normally filled with contestations and valuable considerations, is essential in safeguarding litigants from puffed-up buyers. However, critics assert that such machinery restricts the ability to deal in valid business since either the buyer or seller or both would be prevented from consummating a legitimate agreement.

In a congested Indian Judiciary, this is likely to be particularly a problem since property disputes take years to dispose of. While *lis pendens* thus remains pertinent, there is, however, a growing concern with respect to effectiveness and adequacy in contemporary high Turnover property markets-causing a call for refiner application that weighs dispute resolution against the need for market dynamism.

7. Judicial Interpretation and Expanding Ambit of Lis Pendens

The Indian courts have widened the principle of *lis pendens* to meet the present-day challenges of property and commercial transactions. In various cases seen, such as *Guruswamy Nadar v. P. Lakshmi Ammal* and *Jayaram Mudaliar v. Ayyaswamy*, where the judiciary sustained *lis pendens* in order to protect the interest of the parties litigating with a view to upholding the equitable principles in property-related disputes. These cases emphasize the commitment of the court to the protection of the rights of parties in dispute from unauthorized dealings that could upset the litigation process.

The courts have also tried to extend the application of *lis pendens* to arbitration proceedings-either the arbitration would constitute "pendency of litigation." In the extension of this doctrine, the judiciary has tried to shape and mold the *lis pendens* doctrine in keeping with the evolving legal and commercial landscape of India, attempting thereby to shut the door on some loopholes in the dispute resolution process. However, as remarked by some scholars, this extension of the doctrine may perpetuate delays in court procedures and discourage investment in properties. These critiques point out the need for streamlined procedures that advance the goals of *lis pendens* with concerns related to delay and complexity in an increasingly complex property market like India.

8. Legal Ambiguities and Challenges

The doctrine of lis pendens faces a number of ambiguities in the legal interpretation, especially of terms such as "pendency of litigation" and "property directly in question." For example, defining when a case is pending or determining which property is involved can often be left to jurisdiction and court discretions in different cases; hence, inconsistency may arise⁷. These are interpretational challenges that make the uniform application of lis pendens difficult, as illustrated in landmark cases where different courts reached varied conclusions based on context-specific factors. This may continually confuse the litigants and third parties on which case may affect their transaction regarding their disputed properties.

Legal scholars and practicing attorneys have called for reforms to clarify such ambiguities, which have been made even murkier by online property transactions and multi-party disputes in which the question of "property in question" may well not always be crystal clear. Increased intricacy in property dealings, along with the advent of digital transaction modes, calls all the more for a coherent and transparent framework for applying lis pendens in modern disputes.

9. Proposed Reforms and Contemporary Alternatives

To deal with these issues, several reforms can be used to revitalize lis pendens. A statewide computerized registry of property disputes accessible to the public authority could reduce disputes by greatly improving notice for prospective purchasers as to any pending dispute against a particular property⁸. 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. It has been suggested by legal scholars that practices regarding lis pendens need to be brought into step with advances in both the technology of property and digital records in a manner that would render the doctrine less obtrusive and more flexible in respect of bona fide transactions in land.

10. Conclusion

Indeed, it is the doctrine of lis pendens that protects the rights of the litigant parties along with ensuring judicial integrity in property matters. Yet, modern complexities in the property market

⁷ Gopalakrishnan, K. (2018). "The Doctrine of Lis Pendens and Its Modern Implications." *NALSAR Law Review*

⁸ National Judicial Data Grid; Central Information Commission. "Public Access to Land Dispute Records."

do call for an approach that has a rightful balance, ensuring retention of the protective benefits of lis pendens while addressing delays and ambiguities in procedure. Ensuring relevance and equity, reforms at transparency and efficiency can ensure that lis pendens supports fair and effective resolutions of property disputes in today's legal landscape.

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