

PROPERTY LAW

By

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**Illustrate the concept of “lis pendens” in context of
Transfer of Property Act, 1882.**

I. INTRODUCTION**• Meaning**

“*Lis pendens*” literally means a pending suit or cause and where ‘*Lis*’ means an action or suit, while ‘*pendens*’ means continuing or pending. This doctrine is derived from a latin maxim “*Ut pendent nihil innovetur*” which means that during litigation nothing should be changed.¹

• Definition

The doctrine of *lis pendens* has been defined as jurisdiction, power or control which a Court acquired over property involved in a suit, pending the continuance of action, and until final judgment therein. It denotes those principles of rules and laws which define and limit the operation of common law maxim to the effect that nothing relating to the subject matter of a suit can be changed while it is pending.

The principle embodying the said doctrine is that the subject matter of a suit should not be transferred to a third party during the pendency of the suit. In case of transfer of such immovable property, the transferee becomes bound by the result of the suit.

¹ Black’s Law Dictionary. Also see, Jayaram Mudaliar versus Ayyaswami [AIR 1973 SC 569 para 47]

- **Aim**

The doctrine of *Lis Pendens* essentially aims at;

- avoiding endless litigation,
- protecting either party to the litigation against the act of the other,
- avoiding abuse of legal process.²

II. **LEGAL ASPECT: In light of Transfer of Property Act**

Principle of *lis pendens* has been codified in section 52 of Transfer of Property Act, 1882 which relates to the transfer of any immovable property during the pendency of the suit.

The **object and scope** of this doctrine as contemplated in section 52 is, that neither party to litigation can alienate the property in dispute so as to affect his opponent.³ This section prohibits the transfer of property during pendency of proceedings in order to save the parties from multiplicity of proceedings.⁴

The rule of *lis pendens* lays down that whoever purchases a property during pendency of an action, is held bound by the judgement that may be made against the person from which he derived the title (to the immovable property) even though such a purchaser was not a party to the action or had no notice of the pending litigation.⁵

The statutory text of section 52 of Transfer of Property Act, 1882 is below:

² 2010 CLC 1622

³ PLD 2006 Kar. 278

⁴ 2008 CLC 1340

⁵ 2012 AC 180

“Transfer of property pending suit relating thereto. During the [pendency] in any Court having authority in [Pakistan], or established beyond the limits of [Pakistan] by [the '[Federal Government, [any] suit or proceeding [which is not collusive and] in which any right to immovable property is directly and Specifically in question, the property cannot be transferred to otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.”⁶

- **Essentials of lis pendens**

The essentials of this section are:

- i. Transfer during litigation.
- ii. Transfer by any party to suit.
- iii. Suit must be pending.
- iv. Suit or proceedings must not be collusive.
- v. The court must be competent to adjudicate the matter.
- vi. Any right or interest in immovable property must be directly and specifically involved.
- vii. Alienation must affect the rights of other party.
- viii. Suit should not be conclusive at that stage.
- ix. The transfer must not be authorized by that court.

This doctrine applies to a number of transactions.

⁶ Section 52, Transfer of Property Act, 1882

The word "**transferred**" in section 52, contemplates transfer by sale, mortgages, gift, leave and exchange.⁷ The words "**otherwise dealt with**" include the entering into a contract for sale of the land in suit, which is capable of specific performance;⁸ partition of the property in suit, obtaining of a collusive decree or order relating to the property, the entering into a compromise with a third party regarding with the subject matter of the suit,⁹ the registration of gift deed pending suit for revocation of the gift.¹⁰ This doctrine also applied to a case of acquisition of title by adverse possession pending a suit.

The principle underlying the section 52 has no application to movable property.¹¹ Also, Lis Pendens is not applicable in every case. **There are certain instances wherein this doctrine does not apply:**

- i. A sale made by the mortgagee in the exercise of the power as conferred by the mortgage deed.
- ii. In matters of review;
- iii. In cases where the transferor is the only party affected;
- iv. In cases of friendly suits;
- v. In cases where the proceedings are collusive;
- vi. In case of suits involving pending transfers by a person who is not a party to the suit;
- vii. In cases where the property has not been properly described in the plaint;

7 1981 Dhaka L.R.(SC) 323

8 AIR 1917 Oudh 193

9 AIR 1922 Lah.

10 AIR 1924 Bom. 834 (DB)

11 AIR 1935 Oudh 49

viii. In cases where the subject matter of rights concerned in the suit and that which are alienated by transfer are different.

CONCLUSION

Thus, the virtual and true object of this doctrine at hand (lis pendens) is to protect and safeguard the parties to the suit and their rights and interest in the immovable disputed property against any alienation made by either of the parties, of that property, during the pendency of the suit in favour of third person.

References

Mahmood, S., & Shaukat, N. (2013). *Transfer of Property Act*. Legal Research Centre.