

**INTERNATIONAL JOURNAL OF LEGAL
SCIENCE AND INNOVATION**
[ISSN 2581-9453]

Volume 6 | Issue 3

2024

© 2024 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at editor.ijlsi@gmail.com.

‘Lis Pendens’: A Scrutiny of its Performance in Indian Courts During Transfer of Property

DR. J. JAMES JAYAPPAUL¹

ABSTRACT

The property which is the subject matter of a suit is subject to the Judgment delivered by the court. So the Transfer of Property Act, 1882 under Section 52 says about the procedure to be followed in transferring a property while suit is pending before the court. The hidden reasoning behind regulation of lis pendens is to forestall the topic of a claim from being moved to an outsider while the case is as yet forthcoming. In circumstances including immovable property, any exchange of proprietorship should conform to the court's choice, and the transferee is limited by the court's judgment. This principle supplies a complete position of rules and regulations for different aspects relating to the property transfer such as sale, lease, mortgage, exchange, and gift. It also enumerates the rights and duties of suit parties involved in transfer of pending suit property. More over If a person is going to purchase a immovable property then that person will apply for encumbrance certificate and if a litigation is pending before a competent court, then it will not be reflected in E.C. and the person will purchase that property. I have discussed in this article about the position of applicability of the doctrine of lis pendens on the light of different Judgments.

Keywords: Suits, Pendency, Property, Transfer, Judgment & Registration.

I. INTRODUCTION

The principle of Lis Pendens was derived from a latin term “Lis” which means an action or a suit. “Pendens ” means pending. So it totally means pending of suit. Section 52 of Transfer of Property Act, 1882 reads as:“ Transfer of property pending suit relating thereto.—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 immoveable property is directly and specifically in question, the property 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

¹ Author is a Principal(FAC)/Associate Professor at Government Law College Ramanathapuram, India.

such terms as it may impose.”

As such a careful observation of the definition shows that it not only applies for suit but also for any proceeding, which includes all stages of litigation till finalization of Judgment. If any transfer is made while such pendency then automatically that transfer becomes null and void in the eye of law, if the affected party moves against such unlawful action for relief. Another interesting question is, whether the suit or proceeding pending court has to pass a separate stay order in an interlocutory application against the registration authority not to register the suit pending property. A bare reading of the section says a separate stay order is not necessary. Mere pending of a suit or proceeding is sufficient to attract Lis Pendens.

II. LIMITATIONS TO THE APPLICABILITY OF DOCTRINE

The main motto of this doctrine is to avoid multiplicity of proceedings over the same property. This was Held by High court in Prithiviraj versus A.Muneeswaran².

The transfer of property made by way of will is not covered by Lis Pendens. Similarly succession by death of owners also not comes within the purview of Transfer of Property Act. While the predefined conditions should for the most part be met for the precept of Lis Pendens to be pertinent, there are special cases, one of which is the point at which a transfer is made with the court's assent. Section 52 of Transfer of Property Act, 1882, unequivocally states, “except under the authority of the Court and on such terms as it may impose.” Subsequently, in a claim straightforwardly and expressly including issues connected with the privileges of steadfast property, the court has the carefulness to allow any party to discard the property while the case is continuous, likely to any circumstances forced by the court. This perspective separates the Lis Pendens standard. In specific circumstances, the court fastidiously looks at current realities and conditions of each case to guarantee that the privileges of any gatherings included are not risked by such an approved exchange. For example, on account of Judgment passed in Vinod Seth v. Devinder Bajaj³, the court, after a careful assessment of the case's realities and conditions, established that it was fitting to exclude the case from the Lis Pendens purview, given that security was given. In this particular occasion, after giving a security deposit of Rs. 30 lakhs, the court permitted the respondents to sell the property even while the case was pending.

² 2023 (3) CTC 593

³ Supreme Court on 5th July 2010.

III. COMPARISON OF RES SUB JUDICE, RES JUDICATA AND LIS PENDENS

Res sub Judice is dealt in Section – 10 of the Civil Procedure Code, 1908. It specifically provides the rule for staying the suit if it is pending adjudication by a jurisdictional court. Res Judicata comes under Section 11. It monitors the rule relates to a suit which was already adjudicated and decided by a jurisdictional court. It curtails the continuation trial of a suit or an issue in which the matter directly and substantially in issue has been adjudicated upon in a previous suit.

In the case of *Digambararao v. Rangarao*⁴, Held “In the case of res judicata the same cause of action may sustain various actions simultaneously, but once the cause of action is merged in the judgment pronounced in a previously decided suit. There is no cause of action left to sustain the second suit. In the case of lis pendens however the cause of action continues as it was sustaining the suit which has been filed for the adjudication of the rights of the various parties thereto and the doctrine applies during the pendency of that suit sustained on that cause of action.

Whatever is the transfer’s pendente lite they do not affect the result of the litigation qua the parties to the suit and the transferee pendente lite is bound by the result of that litigation, irrespective of whatever was happened between his transferor and himself. Once, however, even in the case where the doctrine of lis pendens applies a judgment is pronounced and the cause of action is merged in the judgment that judgment is the final pronouncement which binds not only the parties to the suit but also the transferee’s pendente lite from them. The conveyance is treated as if it never had any existence”. Finally in the court’s final order, “therefore, the rule of res judicata prevails over the doctrine of lis pendens and we have come to the conclusion that once a judgment is duly pronounced by a competent court in regard to the subject-matter of the suit in which the doctrine of lis pendens applies, that decision is res judicata and binds not only the parties thereto but also the transferees pendente lite from them”.

IV. JUDGMENTS IMPLICATING LIS PENDENS

In *Rajendar Singh versus Santa Singh*⁵ Held, during pending suit, if the parties goes on taking steps to transfer the property, then it makes the Decree to be disappointed. The Court observed that “the doctrine of lis pendens has been defined as the jurisdiction, power, or control which

⁴ AIR 1949 Born 367

⁵ AIR 1973 SC 2537

a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein”.

In *T.Ravi and another versus B.Chinna Narasimha and others*⁶ Held Section 52 does not make the transfer of property made during pendency of suit as illegal but the purchaser is bound by the decision of the court in that pending suit or proceeding.

In *Kamatchi versus Fathima Beevi*⁷ Held if the property right is not in directly and specifically in question then it is not affected by the doctrine of Lis Pendens.

In *Sitharamaswami versus Lakshmi Narasimha*⁸ Held that property was transferred during the pendency of a suit in a wrong jurisdictional court. Subsequently the suit was transferred to the correct jurisdictional court. Held the Doctrine of Lis Pendens is not applicable for suit pending in the incorrect court. Similar Judgment was also pronounced in *Shakila Banu versus Kathija Beevi*⁹

In *Jegan Singh (Died) through L.R's versus Dhanwanthi and another*¹⁰ Held in this case property was transferred during the limitation period of filing second appeal.

The Honourable court delivered a Judgment that the transfer should take place during the pendency of the proceedings is applicable to this case also and hit by doctrine of Lis Pendens.

V. IMPLEMENTATION OF LAW COMMISSION 157TH REPORT

On April 23rd 1998, the Law commission in its 157th report has amended the rules for Doctrine of Lis Pendens. Accordingly, the pending of suits has to be registered under section 18 of the Indian Registration Act, 1908, within ninety days of the institution of the suit.

After registering this notice, no party will be allowed to register the property during pendency of the suit unless and otherwise the court orders to do it.

VI. CONCLUSION

The Doctrine of Lis Pendens is a legitimate protection to keep parties from disposing property in a way that could sabotage the result of a forthcoming pending dispute in the courts. It is intended to keep up with business as usual of the property until the lawful question is settled, accordingly guaranteeing decency and safeguarding the freedoms of all parties associated with the case.

⁶ 2017 (7)SCC 342

⁷ 2012(1) MWN (Civil) 305

⁸ 1941 Mad 510

⁹ 2023(1) CTC 574

¹⁰ 2012AIR SCW893