

FROZEN IN LITIGATION - DOCTRINE OF LIS PENDENS AND ITS CHILLING IMPACTS ON REAL ESTATE TRANSACTIONS

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ABSTRACT

Real estate transactions involve a lot of buying, selling, leasing, mortgaging or developing immovable property. Section 52 of the Transfer of Property Act, 1882, restricts such transfer when a suit involving rights to immovable property is pending or if the transfer may affect the rights of parties to the litigation. Section 52 specifies the Doctrine of Lis Pendens. 'Lis' means 'litigation' and 'Pendens' means 'pending'. The convention of Lis Pendens is communicated in the notable property: - Pendente lite nihil innovator, which signifies 'during pendency of suit, the same old thing ought to be presented'. Under this principle, it is given that during the pendency of any suit with respect to the title of a property, any new interest regarding that property ought not to be made. Production of a new title or interest is known as an exchange of property. Thusly, fundamentally, the schooling of Lis Pendens precludes the exchange of property forthcoming suit. It is an extremely old school and has been working in the English Common Law. Under this convention, the decisions in the unfaltering properties were viewed as abrogating any estrangement made by the parties during the pendency of the suit. Later on, this schooling was received additionally by value for a superior and more customary organization of equity. This research paper focuses on the evolution of the doctrine of Lis Pendens under common law. Secondly, it focuses on Section 52 of the Transfer of Property Act, 1882, impacting the evolution of the law related to the transfer of property under the pendency of litigation in India. Further, it focuses on the idea of Lis Pendens under the Transfer of Property Act, 1882, which impacted many transfers of properties in real estate.

Keywords: Real estate, Doctrine of Lis Pendens, Transfer of Property, litigation

I. INTRODUCTION

Section 52 of the Transfer of Property Act, 1882² deals with the Doctrine of Lis Pendens. 'Lis' means 'litigation' and 'Pendens' means 'pending'. So, *Lis Pendens*

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would mean ‘pending litigation’. The doctrine of *Lis Pendens*³ is expressed in the well-known maxim:- **Pendente lite nihil innovator**, which means ‘during pendency of litigation, nothing new should be introduced’⁴.

Under this doctrine, it is provided that during the pendency of any suit regarding the title of a property, any new interest in respect of that property should not be created⁵. Creation of a new title or interest is known as a transfer of property. Therefore, in essence, the doctrine of *Lis Pendens* prohibits the transfer of property pending litigation. It is a very old doctrine and has been operating in the English Common Law. Under this doctrine, the judgments in the immovable properties were regarded as overriding any alienation made by the parties during the pendency of litigation⁶. Later on, this doctrine was also adopted by equity for a better and more regular administration of justice⁷.

In current practice, a *lis pendens*⁸ is a written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it.⁹ The notice is usually filed in the county land records office. Recording a *lis pendens* against a piece of property alerts a potential purchaser or lender that the property’s title is in question, which makes the property less attractive to a buyer or lender. After the notice is filed, anyone who nevertheless purchases the land or property described in the notice takes subject to the ultimate decision of the lawsuit¹⁰. A [foreclosure](#) will wipe out a *lis pendens*. If the *lis pendens* does not end in a foreclosure at auction, then it will stay a *lis pendens*, where the subsequent buyer will have constructive notice¹¹.

² Transfer of Property Act, 1882, § 52 (India).

³ Doctrine of Lis Pendens, *Drishti Judiciary* (Dec. 11, 2023), <https://www.drishtijudiciary.com/doctrines/transfer-of-property-act-doct/doctrine-of-lis-pendens>

⁴ Pendente Lite Nihil Innovetur, *LawArticle* (Nov. 21, 2025), <https://lawarticle.in/pendente-lite-nihil-innovetur/>

⁵ *Bellamy v. Sabine*, (1857) 1 De G. & J. 566.

⁶ *Turner v. Houston*, (1841) 1 Y. & C.C.C. 441.

⁷ Doctrine of Lis Pendens – Section 52 of Transfer of Property Act, 1882, *Legal 60* (July 19, 2021), <https://legal60.com/doctrine-of-lis-pendens-section-52-of-transfer-of-property-act-1882/>

⁸ Lis Pendens, *Black’s Law Dictionary* (11th ed. 2019), <https://dictionary.justia.com/lis-pendens>

⁹ Susindhra Nayagi & P. Brinda, *Safeguarding Bona Fide Purchasers: A Critical Analysis of Lis Pendens under Indian Law*, *Indian J. Legal Rsch.* (2024), <https://ijalr.in/volume-6-issue-2/safeguarding-bona-fide-purchasers-a-critical-analysis-of-lis-pendens-under-indian-law-s-susindhra-nayagi-dr-p-brinda/>

¹⁰ Am. Jur. 2d *Lis Pendens* §§ 1–5 (2023); *Lis Pendens*, *Legal Dictionary*, <https://legaldictionary.net/lis-pendens/>

¹¹ Supra note 8.

II. OBJECTIVES OF THE STUDY

The aim of the project is to study the “Doctrine of Lis Pendens” as provided in Section 52 under the Transfer of Property Act, 1882. The objective is to provide a detailed analysis of each important aspect of the doctrine with recent amendments.

III. RESEARCH QUESTIONS

Q. How has the doctrine of Lis Pendens evolved under common law?

Q. Whether Section 52 of the Transfer of Property Act, 1882, impacted the evolution of the law related to the transfer of property under the pendency of litigation in India?

Q. Whether the idea of Lis Pendens under the Transfer of Property Act, 1882, affects the Indian property law?

IV. RESEARCH METHODOLOGY

This research study is mainly doctrinal and analytical. Keeping this in view, the researcher has gone through different books, journals, Web references, E-journal, reports etc. The relevant material is collected from the secondary sources.

V. HISTORY OF LIS PENDENS

Under the common law, the mere existence of a lawsuit potentially affecting the title to real property had the legal effect of putting the entire world on constructive notice of the suit; anyone acquiring an interest in real property which was the subject of a pending suit took that interest subject to the litigants’ rights as they might be eventually determined, no matter how much later.¹² In effect, nothing relating to the ownership of the subject matter of the suit could be definitively changed while the suit was pending. Innocent buyers might discover the existence of a lawsuit too late.¹³

¹² *Lis Pendens: Its Effect on Prior Unrecorded Mortgages*, 15 Fla. L. Rev. 485 (1963), <https://www.floridalawreview.com/api/v1/articles/78775-lis-pendens-its-effect-on-prior-unrecorded-mortgages.pdf>

¹³ Dr. J. James Jayapaul, ‘Lis Pendens’ – A Scrutiny of Its Performance in Indian Courts During Transfer of Property, 6(3) Int’l J. L. Sci. & Innovation 880 (2024), <https://ijlsi.com/paper/lis-pendens-a-scrutiny-of-its-performance-in-indian-courts-during-transfer-of-property/>

The harsh effect of this rule, and especially its effect on innocent purchasers (particularly vis-à-vis not-so-innocent sellers), led many jurisdictions to enact *lis pendens* [statutes](#) requiring a written notice, usually recorded in the land records where the real estate is located, for the notice provisions of the rule to be effective¹⁴. Typically, a separate recorded instrument is required by statute if the lawsuit in question affects title to real property. If the statutory requirements are met, the world is put on "constructive notice" of the existence of the suit, and any person acquiring an interest later does so subject to the outcome of the suit.¹⁵ Some states' *lis pendens* statutes require the filer of the notice, in the event of a challenge to the notice, to establish that it has [probable cause](#) or a good likelihood of success on the merits of its case in the underlying lawsuit; other statutes do not have such a requirement. *lis pendens* applies in matters of parental responsibility as well¹⁶.

VI. BASIS OF LIS PENDENS

The basis of Lis Pendens is 'necessary' rather than actual or constructive notice it may be said that this doctrine is based on notice because a pending suit is regarded as constructive notice of the fact of disputed title of the property under litigation¹⁷. Therefore, any person dealing with that property, pending litigation, must be bound by the decision of the Court. But, the correct view is that *lis pendens* is founded on 'necessity'. For administration of justice it is necessary that while any suit is still pending in a Court of Law regarding title of a property, the litigants should not be allowed to take decision themselves and transfer the disputed property.¹⁸

Lis Pendens is, therefore, based on 'necessity' and as a matter of public policy it prevents the parties from disposing of a disputed property in such manner as to interfere with Court's proceedings. When a litigation is already pending the

¹⁴ Swetha A. & R. Preethi, *Lis Pendens: Implications and Its Exceptions in Contemporary Legal Structure*, 2 ILE Prop. & Land L. Rev. 16 (2024), <https://pllr.iledu.in/lis-pendens-implications-and-its-exceptions-in-contemporary-legal-structure-a-critical-analysis/>

¹⁵ Real Property, 54 Wayne L. Rev. 387 (2008), <https://waynelawreview.org/wp-content/uploads/2025/07/54WayneLRev387.pdf>

¹⁶ *Lis Pendens: Its Effect on Prior Unrecorded Mortgages*, 15 Fla. L. Rev. 485 (1963); Swetha A. & R. Preethi, *Lis Pendens: Implications and Its Exceptions in Contemporary Legal Structure*, 2 ILE Prop. & Land L. Rev. 16 (2024), <https://pllr.iledu.in/lis-pendens-implications-and-its-exceptions-in-contemporary-legal-structure-a-critical-analysis/>

¹⁷ Richard R. Powell, *Powell on Real Property* § 82.01 (Michael Allan Wolf ed., 2023), available at <https://www.lexisnexis.com>

¹⁸ Ralph E. Boyer, *Lis Pendens: Notice of Pending Litigation*, 44 Mich. L. Rev. 1, 2-4 (1945), <https://repository.law.umich.edu/mlr/vol44/iss1/2>

necessities of judicial functioning would require that the decision of the Court should be honoured and be made binding not only on the parties but also on all such persons who derive title under them by alienation made by any one of them pending litigation.¹⁹ Without any rule prohibiting transfer pending litigation, all suits regarding specific property would be rendered meaningless by successive alienations making it almost impracticable for any person to settle his rights in property through the process of law.

Explaining the basis of this doctrine in ***Bellamy v. Sabine***²⁰, Turner L.J. observed:

“It is, as I think, a doctrine common to the Courts both of law and equity and rests as I apprehend, on the foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgement or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings”.

The Indian Courts have also taken the view that basis of Section 52 is not the doctrine of notice but expediency i.e. the necessity for final adjudication and public policy. It has been held that “the foundation for the doctrine of *lis pendens* does not rest upon notice, actual or constructive; it rests solely upon necessity- the necessity that neither party to the litigation should alienate the property in dispute so as to effect his opponents”. In ***Rajendar Singh v. Santa Singh***²¹ the Supreme Court has said that the doctrine of *lis pendens* is intended to strike at attempts by parties to a suit to curtail the jurisdiction of the Court by private dealings which may remove the subject matter of litigation from the power of the Court to decide a pending dispute and frustrate its decree.

Since the Courts in India regard ‘necessary’ as the basis of the doctrine of *lis pendens*, it is immaterial whether the transferee had any notice of pendency of suit or not. The transferee is bound by the decision of the Court even if he had no actual or

¹⁹ *Jayaram Mudaliar v. Ayyaswami*, (1972) 2 S.C.C. 200, 206–07 (India).

²⁰ (1857) 1 De G & J 566.

²¹ AIR (1973) SC 2537.

constructive notice of the pending suit. In *Bellamy's* case given above, Lord Cranworth said:-

“It is scarcely correct to speak of *lis pendens* as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation. It affects him not because it amounts to notice but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party”.

VII. PROVISIONS OF SECTION 52 OF THE TRANSFER OF PROPERTY ACT-1882

The doctrine of *lis pendens* as laid down in Section 52 is given below:-

- a. During the pendency of a suit or proceeding.
- b. Property cannot be transferred or otherwise dealt with, and
- c. if so transferred, the transferee is bound by the decision of the Court whether or not he had notice of the suit or proceeding.

Following conditions are necessary for the application of the doctrine of *lis pendens* as given in section 52: -

- a. There is a pendency of a suit or proceeding.
- b. The suit or proceeding must be pending in a Court of competent jurisdiction.
- c. A right to immovable property is directly and specifically involved in the suit.
- d. The suit or proceeding must not be collusive.
- e. The property in dispute must be transferred or otherwise dealt with by any party to suit.
- f. The transfer must affect the rights of the other party to litigation.

When the above- mentioned conditions are fulfilled, the transferee is bound by the decision of the Court. If the decision of the Court is in favour of the transferor, the

transferee has rights in the property transferred to him. If the decision goes against the transferor, the transferee cannot get any interest in the property²².

VIII. PENDENCY OF SUIT OR PROCEEDING

The section applies only where a property is transferred during pendency of litigation. Pendency of a suit is that period during which the case remains before a Court of Law for its final disposal. If a case is instituted in Court, the first step is presentation of the plaint, and the last step is passing of a decree. When the Court gives its decision by passing a decree, the case is terminated. So, the pendency of a suit begins from the date on which the plaint is presented and terminates on the date when final decree is passed.²³ The explanation to this section provides that the pendency of suit or proceeding is deemed to begin from the date of presentation of the plaint or institution of the proceeding in a Court and continues until the suit has been disposed of by a final decree or order. However, mere presentation of plaint is not sufficient; the plaint must also be accepted by the Court. Where a plaint is presented in a Court having no jurisdiction and the plaint is returned to be filed in the Court having proper jurisdiction, the pendency would commence from the date on which the plaint is presented to another Court having proper jurisdiction. Transfer made during the interval between the first presentation of plaint (which was returned back) and the date of presentation thereof in a proper Court, is not affected by the doctrine of *lis pendens*²⁴.

Similarly, where a plaint is presented with insufficient Court fee and is therefore returned by the Court by the plaintiff presents it again by affixing proper Court fee, the pendency would begin from the date when it was presented second time with proper Court fee. Where an application is presented before a Court asking permission to sue in *forma pauperis*, the pendency starts from the date on which the application has been presented provided it is accepted by the Court. But, where such application is rejected, the pendency shall not commence from the date of application.

²² Ralph E. Boyer, *Lis Pendens: Notice of Pending Litigation*, 44 Mich. L. Rev. 1, 3–6 (1945), <https://repository.law.umich.edu/mlr/vol44/iss1/2>

²³ Swetha A. & R. Preethi, *Lis Pendens: Implications and Its Exceptions in Contemporary Legal Structure*, 2 ILE Prop. & Land L. Rev. 16 (2024), <https://plr.iled.edu.in/lis-pendens-implications-and-its-exceptions-in-contemporary-legal-structure-a-critical-analysis/>

²⁴ Supra note 21.

As regards termination of the suit or proceeding, the Explanation provides that pendency continues until the final decree or order in the suit or proceeding is completely satisfied or discharged unless execution of the decree has become time-barred. Execution proceedings are in fact part of the proceedings in a suit. Therefore, the pendency continues till the decree is completely execute.²⁵

In **N.C Bhartia v. Gandevi peoples Co- operative Bank Ltd.**²⁶ an order of attachment of judgement- debtor's property was passed during execution proceedings. Subsequently, the relatives of the judgement- debtor objected the attachment and claimed a share in that property. They also sold that property and this sale deed was executed during pendency of the execution proceedings. Gujarat High Court held that the sale deed was hit by the doctrine of *lis pendens* as given in section 52. Lis (litigation) in a mortgage suit continues after the decree and does not terminate till the security is realised for the satisfaction of the decree. After a final decree, the defendant has a right to appeal within the period of limitation. Where an appeal is preferred within limitation period, the appeal would be a continuation of the suit and the *lis* shall be deemed to continue during appeal. Transfer of property made during appeal shall be a transfer during pendency of suit and the provisions of section 52 shall apply on it. It may be concluded that for purposes of this section pendency of a suit begins from the date of presentation of a plaint and continues up to the termination of litigation including appellate stage and execution proceedings²⁷.

This section must be interpreted strictly. Any transfer made outside the period of litigation will not be affected by *lis pendens*. A sale-deed executed before but registered after presentation of the plaint is not affected by this section because deed operates from the date of its execution. But where the sale-deed is already registered the sale-deed would be affected by the doctrine of *lis pendens*²⁸.

Proceedings -: The doctrine of *lis pendens* applies to transfers during pendency of suit or proceeding. 'Proceeding' means a judicial activity whether civil or criminal. Here it means a judicial activity in respect of determining the rights in an immovable

²⁵ Supra note 22.

²⁶ AIR 2002 Guj. 209.

²⁷ Ibid

²⁸ Thomson Press (India) Ltd. v. Nanak Builders & Invs. (P) Ltd., (2013) 5 S.C.C. 397, 414–15 (India), <https://indiankanoon.org/doc/1378606/>

property. Accordingly, for purposes of this section, there is no difference between a suit and a proceeding. This section has been applied to transfers made during revenue proceedings. A claim made under O.XXI, R. 58²⁹ of the Civil Procedure Code is a proceeding under this section. Similarly, proceedings for ejectment before Revenue Officer are affected by *lis pendens*. Since Registrar of Co-operative Societies is regarded as a Court, therefore, proceeding under Rule 14 of the Co-operative Societies Act, 1912³⁰ operates as *lis pendens*. But, proceeding before Settlement Officer is not a proceeding under this section and such proceeding cannot operate as *lis pendens*³¹.

Compromise Suit -: The doctrine of *lis pendens* is applicable in cases where the pending litigation is ultimately compromised and a compromise or consent decree is passed. The word 'decree or order' in this section contemplates compromise or consent decrees. However, the compromise must be during the pendency of suit and not a compromise entered into after withdrawal of the suit.³²

IX. PENDENCY IN COURT OF COMPETENT JURISDICTION

The suit or proceeding during which the property is transferred, must be pending before a Court of competent jurisdiction. Where a suit is pending before a Court which has no proper jurisdiction to entertain it, the *lis pendens* cannot apply. For filing a suit, the Civil Procedure Code has prescribed jurisdictions of the Courts on the ground of territory or on the basis of valuation of the subject-matter of dispute.³³ The jurisdiction of the Court is, therefore, territorial or pecuniary or, otherwise as given in this code. Thus, a suit respecting any immovable property should be filed only in the Court within whose jurisdiction the property situates. If the disputed property is situated outside the territorial limits of the Court, it has no competency to try any suit involving that property. Accordingly, the Court cannot pass a valid decree so as to affect a transfer made *pendente lite*. *Lis pendens* is not applicable

²⁹ Code of Civil Procedure, 1908, O. XXI, R. 58, <https://indiankanoon.org/doc/1905573/>

³⁰ Co-operative Societies Act, 1912, r. 14, <https://indiankanoon.org/doc/640923/>

³¹ *R.K. Mohammed Ubaidullah v. Hajee Abdul Wahab*, (2000) 6 S.C.C. 402, 410 (India), <https://indiankanoon.org/doc/825024/>

³² *Nagubai Ammal v. B. Shama Rao*, A.I.R. 1956 S.C. 593, 599-600 (India), <https://indiankanoon.org/doc/1932066>

³³ *R.K. Mohammed Ubaidullah v. Hajee Abdul Wahab*, (2000) 6 S.C.C. 402, 410 (India), <https://indiankanoon.org/doc/825024/>

where the suit is pending in any Court is outside the scope of this section.³⁴ However, as regards pecuniary jurisdiction, if a suit is filed in a higher Court which should have been filed in the lowest Court, it has been held that there is no lack of jurisdiction; it is merely an irregularity and section 52 applies.³⁵

X. RIGHT TO IMMOVABLE PROPERTY MUST BE INVOLVED

Another condition for the applicability of this section is that in the pending suit, the right to immovable property must directly and specifically be in question. The litigation should be regarding title or interest in an immovable property. Where the question involved in the suit or proceeding does not relate directly to any interest in an immovable property, the doctrine of *lis pendens* has no application³⁶. For example, where a suit is pending between landlord and tenant regarding payment of rents and during litigation the landlord transfers the property, the transfer is not affected by *lis pendens* because the litigation is not with regard to any interest in the property but involves payment of rents. Similarly, where a Hindu widow filed a suit against her stepson for maintenance and specifies certain immovable properties in possession of such stepson, it was held that right to immovable property is not directly in issue and this section cannot apply.³⁷ Mere mention of an immovable property in the plaint is not enough, rights in respect of that immovable property must directly and substantially be in question. In a suit for specific performance of a contract to transfer an immovable property is directly and substantially in question. Therefore, transfer of that property is within the scope of this section.³⁸ The test whether a suit or proceeding involves any question of right in immovable property should be the nature of claim and the decree passed rather than the property mentioned in the plaint. However, following suits have been held to involve question of rights in immovable property and are within the scope of this section: -

³⁴ *Nagubai Ammal v. B. Shama Rao*, A.I.R. 1956 S.C. 593, 599 (India), <https://indiankanoon.org/doc/1932066/>

³⁵ *Ibid*

³⁶ Swetha A. & R. Preethi, *Lis Pendens: Implications and Its Exceptions in Contemporary Legal Structure*, 2 ILE Prop. & Land L. Rev. 16 (2024), <https://plr.iledu.in/lis-pendens-implications-and-its-exceptions-in-contemporary-legal-structure-a-critical-analysis/>

³⁷ *Guruswamy Nadar v. P. Lakshmi Ammal*, (2008) 5 SCC 796, <https://indiankanoon.org/doc/1540713/>

³⁸ *Jayaram Mudaliar v. Ayyaswami*, (1972) 2 SCC 200, <https://indiankanoon.org/doc/1533083/>

- a. A suit for partition.
- b. A suit on mortgage.
- c. A suit for pre-emption.
- d. Easement suit.
- e. Suit for maintenance by a Hindu widow in which she claims to have her maintenance made a charge on specific immovable property and a decree is passed creating a charge on such property.

Where the suit or proceeding does not involve any question of right in immovable property, *lis pendens* does not apply. Thus, these are the suits where *lis pendens* does not apply: -

- a. Suit for debt or damages where the claim is limited to money.
- b. A suit for the recovery of movables.
- c. A suit for an account.

Similarly, a suit for recovery of rents of an agricultural holding is also outside the scope of this section.³⁹

Rights in movables -: The doctrine of *lis pendens* does not apply where the suit involves rights in movable properties. Standing timber is a movable property, therefore, this section cannot apply where the issue before the Court is rights in respect of standing timber. Similarly, where certain ornaments were pledged pending a suit for their recovery, it was held that *lis pendens* is not applicable and the pledge shall not be subject to decision of the Court.⁴⁰

LAW . LEARN . LEAD . XI. SUIT MUST NOT BE COLLUSIVE

Lis pendens is inapplicable if the suit is collusive in nature. A suit is collusive if it is instituted with a *mala fide* intention. *Mala fide* intention behind instituting a suit is inferred from the fact that parties to the suit know their respective rights in the

³⁹ **Doctrine of Lis Pendens,** Aashayein Judiciary,
<https://aashayeinjudiciary.com/doctrine-of-lis-pendens/>

⁴⁰ *Shantabai v. State of Bombay*, A.I.R. 1958 S.C. 532 (India),
<https://indiankanoon.org/doc/1351956/>

property and there is no actual dispute.⁴¹ Such suit is, therefore, fictitious and the very purpose of filing the suit is to get judicial decision for some evil design e.g. defrauding a third party. Since such suits are instituted with a *mala fide* intention of causing injury to a third person, there is no question of its being a litigation involving rights in an immovable property. Where property is transferred during pendency of a collusive suit, the transferee is not bound by the result of the litigation. However, it is impossible that a suit in the beginning is *bona fide* but during pendency there is a secret agreement between the parties in the form of a compromise. In such cases too *lis pendens* is inapplicable⁴².

A Hindu wife filed a maintenance suit against her husband with a secret agreement that during litigation the husband would transfer the property. During the pendency of the suit, the husband sold the property. Later on, a charge was created in favour of the wife over the property. It was held by the Privy Council that the suit was collusive in nature and was, therefore, outside the scope of *lis pendens*. Accordingly, the Court held that the purchaser was not bound by the charge on the property⁴³.

XII. PROPERTY IS TRANSFERRED OR OTHERWISE DEALT WITH

During pendency of suit, the property must be transferred or otherwise dealt with by any of the parties to suit. 'Transfer' includes sale, exchange, lease and mortgage. Thus, during pendency of suit if the disputed property is sold or given in exchange, is leased or is mortgaged either by plaintiff or by defendant, the doctrine of *lis pendens* shall apply on it and the transfer would be subject to decision of the Court.⁴⁴

The expression "*otherwise dealt with*" has been interpreted to mean those transactions in which although there is transfer of some interest in the property but they do not come strictly within the meaning of 'transfer of property' as defined in

⁴¹ *Jayaram Mudaliar v. Ayyaswami*, (1972) 2 S.C.C. 200 (India), <https://indiankanoon.org/doc/1633195/>

⁴² M.P. Jain, *Doctrine of Lis Pendens: Its Scope and Application in India*, 14 J. Indian L. Inst. 1 (1972).

⁴³ *Supra* Note 40.

⁴⁴ *Hardev Singh v. Gurmail Singh*, (2007) 2 S.C.C. 404 (India). <https://indiankanoon.org/doc/1639677/>

Section 5⁴⁵ of this Act. Accordingly, surrender, release or partition would be regarded as transfer for purposes of this section. A contract of sale has been regarded as a transfer within the meaning of 'otherwise dealt with'. Therefore, entering into contract of sale of the disputed property during litigation shall attract the provisions of this section. Partition effected during pendency of the suit shall also come within the ambit of this section. Handing over of the disputed property during litigation would mean 'otherwise dealt with' and section 52 applies⁴⁶.

To construct building on the disputed land so as to compel the plaintiff to file another suit for its removal is dealing the property otherwise and comes within the purview of Section 52⁴⁷. Entering into a compromise respecting disputed property with a third person during litigation is also dealing the property otherwise.

Involuntary Transfers -: Transfer of property may either be by act of parties or by operation of law. Transfers by operation of law are known as involuntary transfers e.g. Court sale or transfer made by order of Court.⁴⁸ Section 52 is applicable to both the kinds of transfers *pendente lite*. Formerly there was some doubt whether this section applies to transfers made by operation of law because this Act does not apply to such transfers. But the Privy Council had settled the law that the principle of *lis pendens* is applicable also to transfers by operation of law. The doctrine of *lis pendens* applies where the sale is made by order of the Court. Though an attachment is not a transfer, but a sale in pursuance of an attachment comes within the scope of this section. The principle of *lis pendens* applies to execution sales as well as sales for non- payment of Government Revenue⁴⁹. The auction-purchaser is bound by the decision of the pending litigation though auction is made by Court's order. Purchaser at a sale for arrears of income-tax is affected by the rule of *lis pendens* and would be

⁴⁵ Transfer of Property Act, 1882, § 5 (India). (Defines "transfer of property" – helps distinguish "otherwise dealt with") <https://indiankanoon.org/doc/1526576/>

⁴⁶ Transfer of Property Act, 1882, § 52 (India). (Doctrine of *lis pendens* – transfer or otherwise dealing with property during pendency of suit) <https://indiankanoon.org/doc/1857909/>

⁴⁷ Ibid

⁴⁸ *Comm'r of Income Tax v. Bhurangya Coal Co.*, A.I.R. 1958 S.C. 254 (India). <https://indiankanoon.org/doc/1565904/>

⁴⁹ *Rajender Singh v. Santa Singh*, (1973) 2 S.C.C. 705 (India). <https://indiankanoon.org/doc/1459076/>

bound by the decision of Court if he had purchased the property pending litigation.⁵⁰ Lease effected by Government in *khas mahal* is regarded as lease by the landlord and if made *pendente lite*, Section 52 is applicable on such a lease. In ***Sujan Bhan v. Guj Rai***⁵¹ a suit for specific performance of a contract for the sale of an immovable property was pending in a Court. The property was purchased under an auction sale in execution of decree in suit filed on the basis of a promissory note. The Allahabad High Court held that the execution sale would be hit by the provisions of Section 52⁵² and no title could be given to the purchaser⁵³.

Transfers with permission of the Court -: When a transfer is made during pendency of suit with the permission of Court, the principle of *lis pendens* is not applicable. The concluding part of this Section exempts transfers *pendente lite* if such transfer is made ‘under the authority of the Court and on such terms as it may impose’. Under this clause the parties to suit are entitled to apply to the Court in which the suit is pending to get permission for the transfer. If the Court deems it fit, it may give permission for the transfer of disputed property. In such a situation, Section 52 shall not apply on the transfer of disputed property. In such a situation, section 52 shall not apply on the transfer though it is made during pendency of suit⁵⁴.

XIII. TRANSFER BY ANY PARTY TO SUIT

Transfer made during pendency of suit is not enough to attract the provisions of this section. It is necessary that transfer of disputed property is made by any party to suit. Transfer of property by a person whose title is not in any way connected with disputed property is not affected by *lis pendens*. A party to suit whose name is struck off as a contesting party by consent is not bound by the decree because *lis pendens* shall not apply to him. It is to be noted that the words ‘any party’ are not merely descriptive but refer to the time when the transaction takes place. The doctrine of *lis pendens* was, therefore, not applied where the transfer was made pending the suit by

⁵⁰ *Faiyaz Husain Khan v. Prag Narain*, (1907) L.R. 34 I.A. 102 (P.C.).
<https://indiankanoon.org/doc/1030304/>

⁵¹ AIR (1981) ALL. 149.

⁵² Transfer of Property Act, 1882, § 5 (India).
(Defines “transfer of property” – helps distinguish “otherwise dealt with”)
<https://indiankanoon.org/doc/1526576/>

⁵³ Ibid.

⁵⁴ *Amit Kumar Shaw v. Farida Khatoon*, (2005) 11 S.C.C. 403 (India).

a person who was not party at the time of transfer but, was subsequently made a party as a representative of the original defendant.⁵⁵

XIV. TRANSFER AFFECTS THE RIGHTS OF ANY OTHER PARTY

The last condition for applicability of Section 52⁵⁶ is that the transfer during pendency must affect the rights of any other party to suit. The principle of *lis pendens* is intended to safeguard the parties to litigation against transfers by their opponents. So, the words ‘any other party’ here does not mean stranger to suit. It means any other party between whom and the party who transfers, there is an issue for decision which might be prejudiced by alienation. ‘Any other party’ here means the opposite party whose interest may be affected by transfer *pendente lite*⁵⁷. Where the rights only of the transferor and not of the other party to suit are affected, the principle of *lis pendens* does not apply. Thus, Section 52 cannot be made applicable between parties who are at one side either as plaintiff or as defendant because there is no question of any dispute between them.⁵⁸

For example, in a suit A is plaintiff and B, and C are co-defendants. During pendency of the suit B transfers the property. C cannot take the benefit of Section 52 because there is no dispute between B and C. but A can take the benefit of this section because he is party to suit other than the transferor and his rights may be affected by the transfer *pendente lite*.

XV. EFFECT OF THE PRINCIPLES OF *LIS PENDENS*

Lis pendens is taken as constructive notice of the pending lawsuit, and it serves to place a cloud on the title of the property in question until the suit is resolved and the notice released or the *lis pendens* is expunged.⁵⁹ Reputable, careful lenders will not lend money on the security of land which is subject to a *lis pendens*, as title insurance companies will not insure the title to such land: title is taken subject to the outcome of the lawsuit. Because so much real estate property is purchased with borrowed

⁵⁵ *Samarendra Nath Sinha v. Krishna Kumar Nag*, A.I.R. 1967 S.C. 1440 (India). <https://indiankanoon.org/doc/1904550/>

⁵⁶ Transfer of Property Act, 1882, § 52 (India). <https://indiankanoon.org/doc/1526576/>

⁵⁷ *Nagubai Ammal v. B. Shama Rao*, A.I.R. 1956 S.C. 593.

⁵⁸ *Amit Kumar Shaw v. Farida Khatoon*, (2005) 11 S.C.C. 403 (India)

⁵⁹ *Lis Pendens, Virtual Underwriter*, <https://www.virtualunderwriter.com/en/standard-exceptions/2011-10/SE00005301.html>

money, this largely keeps the owner from selling the property. It also may keep the owner from borrowing money secured by the property (such as to pay the costs of defending the suit). Similarly, careful buyers will be unwilling to purchase the land, at least not at what the full value would be without the cloud on title⁶⁰. It is important to note that the presence of a *lis pendens* does not prevent or necessarily invalidate a transfer of the property, although it makes such a transfer subject to the outcome of the litigation. As such, it tends to scare off diligent, reputable lenders and careful buyers. Thus, the owner is not prevented from selling the land for (non-borrowed) cash, pledging it as security for a speculative loan, or giving it away—subject to the outcome of the lawsuit. However, once the *lis pendens* is recorded, the recipient (a "purchaser" or "grantee *pendente lite*") would be deemed to have notice of the litigation, and thus would not be a *bona fide* purchaser, and the title might be regained.⁶¹

While it is generally thought of in connection with real property (land, buildings, and the like), the doctrine of *lis pendens* also applies to personal property. Frequently, *lis pendens* statutes only apply to real property, so the common-law doctrine probably still applies to personal property.⁶² When the conditions necessary for the applicability of this section are fulfilled, the result is that the transferee is bound by the decision of the Court⁶³. For e.g. in a suit between A and B respecting title of a house if B transfers the house to C during pendency and the judgment is subsequently in favour of B., then C would be entitled to the house. But if the decree is passed against B, then it is binding not only on B but also on C, with the result that C cannot get the house. Under this section, C cannot take the plea that he had no notice of pending litigation. It may be noted that normally, a decree of a Court binds only the parties to the suit. But, under the principle of *lis pendens*, a person who purchases during the pendency of the suit is also bound by the decree made against that party from whom he had purchased.

⁶⁰ Lis Pendens and Its Effect on Property Transactions, *Corinthian Title Company*, <https://corinthiantitle.com/blog/lis-pendens>

⁶¹ *Lis Pendens Property Research Paper*, Scribd, <https://www.scribd.com/document/721258101/lis-pendens-property-research-paper>

⁶² Manisha Pathak, *Transfer of Property Act*, Nat'l J. Real Est. L., Vol. 6, No. 1 (2023), <https://lawjournals.celnet.in/index.php/njrel/article/view/1370>

⁶³ Aryan Bammi, *Fraudulent Transfer of Immovable Property*, Nat'l J. Real Est. L., Vol. 5, No. 1 (2022), <https://lawjournals.celnet.in/index.php/njrel/article/view/1064>

The effect of *lis pendens* is, therefore, that it does not prevent the vesting of title in the transferee but only makes it subject to the rights of the parties as decided in the suit. Section 52, therefore, does not invalidate the transfer but renders it subservient or subject to the rights of the parties to litigation. The words “to affect the rights of any other party thereto under any decree or order which may be made therein” suggest that the transfer *pendente lite* is valid and good to the extent that it might conflict with rights established under the decree⁶⁴.

XVI. CONCLUSION

A pending suit involving title conveys notice to intending purchasers, and charges the land, in whosoever hands it may be, with the consequences of whatever decree may be made. This is known technically as *lis pendens*. The doctrine of *lis pendens* is, that a purchase of real estate property actually in litigation, or, as the technical phrase runs, a purchase *pendente lite*, although for a valuable consideration and without any actual notice, affects the purchaser in the same manner as if he had such notice, and he will accordingly be bound by the judgment or decree rendered in the suit. The doctrine of *lis pendens* applies only where a third person attempts to intrude into a controversy by acquiring an interest in the subject matter of the litigation. The reason of the rule is, that if a transfer of interest pending suit were to be allowed to affect the proceedings, there would be no end to litigation; for as soon as a new party was brought in he might transfer to another, and render it necessary to bring that other before the Court, so that a suit might be interminable. It will be understood, however, that the rule, that a party purchasing *pendente lite* is to be regarded as a purchaser with notice, subject to all the equities of the person under whom he claims, and bound by the decree that may be rendered against the person from whom he derives title, applies only to cases in which such purchaser derives title from one of the parties' litigant. If he claims adversely to both parties by title paramount, the proceedings to which he is neither party nor privy cannot bind him. The common law rule requiring purchasers, at their peril, to take notice of the pendency of suits in courts of justice for the recovery of the lands they are about to purchase, although it is really impossible that they should actually know that such suits have been

⁶⁴ Shikha Dimri, *Regulation of Real Estate Transfers and Protection of Buyers' Interest: A Perspective on Legal and Institutional Developments in India*, Think India J., Vol. 22, Issue 14 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3759289

commenced, has always been considered a hard rule, and is by no means a favorite with the courts. In fact, it has only been tolerated from a supposed necessity. Usually, the filing of a bill of complaint is itself a sufficient notice to the world, so as to defeat the transfer of real estate property by the defendant made subsequent to the filing; but in a large number of states, particularly where the provisions of the New York Code have been followed, a material change has been made to this rigorous rule. In these states the statute provides that the pendency of a suit shall not be notice to a stranger until a formal notice thereof has been filed in the office of the recorder of deeds of the county where the land is situated, and that as to one having no actual notice, he may, in good faith, and for a valuable consideration, acquire a valid title until such notice is filed. Where the suit is still pending, the notice may be shown as an appendix. If the proceedings are shown, as they should be after the bill has been filed, their orderly arrangement would be to precede the synopsis of the court proceedings. Where no notice is required, the bill itself furnishes notice as above explained. The practical purpose of a notice of pendency of suit is to restrain strangers from acquiring interests in the subject matter of the litigation during the progress of the suit.

