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# DOCTRINE OF LIS PENDENS



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## MEANING

The doctrine of lis pendens have been derived from the latin maxim 'Ut Pendens nihil innovetur' which means nothing should be changed at the time of litigation. Lis means litigation and pendens means pending. Therefore, lis pendens means pending litigation. The subject matter of the suit cannot be transferred to the third party during the pendency of the suit.

## DOCTRINE OF LIS PENDENS

**Sec.52** of the property Act, 1882 deals with Doctrine of lis pendens. The suit or proceeding which arises the question on subject matter or title of the property before the court within the jurisdiction, such property cannot be transferred to the third party until the decree or order has been passed on determining the subject matter or title of the property.

For this purpose, the suit or proceeding is pending on the date of the presentation of the plaint or institution of the proceeding in the competent court and continues till the suit is disposed of with final decision or the period of limitation is barred. Any person dealing with the immovable property of the suit pending before the court, he will be abide in the proceedings.

## OBJECTIVES

- To avoid multiplicity of cases.
- To protect the party from obtaining the defective title of the property.
- To obtain the rightful owner of the property.

## CONDITIONS

- The suit must be in pending before the court.
- The pending suit must be in question of subject matter or title of the property.
- The suit or proceeding must be instituted in the competent jurisdiction of the court.
- Neither party can deal with the immovable which is pending before the court law to decide.
- The proceedings should be lawful.



## EXCEPTION

- The sale made by mortgagee to secured the mortgage debt is valid.
- Where the subject of the suit property and alienated property is different.
- On alienating the property, the transferor only gets affected.
- If the judgement debtor satisfies the court that such sale can compensate by mortgage or lease or private sale under Order 21 rule 63 of the Code of Civil Procedure.
- In case where the proceedings are not lawful.

## CASE LAWS

### **Case 1.**

***Thakur Prasad v Gaya Prasad (1898) ILR 20 ALL 349.***

Held - The lease of property made by the judgement debtor against whom the decree has been made under Sec.88 of the Transfer of Property Act, 1881, act of sale of that property comes within the provision of Sec.52 of the act. The lease executed by the judgement debtor cannot, but to the extent which can defeat the auction purchaser of the property. The decree is passed in favour of the plaintiff and all mesne profits from the property will be recovered.

### **Case 2.**

***Har Narain V. Mam charan., (2010) 13 SCC 128.***

It was held that the subsequent sale was subsequent to the filing of the suit under Sec,19(b) of the Specific Relief Act,1963 r/w sec 52 of the Transfer of Property Act,1881 could not grant any benefit to the purchaser and subsequent sale amounts to lis pendens. Second sale does not overriding effect of the first sale.

### **Case 3.**

***The Court Of Ms. Vandana Jain vs Sh. Surender Mahajan., CS.No.231/17.***

Held - Transfer of property during the pendency of the suit cannot be a cause of action for another legal proceedings impugning the transfer on the ground of the same as lis pendens.



The property transferred during the period of lis pendens becomes parties as inoperative as parties to the suit during pendens when the property has been transferred.

**Case 4.**

***Nadiminti Suryanarayan Murthy V. Kothurthi Krishna Bhaskara Rao., (2017) 9 SCC 622.***

Held - Where directly hit by the principle of lis pendens contemplated under Sec.52 of the Transfer of Property Act,1881. The lis pendens will lie on parties not less than plaintiff. Therefore, the parties work at liberty inter se in accordance with law falling on instant judgments.

**Case 5.**

***T.Ravi V. Chinna Narasimha., (2017) 7 SCC 342.***

Held - One sole co-sharer sold all the ancestral property during the pending of partition suit. Purchasers who claimed right over entire property alleged that right of waiver on the other co-sharers who cannot be permitted to approbate or reprobate. Co-sharers should not take multifarious inconsistent stand and have the protection of lis pendens.

**Case 6.**

***Sri M Rajendra V. SMT P Meyyammai., WP 12925/2019.***

Held - The petitioner purchased the property on the pending of injunction suit was operating against the vendor and in violation of injunction order; he was forced to amend the plain to resolve the dispute between the parties.

**Case 7.**

***Chockalingam Pillai V. Renganathan., 2019 SCC ONLINE MAD 6753.***

Held - The Plaintiff cannot claim any title with other property unless the property is specifically allotted to him. Plaintiff cannot claim any suit property and sale made by the first defendant is not valid.

**Case 8.**

***Patel Jivabai Mafatbai V. Patel Khodabai Harijivandas., 2018 SCC ONLINE GUJ 4197.***



Held - It is clear violation that during the pendency of the Civil Suit and received notice of the civil court, the defendant sold the land just to deprive the valuable right of the appellant.

**Case 9.**

***Sri C V Anjinappa V.Sri Jayaraj., WP 52654/2017.***

Held -The contentions of the respondent that they were not aware of the pendency of suit does not merit sustenance in as much as the doctrine of lis pendenceis not depend on the notice.

**Case 10.**

***Sri Venugopal Rao Kureti V. Sri Srinivasa Rao Kureti., WP.54540/2017.***

Held - The alienation of the property shall suffer lis pendence u/s 52 of the Property Act, 1882. Therefore, the alienee shall be bound by the decree no making, not being a party eo-nomine.

**DISCLAIMER.**

*This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s. Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com*



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