

Presentation On Doctrine of Lis Pendens

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Topics

- Introduction
- Doctrine of Lis Pendens Explanation under Section 52 Transfer of Property Act
- Objects
- Essentials of Doctrine of Lis Pendens
- Applicability of Doctrine of Lis Pendens
- Non- Applicability of Doctrine of Lis Pendens
- Some Examples (Illustration)
- Judicial pronouncement /Judicial Precedents On Doctrine Of Lis Pendens
- Conclusion

Introduction

- The doctrine of lis pendens is incorporated in the Transfer of Property Act, 1882, under Section 52.
- ‘Lis’ means litigation and ‘pendens’ means pending, literally signifying pending litigation.
- Any action or proceeding which is pending in any court of law is said to be lis pendens.
- The maxim representing this doctrine means that ‘during the pendency of litigation, nothing new should be introduced and to maintain the status quo, to abstain from doing anything which may affect any party to the litigation.

- The doctrine of Lis Pendens is based on a principle that during the pendency of suit, the subject matter of it (i.e. the property in the suit) should not be transferred to a third party.
- The crux is that when litigation is pending in respect of any property, none of the two parties shall be permitted to transfer the same except with the permission of the court.

- The rule of Lis Pendens states that when there is a suit or proceeding pending between two persons with respect to an immovable property and one these parties sells or otherwise transfers the subject matter of the litigation, then the transferee will be bound by the result of the suit or proceeding whether he had the notice of the suit of proceeding or not.

Doctrine of Lis Pendens Explanation under Section 52 Transfer of Property Act

- The explanation to this section provides the pendency of proceeding would begin on the date the plaint is presented as well as instituted in court of competent jurisdiction, and it would end on the date the final decree or order is passed by the court.
- As per Section 52, the effect of doctrine of lis pendens is not to invalidate the transfer, but to make it subject to litigation.

Objects

- Avoid endless litigation.
- To protect one of the parties to the litigation against the act of the order.
- To avoid abuse of legal process.
- The purpose of the doctrine is to protect either party to the suit against the act of another, to avoid misuse of legal process and to restrict endless litigation.

Essentials of Doctrine of Lis Pendens

- The basis of the doctrine is necessity, so it is immaterial as to whether the transferee had any notice of suit pending in the court or not.
- The transferee is bound by the order of the court even if he had no actual or constructive notice of the pending suit
- The pendency of the suit starts from the date on which the plaint is filed in the court and ends on the date on which the final decree is passed by the court, as mentioned in the explanation to section 52.

- It is observed that the doctrine of lis pendens applies only when the property has been transferred by a party to the litigation and it does not apply when property has been transferred by a stranger i.e. the person who is not a party to litigation.
- There must be a pendency of a suit or proceeding.
- The suit/proceeding must be pending in a court which has the jurisdiction to try it.
- A right to immovable property is either directly or indirectly involved in the suit/proceeding.

- The immovable property in dispute is transferred/dealt with by any party to the suit.
- Such transfer/dealing affects the rights of the other party(s) involved in the suit/proceeding.

Applicability of Doctrine of Lis Pendens

- The Apex court in the case of **Amit Kumar Shaw Vs. Farida Khatoon, (2005) 11 SCC 403** stated the required elements for the applicability of rule of lis pendens under section 52.

They are as follows:

- The suit must be in proceeding.
- The instituted suit should be filed under court with competent jurisdiction.
- The right of title of an immovable property is directly and specifically in question.

- The suit directly affects the rights of the other party.
- The property which is in question is being transferred by either party.
- The suit must not be collusive in nature.
- The court has explained the difference between collusive and fraudulent proceeding. It was held in the case of *Awadesh Pradesh V. Belarani* that, "the rule of *lis pendens* does not apply to the collusive suit or a suit in which a decree is obtained by a fraud or collusion".

- This doctrine applies only to immovable property cases and not to cases in which subject matter is movable property.
- The case must be directly or indirectly related to the question of the right to immovable property such as a dispute over title, right of alienation, etc. and is not applicable to suits related to debt, taxes, rents, etc.
- The doctrine of lis pendens is not applicable where the suit is collusive i.e. instituted with mala fide intention. This means that there is no actual dispute but the suit is filed for some evil motive, for example, defrauding a third party.

Non- Applicability of Doctrine of Lis Pendens

- Sale made by mortgager in exercise of his power conferred under the deed.
- In case where only transferor is only affected.
- In cases where proceedings are collusive in nature.
- When the property is not described correctly and makes it unidentifiable.
- When the right to the said property is not directly in question and alienation is permissible.

Some Example (Illustration)

- A rented his property to B so there is a pending suit between a landlord (A) and a tenant (B) regarding payment of rent, then A transfers his property during that time to another person C, the transfer shall not be affected in any manner by the doctrine of Lis Pendens because the suit was not regarding the title or interest of an immovable property, it was regarding the payment of rents.

- There is a dispute between A and B with regard to ownership of property. A files a suit against B. A may either win or lose the suit. If he wins, he gets the property but if he loses, B gets the property. If during the pendency of the suit, A professing to be the owner of the property, sells it to C and the suit ends in A's favour, no difficulty will arise. But if it ends in B's favour, C cannot retain the property. C is bound by the decree of the court and must return the property to B. He cannot take plea that he had no notice of pending litigation.

Judicial Pronouncement /Judicial Precedents On Doctrine Of Lis Pendens:

In the case of *Hardev Singh vs. Gurmail Singh, (2007) 2 SCC 404 (Civil Appeal No. 6222 of 2000)*, the Hon'ble Apex court held that Section 52 of the Act does not declare a pendente lite transfer by a party to the suit as invalid, void or unlawful but only make the pendente lite purchaser to be bounded by the pending litigation decision.

In the case of *Gouri Datt Maharaj V. Sheikh Sukur Mohammed (1948) 50 BOMLR 657* the Hon'ble High court of Bombay held that Section 52 is to maintain the status quo, unaffected by act of any party to the pending litigation.

Conclusion

- The main principle underlying Section 52 of the act is to maintain and preserve the status quo in a pending case and prevent any alteration that can be brought to the case by the involved parties. The principle specially mentions cases where an immovable property is directly or indirectly involved.
- It prevents a party to a suit from being deprived of its right regarding a certain property.

- It prevents from changes being made, introduction of rights in between a pending litigation.
- To protect either party to the suit against the act of another; To avoid misuse of legal process; To restrict endless litigation.



Thank You