

LIS PENDENS

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PROPERTY DISPUTES ARE RELATING TO

- Illegal possession of property
- Family disputes
- Title disputes
- Rental disputes
- Contractual disputes
- Disputes relating to Co-operative Housing Societies
- Disputes between buyers and developers
- Fraudulent property transactions
- Misrepresentation
- Partition of property
- Transactions based on fraudulent documents/WILLS

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DOCTRINE OF LIS PENDENS:

INTRODUCTION

‘Lis’ means an action or a suit. ‘Pendens’ is the present principle of Pendo, meaning continuing or pending, and the doctrine of lis pendens may be defined as the jurisdiction, power, or control that courts have, during the pendency of an action over the property involved therein.

The principle underlying section 52 of the Transfer of Property Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination.

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The principle of the maxim pendente lite nihil innovetur is incorporated in this section. The section provides that during the pendency of any suit in which right to immovable property is in question, neither party to the litigation can transfer or otherwise deal with such property so as to affect the rights of the opponent. The Explanation makes it clear that lis shall be deemed to commence from the date of the presentation of the plaint and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained.

The doctrine of lis pendens is founded in public policy and equity and if it has to be read meaningfully such a sale until the period of limitation for second appeal is over will have to be held as covered under S. 52 of the Transfer of Property Act.

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The purpose of Section 52 of the Transfer of Property Act is not to defeat any just and equitable claim, but only to subject them to the authority of the court which is dealing with the property to which claims are put forward. Section 52 of the Act does not declare a pendente lite transfer by a party to the suit as void or illegal, but only makes the pendente lite purchaser bound by the decision in the pending litigation. The principle underlying Section 52 is thus clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any party to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such suit.

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BASIC INGREDIENTS OF THE DOCTRINE OF LIS PENDENS

- A litigation should be pending in a court of competent jurisdiction;
- The suit must be relating to a specific immovable property;
- The suit should not be collusive;
- The suit should relate to a right in this specific property;
- Such property during the pendency of such a suit or proceeding cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under any decree or order which may be passed therein except under the authority of Court.

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NON-APPLICABILITY OF DOCTRINE:

It is not that the doctrine of lis pendens would be applicable in every case. Rather there are many instances where the doctrine cannot be applied. Following are the instances:

- A private sale by a mortgagee in exercise of power conferred by mortgage deed is not affected by the doctrine of lis pendens embodied in the section and the sale is valid, though made during the pendency of a redemption suit filed by the mortgagor.
- When the transferor alone is affected.

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- To an order passed against an intervenor in execution proceedings as the proper remedy in such cases is a suit under O. 21, r. 63 of the Code of Civil Procedure, 1908.
- To a friendly suit.
- Where the proceedings are collusive.
- To a transfer pending suit by a person who is not a party to such suit.
- To personal property other than the chattel interests in land.
- To transfer affected by order of the court in which suit or proceedings is pending.
- Where there is misdescription of the property in the plaint.

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- Where alienations are not inconsistent with the rights which may be established by the decree in the suit.
- The doctrine of lis pendens does not apply to the case of a person who, during the pendency of a mortgage suit obtains a mortgage of the property, in consideration for money paid by him and used by the mortgagor to pay off the suit mortgage.

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