

**SECTION 52:  
DOCTRINE OF LIS  
PENDENS**

- **Lis pendens means a suit under consideration of any court of law.**
- It is an action which is pending in any court.

- **The section is based on the maxim “*ut lite pendente nihil innovetur*” which means – that nothing new should be introduced in the pending litigation.**

- ❑ **Basis of Section 52 in Indian Courts is not the doctrine of notice but expediency ie., the necessity for final adjudication and public policy.**
- ❑ **Doctrine does not rest on any kind of notice but on necessity that neither party to the litigation should alienate the property in dispute.**

- **Where a suit or proceeding is 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. This is known as the rule of lis pendens.**

- *Low Raj Kumar v Major Daya Shankar (Dr)AIR1986 Del364*
- *Narendrabhai Chaganbhai Bharatia v Gandevi Peoples Cooeprative Bank Ltd AIR 2002 Guj 209*

in both cases it was held that the principle of S-52 applies even where TPA does not apply , because the section is based on justice, equity & good conscience.

- **The following conditions must be fulfilled for the applicability of this section section:**
  1. **There must be a pending suit or proceeding**
    - **Pendency of the suit or proceeding begins from the date of the presentation of the plaint or institution of the proceeding in a court of competent jurisdiction**

- In case of *Gauri Dutt v Sukar Mohd.* (1948),  
A transfer was affected next day after the institution of the suit, the section was held to apply to the transfer although nothing was done to inform the transferor regarding the institution of the suit



- If a plaint is presented in a wrong court and transfer takes place during such pendency, the doctrine of lis pendens would not be applicable.

**4. The right to immovable property must be directly of specifically in question in that suit or proceeding.**

**The disputed property must be transferred or otherwise dealt with by any party to the dispute.**

## ILLUSTRATIONS

- **A mortgaged property to B. B sued on the mortgage and obtained a decree for foreclosure. Before the decree was made absolute, A sold property to C. The decree for foreclosure was made absolute and it was held that C was not entitled to redeem. If he had purchased before the suit ,he would have been entitled to redeem though not made a party. But as his purchase was pendente lite, he was bound by decree.**

- **A mortgaged property to B.B sued A on the mortgage and obtained decree for sale. While this decree was in execution ,A leased the property to C for 10 yrs. B brought the property to sale and purchased it himself . As C's lease was affected by the rule of lis pendens, it was held that B was entitled to evict C.**

Padmja v Errathil Sanjeev AIR 2007(NOC) 70 Ker  
Question was whether 19(b) of Specific Relief Act  
*would apply or Section 52 of TPA would apply.*

- 19. Relief against parties and persons claiming under them by subsequent title.- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-  
  
(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

## References:

Gour H.S., *Commentary on the Transfer of Property Act, 1882*, 13<sup>th</sup> Edition, Delhi Law House, New Delhi, (2014)

Saxena, P.P., *Property Law*, 2<sup>nd</sup> Edition, LexisNexis Publications, Gurgaon, (2007)

Chitaley & Manohar, *The Transfer of Property Act, 1882*, 1<sup>st</sup> Edition, All India Reporter, Nagpur, (2012)

Shukla S.N., *Transfer of Property Act*, 5<sup>th</sup> Edition, Allahabad Law House Publishers, Allahabad, (2008)

Rose, Carol M., *Possession as the Origin of Property*, Yale Law School: Faculty Scholarship Series (Paper 1830), 1985

Pedersen Martin J., *Properties of Property: A Jurisprudential Analysis*, The Commoner (Issue #14), 2010