

## CAN TRANSFEREE PENDENTE LITE BE MADE PARTY TO A PARTITION SUIT?

Written by *Shivam Goel*

Advocate, High Court of Delhi

### DOCTRINE OF *LIS PENDENS*

The doctrine of *lis pendens* is based on legal maxim “*ut lite pendente nihil innovetur*”, that is, during a litigation nothing new should be introduced. The doctrine of *lis pendens* is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title *pendente lite*. Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as the TPA) does not indeed annul the conveyance or transfer of immovable property which takes place *pendente lite*, but it rather renders the conveyance or transfer which takes place *pendente lite*, subservient to the rights of the parties to a litigation. The purchaser *pendente lite* is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him.

In the matter of: *Anita Soni V/s Mina Devi & Ors*, Writ Petition (Civil) No. 5237 of 2015, High Court of Jharkhand (Ranchi), Date of Decision: 27.08.2018, Coram: Shree Chandrashekhar, J., it was held that:

1. The person whose presence is necessary for effective adjudication of the dispute is a ‘necessary party’ and the one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding is a ‘proper party’.
2. Under Order 1, Rule 10 (2) of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC), the court may at any stage of the proceeding, either *suo motu* or upon an application of a party, strike out the name of any party who has been improperly joined and/or add name of any person who ought to have been joined in the suit but was

not joined. The power under Order 1, Rule 10 (2) of the CPC is grounded on justice, equity and good conscience.

3. Doctrine of *Lis Pendens* has been incorporated in Section 52 of the TPA. Doctrine of *Lis Pendens* embodies the public policy that:
  - i. The decision of a court in a suit must bind all who claim an interest in the property and also those who derive title *pendente lite*.
  - ii. It would be plainly impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* are permitted to prevail, as the plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment/ decree, and thus, would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of conduct.
4. Application for joinder of a transferee *pendente lite* in a partition suit should ordinarily be allowed to enable the transferee *pendente lite* to protect his interest (See: ***Amit Kumar Shaw & Anr V/s Farida Khatoon & Anr***, (2005) 11 SCC 403). However, a transferee *pendente lite* cannot claim his addition in the pending suit as of right, though the court has a discretion to make him a party, thus, he can be added as a 'proper party' only if his interest in the subject matter of the suit is substantial and not peripheral.
5. It is important to note that, in a partition suit:
  - i. A purchaser *pendente lite* who has purchased undivided share of a co-sharer is normally impleaded as a party in order to work out equities in his favour in the final decree proceedings.
  - ii. Impleadment of purchaser *pendente lite* in a partition suit is only for the purpose of providing an opportunity to the purchaser *pendente lite* to protect his rights flowing from the sale-deed executed by a co-sharer to the extent of the share of the co-sharer in the joint family property.
  - iii. Presence of purchaser *pendente lite* is not necessary for effective and complete adjudication of the dispute in a partition suit, however, it is only at the stage when final decree is to be prepared that a purchaser from a co-sharer can have a right to get the equities worked out in his favour in such manner that he may get the land comprised in the sale-deed which has been transferred to him by the co-sharers.

- iv. A purchaser *pendente lite* if impleaded has a very limited right and this limited right of a purchaser from a co-sharer is not a transferable right.
- v. **The limited right of a purchaser *pendente lite*, or the first purchaser, from a co-sharer to get equities worked out in his favour gets exhausted with his impleadment in the suit and a further alienation of the same property by the purchaser *pendente lite*, or the first purchaser, does not create a fresh equity or revive the same right in the second purchaser.**
- vi. **A purchaser *pendente lite*, who has purchased the suit property or a part of the suit property from another purchaser *pendente lite*, has no right to equities and, thus, cannot be impleaded in a partition suit.**

In the matter of: *Lakshmi V.P. V/s State of Kerala & Ors*, Writ Petition (Civil) No. 10995/2014, High Court of Kerala, Date of Decision: 10.04.2017, Coram: Dama Seshadri Naidu, J., it was held that:

1. A person could, either temporarily or on permanent basis, be restrained from alienating property under a valid judicial directive, however, mere pendency of any litigation of whatever nature does not *ipso facto* affect a person's right to alienate.
2. As mandated under Section 52 of the TPA, a sale, pending any litigation, at best amounts to a *lis pendens* sale. A sale *pendente lite* cannot give to the purchaser a cleaner or better title than what the seller has and the purchaser's right to the property is always subject to the outcome in the pending litigation.
3. **A purchaser *pendente lite* cannot take the plea of a *bona fide* purchaser even when he did not know of the pending litigation. *Caveat emptor*- buyer beware- holds the field.**
4. Transactions hit by doctrine of *lis pendens* are not void. Transfer of immovable property, if any, made in contravention of Section 52 of the TPA renders it subservient to the rights of the parties in litigation so that the rights would eventually be determined in a suit.

## EXCURSUS

1. A transferee pendente lite can be made proper (and not necessary) party to a partition suit.
2. The whole object of the doctrine of *lis pendens* is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.
3. Even after the dismissal of a suit a purchaser *pendente lite* is subject to the doctrine of *lis pendens*, if appeal is afterwards filed.
4. Ordinarily, the *pendente lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.
5. When sale-deed is executed during the pendency of suit, the purchaser *pendente lite* is bound by the outcome of the suit.
6. If a sale-deed is hit by doctrine of *lis pendens* then a purchaser *pendente lite* cannot take the plea that he has perfected his title by adverse possession during the pendency of the suit. (See: *T. Ravi & Anr V/s B. Chinna Narasimha & Ors*, Civil Appeal Nos. 4731-4732/ 2010, Supreme Court of India, Date of Decision: 21.03.2017, Coram: Arun Mishra & Amitava Roy, JJ.)

## AFTERNOTE

Section 43 of the TPA deals with ‘Transfer by unauthorized person who subsequently acquires interest in property transferred’. Section 43 of the TPA states that:

*“Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.*

*Nothing in this Section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”*

In the matter of: *Tanu Ram Bora V/s Promod Ch. Das (D) through LRs & Ors*, Civil Appeal No. 1575 of 2019, Supreme Court of India, Date of Decision: 08.02.2019, Coram: L. Nageswara Rao & M.R. Shah, JJ., it was held that:

- i. Section 43 of the TPA provides that if at the time of transfer, the vendor/transferor might have a defective title or have no title and/or no right or interest, however if subsequently the transferor acquires the right, title or interest and the contract of transfer subsists, in that case at the option of the transferee, such a transfer is valid; and in such a situation, the transferor cannot be permitted to challenge the transfer and/or the transferor has no option to raise the dispute in making the transfer.
- ii. The intention and object behind Section 43 of the TPA seems to be based on the principle of estoppel as well as equity. The intention and object seem to be that after procuring the money (sale consideration) and transferring the land, thereafter the transferor is estopped from saying that though he has sold/transferred the property or land on payment of sale consideration, still the transfer is not binding on him. This is the reason as to why Section 43 of the TPA gives an option to the transferee and not the transferor.
- iii. The intention of Section 43 of the TPA seems to be that nobody can be permitted to take benefits of his own wrong.
- iv. In the matter of: *Ram Pyare V/s Ram Narain & Ors*, (1985) 2 SCC 162, considering Section 43 of the TPA, it was observed that the sale deed in favour of the vendee was result of an erroneous representation of the vendor, thereafter the sons of the vendor, cannot claim to be transferees in good faith and therefore their suit for cancellation of the sale deed would not be maintainable.