



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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Lecture-15



DOCTRINE OF LIS PENDENS (Section 52)

The Doctrine of 'Lis Pendens' has its origin by Justice Turner in *Bellamy Vs. Sabine* 44 E.R. 842. It means pendente lite (pending litigation) neither party to the litigation can transfer the property in dispute so as to affect the interests of his opponent. In India this principle has been accepted by Privy Council in the case of *Faiyyaz Hussain Vs. Prag Narayan*. It is provided under section 52 of Transfer of India Act 1882 as follows:

" During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir] Government or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."

Explanation : For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, 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, or has become unobtainable by reason of the expiration of any period of limitation.

The essentials are as follows:

- a) The transfer should take place during the pendency of a suit or proceeding.
- b) The case must be pending in a court of competent jurisdiction.
- c) The case should not be collusive.
- d) The litigation should be specifically in respect of the immovable property transferred

It is evident from the above that the doctrine does not prohibit transfer 'pendente lite' but what it says is that the transfer should not defeat the rights of the other party, & any decree which may be passed by the court.

The suit or proceeding commences on the date of the presentation of the plaint or the institution of the proceeding in a court which has got jurisdiction.

The case is pending until it has been disposed off by a final decree or order of the court. Further, there must be complete satisfaction of the decree or order of the court thereof.

i) In Bellamy Vs. Sabine the facts were: E sold immovable property to S. E's son F as heir of E sued S in a competent court to set aside the sale. Pendente lite the defendant S, sold the property to B who took without notice of pendants lite. Ultimately the court held that F was entitled to the property. The sale was set aside. The transferee. B does not get any title to the property (He who has no title cannot pass title).

ii) A Hindu wife sued her husband B for maintenance ove

r certain immovable properties in dispute. B transferred the property to C. The wife got a decree declaring a charge over the property. Question was whether C was bound by the decree. Held : Right to maintenance was a personal obligation independent of the property. Hence the doctrine of lis-pendens was not applicable.

MCQ

1. Section 52 of Transfer of Property Act, 1882 imposes a prohibition on transfer or otherwise dealing of any property during the pendency of a suit, provided the conditions laid down in section are satisfied. The statement is:

- (a) false
- (b) true
- (c) partly true
- (d) none of the above.

2. The principle of lis pendens embodied in section 52 of the Transfer of Property Act, 1882 pertains to:

- (a) bona fide purchase
- (b) public policy
- (c) auction sale
- (d) none of the above.

3. Rule of lis pendens is applicable to suits for specific performance of contracts to transfer immovable property. The statement is:

- (a) true
- (b) false
- (c) partly true
- (d) none of the above.

4. Rule of lis pendens is applicable to suits for specific performance of contracts to transfer immovable property. This statement is:

- (a) false
- (b) true
- (c) partly false
- (d) none of the above.

5. In case of a transfer hit by the doctrine of lis pendens, the question of good faith which is essential to be established before a equitable relief can be granted in favour of a subsequent vendee under sections 41 or 51 of the Transfer of Property Act, 1882 is:

- (a) relevant
- (b) partly relevant
- (c) totally irrelevant
- (d) partly irrelevant.