IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 461 of 2008

Reserved on: 13.10.2026

Date of Decision: 29.10.2026

Pritam Singh (deceased) through LRs ...Appellants

Versus

Santosh Kumari & ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes.

For the Appellants	:	Mr. N.K. Thakur, Senior Advocate, with Mr Divya Raj Singh, Advocate.
For the Respondents	:	None.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 29.07.2008 passed by the learned Additional District Judge, Fast Track Court, Una, H.P. (learned First Appellate Court), vide which the order dated 08.03.2002 passed by the learned Senior Sub-Judge, Una (learned Executing Court), in objections preferred under Order XXI Rules 97 and 98 of the

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Code of Civil Procedure (CPC), was set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Executing Court for convenience)*.

2. Briefly stated, the facts giving rise to the present appeal are that the learned Senior Sub-Judge, Una, decreed the suit filed by Jagannath against defendant Sarwani Devi for the specific performance of the agreement to sell and directed her to execute the sale deed as per the law for a consideration of ₹4,000/-. The decree holder (DH), Jagannath, filed an application for execution of the judgment and decree, seeking a direction to Sarwani Devi, the judgment debtor (JD), to execute the sale deed on the payment of the remaining sale consideration. Pritam Singh, Gian Singh, and Vikram Singh (objectors) filed objections to the execution, taking preliminary objections regarding lack of maintainability and cause of action. They asserted that they are the absolute and exclusive owners in possession of the suit land and the DH had no concern with it. The objectors had purchased the entire suit land vide sale deeds dated 03.06.1986 and 06.10.1986 for valuable consideration without notice before filing of the suit and passing of the decree.

2026:HHC:47339

They are not bound by the decree and the execution cannot proceed against them.

3. The DH filed a reply asserting that the sale deeds were executed by the JD after filing of the suit to defeat the rights of the decree holder. Therefore, it was prayed that the objections be dismissed.

4. The learned Trial Court framed the following issues on 15.12.2000:

1. Whether the present petition is not maintainable? OP Objector.
2. Whether the DH has no cause of action and locus standi to file the execution? OP Objector.
3. Whether the decree is unexecutable and the objector had purchased the entire suit land from the land owners bona fide for valuable consideration without notice prior to the filing of the suit as alleged? OP Objector.
4. Relief.

5. The parties were called upon to produce the evidence. The objectors examined Pritam Singh (OW-1), Gian Chand (OW-2), Jeeta (OW-3), and Ram Chand (OW-4). The decree holder examined Prem Lal (NOW-1), Chanan Singh (NOW-2), and Jagannath (NOW-3).

2026:HHC:47339

6. The learned Executing Court held that Jeeta, Attorney of JD No. 1, had executed a sale deed in favour of Pritam on 06.10.1987 and delivered possession to the purchaser. Jeeta executed a sale deed in favour of Gian Chand on 03.06.1986 for a consideration of ₹300/- and put Gian Chand in possession. The civil suit was filed on 03.06.1986, and an interim injunction was granted on the same day restraining the JDs from alienating the property. There was no evidence that the JDs or the objectors were aware of the passing of the interim order. A part of the suit land had been sold, and the execution could proceed regarding the rest. Hence, the learned Trial Court answered Issue Nos. 1 and 2 in the negative, Issue No. 3 partly in the affirmative, upheld the objections of the objectors, and ordered the continuation of the execution regarding the rest of the suit land after excluding 2 Kanals 17 Marlas and 5 Marlas sold to Pritam Singh and Gian Chand.

7. Being aggrieved by the order passed by the learned Executing Court, the legal heirs of the decree holder filed an appeal, which was decided by the learned Additional District Judge, Fast Track Court, Una, District Una (learned First Appellate Court). The learned First Appellate Court held that the

2026:HHC:47339

civil suit was filed on 03.06.1986 and was decreed on 03.09.1992. Sarwani (JD No. 1) had sold part of the suit land through her son Jeet Singh, measuring 5 Marlas, to Gian Chand on 03.06.1986 and 2 Kanals 17 Marlas to Pritam Singh vide sale deed dated 06.10.1987. A plea of bona fide purchaser for consideration is not available to a transferee who purchases the property during the pendency of the suit. The doctrine of *lis pendens* applies from the date of presentation of the plaint till the satisfaction of the decree. The plaint was presented on 03.06.1986, and the sale deeds were executed during the pendency of the suit; hence, they are hit by the doctrine of *lis pendens.* The learned Trial Court erred in upholding the objectors' claim. Hence, the order passed by the learned Trial Court was set aside, and the learned Trial Court was directed to execute the judgment and decree as per the law.

8. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the objectors filed the present appeal, which was admitted on the following substantial questions of law on 12.09.2008:

1. Whether a decree for specific performance obtained by respondents No.1 to 5 is binding on a bona fide

purchaser for lawful consideration without notice and without impleadment of such purchaser?

2. Whether the doctrine of lis-pendens as envisaged under Section 52 of the Transfer of Property Act is attracted to the facts of the case in the absence of any proof/evidence as to whether the sale deed which is executed before the suit or after the suit?

3. Whether the sale in favour of a person who is a bona fide purchaser for value without notice is protected under Section 19 of the Specific Relief Act and the learned Lower Appellate Court has erred in misconstruing the provisions of Section 19 of the Specific Relief Act?

9. Mr N.K. Thakur, learned Senior Counsel for the appellants/objectors, submitted that the objectors were *bona fide* purchasers for consideration without any knowledge of the pendency of the suit. The decree holder had not assailed the sale effected by defendant No. 1/JD no.1 in favour of the objectors, and the same could not have been set aside by the learned Appellate Court. The learned Executing Court had rightly upheld the objections preferred by the objectors, and the learned Appellate Court erred in setting aside the well-reasoned judgment passed by the learned Executing Court. Therefore, he prayed that the present appeal be allowed, the judgment and decree passed by the learned First Appellate Court be set aside, and those passed by the learned Executing Court be restored. He

2026:HHC:47339

relied upon the judgment of this Court in ***Bhagwati Devi & ors. v. Dev Raj @ Hans Raj Sharma & anr. a/w connected matter RSA No. 384 of 2005, decided on 24.09.2019***, in support of his submissions.

10. None appeared on behalf of the respondents when the matter was listed for hearing; hence, none could be heard on their behalf.

11. I have given considerable thought to the submissions made at the Bar and have gone through the records carefully.

Substantial Question of Law No.2:

12. A sale deed (Ext. O-2) was executed by Jeeta as power of attorney of Sarwani in favour of Pritam Singh for ₹2,500/- on 06.10.1987. Similarly, a sale deed (Ext. O-3) was executed by Jeeta regarding 5 Marlas of land in favour of Gian Chand on 03.06.1986. The judgment and decree passed by the learned Senior Sub-Judge, Una, mentions the date of institution of the suit as 03.06.1986. Thus, it is incorrect to say that there is no proof of the fact as to whether the sale deeds were executed before the pendency of the suit or not. The dates of execution of the sale deeds were apparent on the sale deeds themselves.

2026:HHC:47339

These were also mentioned in the objections, as well as the statement on oath by Gian Chand (OW-2) and Jeeta (OW-3).

13. Section 52 of the Transfer of Property Act provides that the pendency of the suit shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and will 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 prescribed for the execution thereof.

14. It was laid down by the Hon'ble Supreme Court in ***Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy, 2024 SCC OnLine SC 3214*** that the pendency is defined to commence from the date of institution until its disposal. The doctrine of *lis pendens* kicks in at the stage of institution and not at the stage when notice is issued by the Court. Thus, it would apply even if the petition is defective and is lying in the Registry. It was observed: -

> **61.**...This purpose of the provision is clearly elucidated in the Explanation clause to Section 52, which defines

2026:HHC:47339

> "pendency". The Amending Act 20 of 1929 substituted the word "pendency" in place of "active prosecution". The Amending Act also included the Explanation defining the expression "pendency of suit or proceeding". "Pendency" is defined to commence from the "date of institution" until the "disposal". The argument of the respondents that the doctrine of lis pendens does not apply because the petition for review was lying in the Registry in a defective state cannot be accepted.
>
> **62.** The review proceedings were "instituted" within the period of limitation of thirty days. The doctrine of lis pendens kicks in at the stage of "institution" and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this Court. Any transfer that is made during the pendency is subject to the final result of the litigation. [***G.T. Girish v. Y. Subba Raju, (2022) 12 SCC 321: (2023) 3 SCC (Civ) 422***]

15. In the present case, the suit was instituted by filing a plaint. The certified copy of the plaint mentions Box No.1 above the date of presentation of the plaint. Volume 1, Chapter 1, Part C of the Punjab and Haryana High Court Rules and Orders, as applicable to the State of H.P., deal with the reception of the plaint and application. Rule 7 provides that the petition box shall be placed in the verandah of the Court house about one hour before the Court sits. It shall be opened in the presence of the Judge about 15 minutes after the Court opens, when all the petitions shall be initialled by him. The box shall be replaced in

2026:HHC:47339

the verandah and opened again before the Court rises for lunch. It shall then again be replaced and opened for the last time 15 minutes before the time fixed for rising of the Court. After it has been opened for the third time, it shall not be replaced in the verandah again.

16. Therefore, Box No. 1 opens 15 minutes after the Court sits, and the plaint was filed within one hour of the sitting of the Court. The Court hours are from 10:00 AM to 4:00 PM, which means that the plaint was instituted on or before 10:15 AM. The sale deed was written, executed, and registered on 3.6.1986. Therefore, the learned Appellate Court had rightly held that the sale deed was executed during the pendency of the suit and was hit by the doctrine of *lis pendens*. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No. 3:

17. It was laid down by the Allahabad High Court in ***Ram Peary vs. Gauri, AIR 1978 All 318***, that Section 19(b) of the Specific Relief Act will give way to Section 52 of the Transfer of Property Act. It was observed:

> "**7.** In the light of these principles we have got to consider whether in the event of a conflict arising between the

2026:HHC:47339

doctrine of lis pendens enshrined in Section 52 of the Transfer of Property Act and the rule availing a subsequent transferee without notice, contained in Section 19(b) of the Specific Relief Act either the one or the other should prevail. Ordinarily, it is true that the title acquired by the subsequent purchaser is good, the sale to him being not void. But he who purchases during the pendency of the suit is bound by the decree that may be made against the person from whom he derives title. The litigating parties are exempted from the necessity of taking any notice of a title so acquired (see ***Samarendra Nath Sinha v. Krishna Kumar Nag (AIR 1967 SC 1440***)). As to the vendor and the prior contractor, it is as if no such title existed. Section 52 places a complete embargo on the transfer of any right to immovable property pending suit, which is directly and specifically in question in such litigation; it enacts that during the pendency of the suit in which any right to immovable property is "directly and specifically in question, the property cannot be transferred or otherwise alienated by any party to the suit so as to affect the rights of any other party thereto under any decree."

8. Thus, in the present case it may be that the subsequent transferee was entirely ignorant of any right on the part of the contractor, and also of the pendency of the suit filed against the vendor by such contractor, yet as the transfer was made to him by the vendor after the institution of the suit of the contractor and, while it was pending, the subsequent purchaser cannot set up against the contractor any right from which his vendor is excluded by the decree. The title of the subsequent purchaser is good against him on the ground of breach of covenant, but against the plaintiff contractor who seeks specific performance of the contract against the vendor, the subsequent transferee can be in no way better position than the vendor himself. It is well settled that in a suit for specific performance of a contract in respect of immovable property a right to immovable property is

directly and specifically in question. (see ***Gauri Dutt Maharaj v. Sheikh Sukur Mohammad (75 Ind App 165) : (AIR 1948 PC 147)***).

9. As Story has put it in the passage quoted above, the effect of the doctrine of lis pendens is not to annul the conveyance but only to render it subservient to the rights of the parties in the litigation. The conveyance in favour of the subsequent purchaser is treated as if "it never had any existence". The conveyance in favour of the subsequent purchaser thus yields to the adjudication of the rights obtained by the contractor, in consequence of a decree obtained against the vendor in a suit for specific performance of the contract. In ***Durga Prasad v. Deep Chand (AIR 1954 SC 75)*** (supra), their Lordships were dealing with the form of the decree in a suit directing specific performance of contract between the vendor and the plaintiff and in that connection, with a view to convey to the plaintiff, without cancelling the subsequent sale, they, without enforcing the contract against the subsequent purchaser, directed him to join in the conveyance so as to pass on the title which resided in him to the plaintiff. It was not a case falling within the mischief of Section 52 of the Transfer of Property Act.

10. In our opinion, therefore, when the doctrine of lis pendens renders a transfer made during the pendency of the suit subservient to the rights of the plaintiff seeking specific performance of a prior contract entered into by the vendor in his favour and when on account of the operation of the doctrine of lis pendens such conveyance is treated as if it had never any existence, the subsequent transferee, even though he had obtained the transfer without notice of the original contract, cannot set up against plaintiff-contractor any right; for it would defeat the rule of lis pendens which is founded upon public policy. And considered in that manner, Section 52 of the Transfer of Property Act is not subject to Section 19(b) of the Specific Relief Act."

18. The Hon'ble Supreme Court also held in ***Alka Shrirang Chavan v. Hemchandra Rajaram Bhonsale, 2026 SCC OnLine SC 55*** that Section 19(b) of the Specific Relief Act applies to the sale deeds executed before the pendency of the suit and not to those executed during the pendency of the suit. It was observed: -

> **46.1.** The only clause which may be of some relevance is clause (b) of Section 19. It says specific performance of a contract may be enforced against 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.
>
> **46.2.** Section 19 in general and clause (b) thereof in particular acknowledges the claim of a person to a contract *qua* a subsequent transferee. But clause (b) carves out an exception when a subsequent transferee acts in good faith and without notice of the original contract.
>
> **47.** In ***K.S. Manjunath v. Moorasavirappa [2025 SCC OnLine SC 2378***], the subsequent purchasers were seeking to bring themselves within the status of *bona fide* purchasers under Section 19(b) of the Specific Relief Act. It was in that context that this Court examined Section 19(b) as under:
>
> > 68. .....Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against 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

2026:HHC:47339

> original contract. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause. In the case of ***Ram Niwas v. Bano [(2000) 6 SCC 685]***, this Court had set out three factors that a subsequent transferee must show to fall within the excluded class: (a) he has *purchased for value* the property, which is the subject matter of the suit for specific performance; (b) he has paid his money to the vendor in *good faith*; and (c) he had *no notice* of the earlier contract for sale specific performance of which is sought to be enforced against him. The Court observed that "notice" can be (i) actual notice or (ii) *constructive notice*, or (iii) imputed notice. As per Section 3 of the Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when, but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it.....

47.1. Thereafter, this Court referred to a decision of the Madhya Pradesh High Court and held thus:

> 69. Similarly, in ***Durg Singh v. Mahesh Singh [2004 SCC OnLine MP 9]***, the Madhya Pradesh High Court had observed that there are two factors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser: *(i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree*, and *(ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour of the plaintiff*. Both these factors need to have nexus with the facts of each case and conduct of parties.....

> **47.2.** This Court analysed the expressions 'wilful abstention from inquiry or search', 'notice' and 'good faith' and concluded that to claim protection under Section 19(b), the purchaser must show three things: (a) purchase for value, (b) payment in good faith, and (c) absence of notice of the earlier contract. 'Notice', it has been emphasised, includes not merely actual knowledge but also constructive and imputed knowledge.
>
> **48.** However, it is evident that Section 19(b) of the Specific Relief Act operates at a stage prior to institution of a suit or proceeding.
>
> **49.** We have already analysed Section 52 of the Transfer of Property Act and the interpretation given thereto by this Court. In our view, the interpretation and understanding of clause (b) of Section 19 has to align with the interpretation given to Section 52 of the Transfer of Property Act, as any other interpretation would lead to an incongruous and anomalous situation which should be avoided.
>
> **50.** As pointed out above, Section 19(b) of the Specific Relief Act would be available to a party to a contract who suffers a subsequent transfer of property. However, the moment a suit or proceeding is instituted by a party to the contract whereafter there is transfer of the suit property, Section 19(b) of the Specific Relief Act would have to give way to Section 52 of the Transfer of Property Act in which event the doctrine of *lis pendens* would come into force.

19. Therefore, the provision of Section 19(b) of the Specific Relief Act cannot apply to a pendente lite purchaser.

20. This Court had also held in ***Raj Singh vs. Maharaj Mal, 1996 (2) Civil Court Cases 326 (HP)***, that the plea of bona fide

purchaser for consideration is not available to a transferee *pendente lite*. It was observed: -

> **17.** It was contended that the transferee's objectors are the bona fide purchasers for consideration, who had no notice regarding the pendency of the litigation. It was laid down by this Court in ***Raj Singh v. Maharaj Mai, 1996 (2) Civil Court Cases 326 (HP)*** that the plea of bona fide purchaser for consideration is not available to the transferee under lis pendens. It was observed:—
>
> > 13. Section 52 is absolutely clear that during the pendency of the suit or proceeding, the immovable property involved in the case directly cannot be transferred. The contention of the learned counsel for the petitioners is that as both the courts below dismissed the suit and the appeal, mere pendency of the second appeal before this Court will not attract the provisions of Section 52 of the Act, which I am unable to accept in view of the explanation to Section 52.
> >
> > 14. Mr Chhabil Dass has placed reliance on two decisions, namely, ***Simla Banking and Industrial Co. Ltd. v. Firm Luddar Ma! Khushi Ram, AIR 1959 Punj 490***, and ***Kanshi Ram v. Kesho Ran Bahna, AIR 1961 Punj 299***.
> >
> > 15. In ***Simla Banking and Industrial Co. Ltd.*** (supra), the Punjab High Court considered the doctrine of lis pendens elaborately and held that this doctrine is to invest the Court with complete control over alienations in this respect which are pendente lite and thus to render its judgment binding upon the alienates, as if they were parties, notwithstanding the hardship in individual cases.
> >
> > 16. In ***Kanshi Ram's case*** (supra). It was held that Section 41 must yield to the doctrine of is pendens

2026:HHC:47339

> under which the title in property could be validly transferred during the pendency of the litigation in respect of it.
>
> **18.** Hence, the objectors cannot claim to be *bona fide* purchasers for consideration.

21. Therefore, the objectors cannot claim to be *bona fide* purchasers for value without notice and protection under Section 19(b) is unavailable to them. The learned Appellate Court had rightly held so, and this substantial question of law is answered accordingly.

Substantial Question of Law No.1:

22. It was submitted that the objectors were not parties to the original suit; therefore, the decree cannot be enforced against them. This submission is not acceptable. It was laid down in ***Lakshmanan v. Kamal, 1958 SCC OnLine Ker, 1958 SCC OnLine Ker 132*** that there is no necessity to bring the transferee on record and he would be bound by the judgment and decree as if he was a party to the suit. It was observed:-

> **16.** The effect of this section is to render void as against the decree-holder in a suit in which any right to immovable property was in dispute and entitle him to ignore all transfers or other dealings with it by the judgment-debtor from the time of the institution of the suit till the complete satisfaction or discharge of the decree which would affect the decree-holder's rights

2026:HHC:47339

under the decree or any order made in the suit. The explanation specifically enjoins that the prohibition against transfers or dealings is to take effect from the date of the presentation of the plaint or the institution of the proceedings in a court of competent jurisdiction and remain in force until complete satisfaction or discharge of the decree has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed by law.

17. If a transfer or other dealing with a suit property *pendente lite* is void as against the decree-holder and he is entitled to ignore it and it cannot affect his rights under the decree, no purpose will be served by bringing on record, after the transfer, the transferee or the person in whose favour the property has been dealt with; and to insist that a transferee or the person in whose favour the property has been dealt with should be brought on record in such cases would only be to hold out a premium to persons who desire to escape from their legal obligations and unnecessarily protract legal proceedings, and would defeat the very purpose for which section 52 of the Transfer of Property Act has been enacted.

18. Regarding the necessity and justification for the rule of *lis pendens*, Turner, L.J., has observed in ***Bellamy v. Sabine, (1857) 1/De C. & J. 566***:

> "It is, as I think, a doctrine common to the Courts both of Law and Equity, and rests, as I apprehend, upon this foundation—that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceeding."

19. Lord Cranworth also has said in the same case:

> "It is scarcely correct to speak of *lis pendens* as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation. It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party".

(See passages from Their Lordships' judgment extracted at page 224 of *Mulla's Transfer of Property Act*, 1956 Edition). The explanation to section 52, Transfer of Property Act, is wide enough to include all transfers and dealings with the property made during the pendency of the suit in the trial and appellate courts as well as during the execution proceedings.

20. There is a case reported in ***I.L.R. 37 Bombay 427, Ishwar Lingo v. Dattu Gopal***, almost parallel to the present case. But for the fact that in the Bombay case, the suit was for the redemption of four joint mortgages and in the present case, the suit was for the redemption of a kanom, there is practically no difference between the two cases. There, as in the present case, the suit was originally brought against a joint family, and there was a partition in that family during the pendency of the suit. The co-parcener who obtained the family partition of the property involved in ***37 Bom. 427*** died during the course of the suit, and on his death, his right to the property devolved on his widow as his heir. But she was not impleaded in the suit after his death, and after the decree, she came forward and contended that the decree obtained without impleading her was invalid and not binding on her and the properties she got by virtue of the partition and her husband's death. The following passages from the judgment in that case disposing of her contentions are very relevant for the purpose of this case:

> ".....Thus regarded, it is at once clear that if, indeed, the plaintiff was under any obligation to

> bring Gopal's widow on the record, that could only have been because of the partition. And as *ex hypothesi*, that partition, being effected during the active prosecution of a contentious suit, was void against the plaintiff; it could not have cast any such obligation upon him. In using those words we do not lose sight of the learned Judge's view, that although a transfer or dealing with the property in suit *pendente lite*, it was not dealing which in any way affected the plaintiff's right. We are rather indicating why, in our opinion, that view is incorrect. For anything which imposes a new obligation upon a party to a suit must plainly *pro tanto* affect his right.....It is surely part of any litigant's right, so far as the subject matter and conduct of the suit are concerned, to know precisely where he stands. He is entitled to know who his opponents are, and, when that has been definitely and finally ascertained, to insist that no dealing on their part, with the property in suit, shall compel him to go further afield, and bring in new parties, who, but for such dealing, could have had no *locus standi* at all.....

Perhaps the simplest and most effective test is to ask whether, if the partition had not been made *pendente lite*, the plaintiff's suit could possibly have ended as it has? The answer to this must be — No. If there had been no partition, the widow would have had no *locus standi* when she intervened in execution. This suit would never have needed to be brought. All his troubles during the last seven years in prosecuting his redemption suit have been brought on the plaintiff by this partition and by nothing else. Or to put it in another way, either the partition has affected the plaintiff's rights as a party, or it has not. If it has, it is admittedly void as against him, under section 52. If it has not, it ought to be ignored, and no considerations drawn from it ought to have any place in the decision of the suit. Taking the latter course, what is the result? This,

that no Court should have treated the defendant in this suit as having any right whatever against the plaintiff, so far as his suit for redemption went. For it is only on the strength of the partition that she can pretend to any such right, and, *ex hypothesi*, the partition does not affect the plaintiff for all the purposes of that suit. Thus, the same result is easily and immediately reached either way. It would be easy to add further illustrative considerations. But we think that what we have said warrants us in believing that we have indicated the correct lines of reasoning to be followed in cases of the kind. Applied to the facts of this case, those lines of reasoning yield a very safe conclusion. We have no doubt at all but that the partition of January 10th, 1902, falls within the mischief of section 52, Transfer of Property Act, and cannot be allowed in any way to affect the plaintiff's right, either under his redemption decree or in execution. That being so, and the partition with all its legal consequences out of the way, it necessarily follows that the defendant in this suit has no right nor any ground of defence at all".

21. We have quoted the above passage in extenso because it gives an answer to the respondents' contention that section 52 of the Transfer of Property Act only enjoins that the transfer or dealing with the property shall not affect the decree-holder's rights under the decree and does not obviate the necessity to implead the transferee or the person in whose favour the property has been dealt with after the transfer. The decree-holder's right under the decree is not merely to get the property after paying the mortgage money—that right existed even before the decree and the decree merely enforces that right—but also to get possession of the property from the defendants against whom he had brought a properly constituted suit. The defendants cannot be allowed to defeat that right and cast a burden upon the plaintiff to change the frame of his suit and bring in other persons on record by transferring or dealing with the property *pendente lite*. It would be extremely difficult, if not

2026:HHC:47339

altogether impossible, to have a final adjudication if, after each successive transfer of the suit property or dealing with it by the defendants, the plaintiff has to implead the persons obtaining rights under the transfer or dealing or file a fresh suit against them. He will then have to implead more and more persons in successive and unending stages determined at the sweet will and pleasure of the persons interested in delaying the suit. The effect of the rule of *lis pendens*, which has been enacted by section 52 of the Transfer of Property Act to get over this difficulty, is that the transferee *pendente lite* is bound by the proceedings in the suit and the decree therein even though he is not a party to the suit. He takes the transfer subject to the result of the suit to which the original transferor is a party. As pointed out in ***Seithappa Gowndan v. Muthiah Gowndan (I.L.R. 31 Mad. 268)***:

> "The law of *lis pendens* in this country is founded on the necessity, if possible, of a final adjudication"

22. and to prevent the injustice of the plaintiff being prejudiced by any act of the defendant subsequent to the institution of the suit.

23. For the reasons stated above, we hold that in a suit or proceeding in which any right to immovable property is directly and specifically in question (which would include the right to recover property) brought against the manager of a Hindu joint family or the karnavan of a marumakkathayamtarwad in his representative capacity, which is not collusive, the plaintiff, or the decree-holder in the execution proceedings, is not bound to implead either in the suit or in the execution proceedings any person to whom the suit property has been allotted under a partition effected subsequent to the institution of the suit and that all proceedings in such a suit, whether on the trial, appellate, or execution side, would be binding on all the members of the tarwad or joint family including the persons who had obtained title to any part of the suit property under the subsequent partition, if they are valid and binding against the original defendant and the

> persons whom the plaintiff or decree-holder was bound to implead on the death of such defendant. It will, of course, be open to the persons who have obtained rights to the suit properties by the subsequent partition to apply to get themselves impleaded in the suit or execution proceedings to protect their legitimate rights, if any, and courts have the power to implead them on their applications if their presence in the party array is necessary in the interests of justice. But the plaintiff and the decree-holder are not bound to implead them, and no proceeding can be held to be invalid merely because the plaintiff and the decree-holder have omitted to implead them. We, therefore, hold that the decree-holders were not bound to implead the petitioners in I.A. Nos. 1193, 1194, 1195 and 1196 of 1955 and that the deliveries of the properties complained of in those petitions cannot be set aside on the ground that the decree-holders had failed to implead them.

23. The Hon'ble Supreme Court held in ***Samarendra Nath Sinha v. Krishna Kumar Nag, AIR 1967 SC 1440,*** that a purchaser *pendente lite* is bound by the result of the litigation. It was observed:

> **16.** What then is the position of the respondent once it is held that the final decree for foreclosure was validly passed by the trial court? Could he challenge that decree in an appeal against it in the High Court on the basis that he was entitled to redeem the said mortgage? Section 91 of the Transfer of Property Act provides that besides the mortgagor, any person other than the mortgagee who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same may redeem or institute a suit for redemption of such mortgaged property. An execution purchaser therefore of the whole or part of the equity of redemption has the right to redeem the mortgaged property. Such a right is based on

2026:HHC:47339

the principle that he steps in the shoes of his predecessor-in-title and has therefore the same rights which his predecessor-in-title had before the purchase. Under Section 59-A of the Act, also all persons who derive title from the mortgagor are included in the term "mortgagor" and therefore entitled to redeem. But under Section 52, which incorporates the doctrine of *lis pendens*, during the pendency of a suit in which any right to an immovable property is directly and specifically in question, such a 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. Under the Explanation to that section, the pendency of such a suit commences from the date of its institution and continues until it is disposed of by a final decree or order and complete satisfaction or discharge of such a decree or order has been obtained. The purchaser *pendente lite* under this doctrine 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. This principle is well illustrated in ***Radhamadhub Holdar v. Monohar [15 IA 97],*** where the facts were almost similar to those in the instant case. It is true that Section 52, strictly speaking, does not apply to involuntary alienations such as court sales, but it is well-established that the principle of *lis pendens* applies to such alienations. (See ***Nilkant v. Suresh Chandra [12 IA 171]*** and ***Motilal v. Karrabuldin [24 IA 170]***). It follows that the respondent, having purchased from the said Hazra while the appeal by the said Hazra against the said preliminary decree was pending in the High Court, the doctrine of lis pendens must apply to his purchase, and as aforesaid he was bound by the result of that suit. In the view we have taken that the final foreclosure decree was competently passed by the trial court, his right to equity of redemption was extinguished by that decree and

2026:HHC:47339

> he had therefore no longer any right to redeem the said mortgage. His appeal against the said final decree was misconceived, and the High Court was in error in allowing it and in passing the said order of remand directing the trial court to reopen the question of redemption and to allow the respondent to participate in proceedings to amend the said preliminary decree.

24. Similarly, it was held in ***Sukhdeo Prasad v. Jamna, ILR (1901) 23 All 60***, that the transferee cannot challenge the decree on the ground that they were not parties to the litigation. It was observed at page 65: -

> It was further contended on behalf of the appellants that as they were not parties to the appeal which ended in a declaration of the plaintiff's right, they are entitled in this suit to have the validity of the plaintiff's title to the property re-tried as against them. In my opinion, this is not so. The auction purchaser might have applied to have himself brought on the record as a defendant whilst the case was under appeal (sections 372 and 582 of the Code of Civil Procedure), but he did not choose to do so. To hold that he is entitled, owing to his purchase during the pendency of the appeal, to put the plaintiff again to proof of her title would be entirely opposed to the doctrine of *lis pendens* which applies to this case.
>
> This may seem to bear somewhat hard on purchasers at sales in the execution of decrees, but it is only the application of the principle "*caveat emptor*." The court sells such rights and interests as a judgment-debtor has in the property exposed for sale: it does not guarantee that he has any. If those rights and interests are nil, a purchaser, however complete may be his *bonâ fides*, acquires nothing. If it turns out that the judgment-debtor had no saleable interest in the property which purported to be sold as his, the purchaser is not entitled to retain the

2026:HHC:47339

> property on the ground that he bought it at a sale held under the orders of the Court. He is only entitled to receive back his purchase money from any person to whom the purchase money has been paid vide section 315 of the Code of Civil Procedure.
>
> In the last ground of appeal, it is urged that Jawahir Lal, being a *bonâ fide* transferee from the auction-purchaser, and having been allowed by the plaintiff to spend a large sum of money on the property in dispute, is entitled to the benefit of section 41 of the Transfer of Property Act, and to have a suit as against him dismissed. I do not think this plea can succeed, as it is difficult to see how it can be held that the auction-purchaser was in possession of the property with the plaintiff's consent.

25. Therefore, the plea taken by the objectors that they or their predecessor were not parties, and the decree cannot be executed against them, is not acceptable

26. The objectors had filed petitions under Order XXI Rule 97 to 98 of the Code of Civil Procedure. However, Order XXI Rule 102 specifically provides that Rules 98 and 100 do not apply to a person to whom the judgment debtor had transferred the property after the institution of the suit.

27. It was laid down by the Hon'ble Supreme Court in ***Usha Sinha v. Dina Ram, (2008) 7 SCC 144*** that a transferee from a judgment debtor is presumed to be aware of the proceedings, and he should be careful before he purchases the property. It was observed:-

2026:HHC:47339

17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

> "102. *Rules not applicable to transferee pendente lite*.— Nothing in Rules 98 and 100 shall apply to resistance or obstruction in the execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

A bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognises the doctrine of lis pendens recognised by Section 52 of the Transfer of Property Act, 1882 ["52. Transfer of property pending suit relating thereto.—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding 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 prescribed for the execution thereof by any law for the time being in force."] . Rule 102 of Order 21 of the Code thus takes

2026:HHC:47339

into account the ground reality and refuses to extend a helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.

18. Before one-and-half century, in ***Bellamy v. Sabine [(1857) 1 De G & J 566: 44 ER 842]***, Lord Cranworth, L.C. proclaimed that where litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

19. Keeping in view the avowed object, the expression "transferee from the judgment-debtor" has been interpreted to mean the "transferee from a transferee from the judgment-debtor" (vide ***Vijayalakshmi Leather Industries (P) Ltd. v. K. Narayanan [AIR 2003 Mad 203***]).

20. In ***Vijayalakshmi Leather Industries [AIR 2003 Mad 203]*** it was urged that the provisions of Rules 98 and 100 of Order 21 of the Code had limited application to the transferee of the judgment-debtor and could not extend to "a chain of transactions" where the transferee of the judgment-debtor had transferred his interest.

21. Referring to statutory provisions and case law, the Court negatived the contention, stating : (***Vijayalakshmi case [AIR 2003 Mad 203***], AIR p. 206, para 13)

> "*13.* If such contention of the learned Senior Counsel for the appellant is to be accepted, then we are closing our eyes regarding the intention of the statute. It is obvious that while interpreting the provisions of the

> statute, the court must give due weight to the intention of the statute in order to give effect to the provisions. If any narrow interpretation is given and thereby the purpose of the statute is being defeated, the courts must be careful to avoid such interpretations. If we look at Section 52 of the Transfer of Property Act and Rule 102 of Order 21 CPC, it is very clear that the intention of Parliament with which the statute had been enacted is that the rights of one of the parties to the proceeding pending before the court cannot be prejudiced or taken away or adversely affected by the action of the other party to the same proceeding. In the absence of such restriction, one party to the proceeding, just to prejudice the other party, may dispose of the property which is the subject matter of the litigation or put any third party in possession and keep it away from the court. By such actions of the party to the litigation, the other party will be put to more hardship, and only to avoid such prejudicial acts by a party to the litigation are these provisions in existence. When, despite such statutory restrictions, for the transfer of the properties, which are the subject matter of litigation by a party to the proceeding, the courts are duty-bound to give effect to the provisions of the statute."

22. The above observations, in our opinion, lay down the correct proposition of law.

23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct the execution of the decree passed by a competent court. The doctrine of "lis pendens" prohibits a party from dealing with the property which is the subject matter of the suit. "Lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if resistance is caused or obstruction is offered by a transferee pendente lite of the judgment-

2026:HHC:47339

debtor, he cannot seek the benefit of Rules 98 or 100 of Order 21.

24. In ***Silverline Forum (P) Ltd. v. Rajiv Trust [(1998) 3 SCC 723]***, this Court held that where the resistance is caused, or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question of whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the executing court must hold that he had no right to resist or obstruct, and such a person cannot seek protection from the executing court. The Court stated : (SCC pp. 727-28, para 10)

> "*10*. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions 'arising between the parties to a proceeding on an application under Rule 97 or Rule 99' shall be determined by the executing court if such questions are 'relevant to the adjudication of the application'. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question of whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. *Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act*." (emphasis supplied)

(See also ***Sarvinder Singh v. Dalip Singh [(1996) 5 SCC 539***] .)

2026:HHC:47339

> **25.** We are in respectful agreement with the proposition of law laid down by this Court in ***Silverline Forum [(1998) 3 SCC 723]***. In our opinion, the doctrine is based on the principle that the person purchasing a property from the judgment-debtor during the pendency of the suit has *no independent right* to property to resist, obstruct or object to the execution of a decree. Resistance at the instance of the transferee of a judgment-debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his *own right* and, therefore, is not entitled to get his claim adjudicated.
>
> **26.** For invoking Rule 102, it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which the decree was passed and sought to be executed against the judgment-debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21.

28. A similar view was taken in ***Tahir V. Isani v. Madan Waman Chodankar, 2025 SCC OnLine SC 1962***, wherein it was observed:-

> Therefore, it is absolutely clear that the transferee of a judgment-debtor who traces his title to the immovable property, that is the subject matter of a pending suit, is not entitled to seek the remedy available under Rules 97 to 102 of Order XXI. At the cost of repetition, we state that the whole scheme of Rule 102 of Order XXI read with Section 52, Transfer of Property Act, 1882 is to protect the interest of a decree-holder who has successfully attained a decree of possession of an immovable property.

2026:HHC:47339

29. This position was reiterated in ***R. Savithri Naidu v. Cotton Corpn. of India Ltd., 2026 SCC OnLine SC 198***, wherein it was observed: -

> **13.** It is a well-worn proverb in litigation, echoing the Privy Council's century-old observation, that the true difficulties of a litigant begin only after they have obtained a decree. ***General Manager of the Raj Durbhunga v. Coomar Ramaput Singh, (1871-72) 14 Moo IA 605; 1872 SCC OnLine PC 16***. It is generally stated that a suit may take 5 years to conclude, but its execution takes 10 years. Order XXI of the CPC was comprehensively amended in 1976 specifically to cure this mischief, operating as a self-contained code that strictly bars separate suits (under Section 47, Rule 92(3), and Rule 101) and imposes rigid limitation periods for raising objections. If the argument of the appellant is accepted, allowing pendente lite purchasers or third parties to bypass these strict procedural safeguards and institute separate suits or raise belated objections long after the execution processes (like attachment and sale) have advanced, it would completely derail the statutory machinery. Judgment-debtors would be incentivised to systematically defeat decrees by transferring properties or planting surrogate objectors to initiate endless collateral litigation. Consequently, execution proceedings would not merely take 10 years, but would get trapped in an infinite loop and practically never get completed, reducing the hard-won decrees of competent courts to mere "paper tigers."
>
> **13.1** This Court emphasised in ***Jini Dhanrajgir v. Shibu Mathew (2023) 20 SCC 76*** that winning a case is meaningless unless the winner actually gets the relief they sought. We need a shift in mindset: the goal of the legal system should not just be to dispose of cases, but to ensure that the litigant enjoys the reliefs. The provisions in the CPC must be employed to secure actual relief, not

> just a formal decree. We must ensure that the legal process results in justice not just appearing to be done, but justice actually being done.

30. It was submitted that the decree for specific performance could not have been passed without setting aside the sale deed executed in favour of the objector. This submission is not acceptable. It was held by this Court in ***Rajinder Singh v. Sushil Kumar, 2006 SCC OnLine HP 14*** that specific performance of a contract can be enforced against a transferee *pendente lite* even without seeking a declaration regarding the invalidity of the sale deed. It was observed:

> **4.** I have heard the learned counsel for the appellant. The main contention raised by the learned counsel is that no prayer having been made by the plaintiffs for the cancellation of the sale deed made by Nand Lal in favour of the appellant, the suit could not have been decreed against the present appellant. The matter has been dealt with by the First Appellate Court. Section 19(a)(b) of the Specific Relief Act, 1963 says that specific performance of a contract may be enforced against either party thereto or 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. The aforesaid provision is clear. The present appellant, being a transferee subsequent to the making of the agreement by Nand Lal with the plaintiffs, decree for specific performance is executable against him even without seeking the cancellation of the sale made in his favour by Nand Lal.

2026:HHC:47339

31. It was laid down in ***Shingara Singh v. Daljit Singh, 2024 SCC OnLine SC 2823,*** that transactions hit by the doctrine of lis pendens are illegal. It was observed:

> **14.** In a recent judgment of this Court in ***Chander Bhan (D) through Lr. Sher Singh v. Mukhtiar Singh, 2024 INSC 377,*** it is observed, "once it has been held that the transactions executed by the respondents are illegal due to the doctrine of *lis pendens*, the defence of the respondents 1 - 2 that they are *bona fide* purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Transfer of Property Act, 1882 is liable to be rejected."

32. In ***Bhagwati Devi*** *(supra)*, this Court was dealing with a suit for specific performance in a regular second appeal. The Court held that the plaintiff had not sought a declaration regarding the invalidity of the decree and he was not entitled to specific performance. The judgment does not show that the sale deed was executed during the pendency of the suit. The benefit of Section 19 (b) of the Specific Relief Act is available to a person who had purchased the property before the institution of the suit; therefore, the cited judgment does not apply to the present case.

33. It was laid down by the Hon'ble Supreme Court in ***Shingara Singh*** (supra) that any person purchasing the property

2026:HHC:47339

during the pendency of the suit would be bound by the decree. Therefore, the learned Appellate Court had rightly held that specific performance could be granted against the objectors, and this substantial question of law is answered accordingly.

Final order:

34. In view of the above, the present appeal fails, and it is dismissed.

35. Pending application(s), if any, also stand(s) disposed of.

36. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

29th October, 2026
(Chander)