

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE SHAHID BILAL HASSAN**

**MR. JUSTICE AAMER FAROOQ**

**C.A. No. 636-L OF 2012**

**In C.P.L.A No.1637-L OF 2010**

[Against order dated 12.07.2010 passed in  
W.P.No.1631 of 2008 by Lahore High Court,  
Lahore]

Muhammad Sadiq (deceased) through LR's.

*...Appellant(s)*

***Versus***

Additional District Judge, Toba Tek Singh etc.

*...Respondent(s)*

For the Appellant(s) : Ch. Muhammad Maqsood Buttar, ASC

For the Respondent(s) : Mian Muhammad Athar, ASC  
(For Respondent No. 2 & 3)

Date of Hearing : 10.06.2025

**JUDGMENT**

**SHAHID BILAL HASSAN, J.-** The instant Civil Appeal by leave of this Court has arisen out of the judgment passed by the Lahore High Court, Lahore in Writ Petition No.1631 of 2008 filed by Alam Sher etc., respondents No.2 to 4, through which the order impugned therein was set aside and case was remanded to the trial Court to decide the same after recording evidence on merits by providing opportunity to the parties to defend their right in the suit land.

2. Succinctly, the appellant(s) instituted a suit for possession through pre-emption against respondent No.5 regarding property measuring 10 marlas bearing Khewat No.46/46, Khatoni No.107, Square No.1, Killa No.8/1, 8/2, situated in Chak No.384/J.B, Tehsil and District Toba Tek Singh. The mutation of sale was attested on 10.03.2003 at Sr.No.651 against consideration of Rs.200,000/-. Respondent No.5 contested the suit and claimed that he had purchased the land for Rs.250,000/-, but the mutation was attested against consideration of Rs.200,000/-. During the pendency of the suit, on 12.03.2005, the respondent No.5 recorded his statement to

the effect that original vendor may be summoned and actual consideration may be confirmed from him and whatever amount he admits to have received, the suit may be decreed on the said amount. After recording the statement, the suit continued to be adjourned and ultimately on 25.06.2005, it was dismissed for non-prosecution. The appellant filed an application for restoration of the suit and the learned trial Court vide order dated 28.06.2005 while accepting the application restored the suit.

Thereafter, during pendency of the suit, the respondents No.2 to 4 purchased the suit land on 12.07.2005 from respondent No.5 through mutation No.736. On 26.10.2005, it was brought to the notice of the court that respondent No.5 had sold the property further and the purchaser(s) may be impleaded as a party to the suit. The learned trial Court vide order dated 07.05.2006 accepted the said application and respondents No.2 to 4 were impleaded as a party to the suit. The amended plaint was submitted on 29.07.2006 and respondents No.2 to 4 were summoned. Respondents No.2 to 4 filed their written statement on 13.12.2006. On 07.02.2007, the appellant recorded his statement that he had no intention to file replication and submitted that in terms of the order dated 12.03.2005, the only question required for determination is the price of the suit land and he had no objection if the original vendor was summoned for ascertaining the actual amount of sale, but the learned trial Court did not accede to the request of the appellant and proceeded to frame the issues on 18.01.2008. In light of this, the appellant filed a revision petition against the order dated 27.04.2007 and again on 26.09.2007 made the statement before the revisional court that he is ready to deposit a sum of Rs.200,000/- as sale consideration recorded in the original mutation attested in favour of respondent No.5 after deduction of Rs.66,667/- as Zar-e-Soim, which he has already deposited. The appellant deposited the amount and challan was produced before the court. The appellant(s) through their counsel made statement on 22.01.2008 that they were ready to deposit the controversial amount of Rs.50,000/- in the Court and their suit be decreed. The revisional court vide order dated 22.01.2008 accepted the revision petition of the appellant and decreed the suit. Aggrieved with this, the respondents No.2 to 4 filed a writ petition before the Lahore High Court, wherein the order impugned before us was passed.

3. This Court in its order dated 06.12.2012 granted leave to appeal, in C.P.L.A. No.1637-L of 2010, to consider, among other questions, whether the Respondent No.2, who purchased the suit property during the pendency of the pre-emption suit despite a stay order, were bound by the statement of their predecessor-in-interest under the rule of *lis pendens*, and whether the appellant, who had already deposited the amount of Rs.250,000/- in compliance with that statement, could claim that the transaction was struck by *lis pendens* and was entitled to have the suit decreed.

4. Heard. Record perused.

5. Considering the arguments advanced at bar and going through the record, it is observed that for the determination of this appeal it must be noted that the doctrine of *lis pendens* is fully applicable to suits for pre-emption as has been held by this Court in judgment reported as Basit Sibtain vs. Muhammad Sharif (2004 SCMR 578) that the validity of a pre-emption decree is not affected by any sale made during litigation and is binding on the purchaser.<sup>1</sup> The only exception to the doctrine of *lis pendens* applicable to pre-emption claims is in one situation, where the sale by the vendee is to one who has a superior right of pre-emption provided that the sale is within the period of limitation when such right can be exercised.<sup>2</sup>

Before any determination on the applicability of the doctrine of *lis pendens* in the present appeal, it will be appropriate to discuss this Court's position and the significant developments therein concerning Section 52 of the Transfer of Property Act, 1882, ("the Act") and possible defence to the Section 52 of the Act provided under Section 41 of the Act through which the *bona fide* purchaser can claim protection. For ease of reference, the aforementioned Sections of the Act are reproduced hereinbelow:

**"41. Transfer by ostensible owner.**—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

**"52. Transfer of property pending suit relating thereto.**—During the pendency in any Court having authority in Pakistan, or established beyond the limits of Pakistan by the Federal Government, of any suit or proceeding which is not collusive and in which any right to immoveable

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<sup>1</sup> Para. 6

<sup>2</sup> Sawar Muhammad Sharif vs. Makhmool (1991 SCMR 1419)

*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."*

This Court's stance on Sections 41 and 52 of the Act is encapsulated in Muhammad Nawaz Khan vs. Muhammad Khan (2002 SCMR 2003) wherein it was held that a transfer by ostensible owner does not automatically become void simply because it was made pendente lite but such transfer cannot affect the rights of the other parties in the suit, thereby making the sale subject to the outcome of the decree. In other words, a *bona fide* purchaser, who retains title, remains bound by the final decree and bears the risk that any rights declared in the suit will prevail over their purchase.

In Muhammad Ashraf Butt v. Muhammad Asif Bhatti (PLD 2011 SC 905), this Court considered the ambit of the doctrine of *lis pendens* and held as under:

*The rule unambiguously prescribes that the rights of the party to the suit, who ultimately succeed in the matter are not affected in any manner whatsoever on account of the alienation, and the transferee of the property shall acquire the title to the property subject to the final outcome of the lis. Thus, the transferee of the suit property, even the purchaser for value; without notice of the pendency of suit, who in the ordinary judicial parlance is known as a bona fide purchasers in view of the rule/doctrine of lis pendens shall be bound by the result of the suit stricto sensu in all respects, as his transferor would be bound. The transferee therefore does not acquire any legal title free from the clog of his unsuccessful transferor, in whose shoes he steps in for all intents and purposes and has to swim and sink with his predecessor in interest.....*  
*..... The foundation of the doctrine is not rested upon notice, actual or constructive, it only rest on necessity and*

*expediency, that is, the necessity of final adjudication (Emphasis supplied) that neither party to the litigation should alienate the property so as to effect the rights of his opponent. If that was not so, there would be no end to litigation and the justice would be defeated. In support of the above, reliance is placed upon Messrs Aman Enterprises v. Messrs Rahim Industries Ltd. and another (PLD 1993 SC 292), Muhammad Nawaz Khan v. Muhammad Khan and 2 others (2002 SCMR 2003). Besides, in West Virginia Pulp and Paper Co. v. Cooper, 106 S.E. 55, 60, 87 W.Va. 781, it has been held the doctrine of "lis pendens" is that one who purchases from a party pending suit a part or the whole of the subject-matter involved in the litigation takes it subject to the final disposition of the cause and is bound by the decision that may be entered against the party from whom he derived title.*

*In Tilton v. Cofield, 93 U. S. 168, 23 L.Ed, 858, the view set out is "the doctrine of lis pendens is that real property, when it has been put in litigation by a suit in equity, in which it is specifically described, will, if the suit is prosecuted with vigilance, be bound by the final decree, notwithstanding any intermediate alienation; and one who intermeddles with property in litigation does so at his peril and is as conclusively bound by the results of the litigation, whatever they may be, as if he had been a party from the outset".<sup>3</sup>*

In Tabassum Shaheen vs. Uzma Rahat (2012 SCMR 983), this Court placing reliance on Muhammad Ashraf Butt emphasised that even a *bona fide* purchaser without notice of litigation is bound by the result of the suit. This principle was reinforced in Aasia Jabeen vs. Liaqat Ali (2016 SCMR 1773), wherein the pre-emptor sold the land during pendency of proceedings before the Supreme Court. In light of this the Court held that any person who purchased the land during pendency of the proceedings before this Court or raised construction thereon did so at his own risk and cost.

6. So far as the arguments that the petitioner(s) purchased the land during the period when the suit was dismissed, therefore, the principle of *lis pendens* does not apply to the case of the petitioner; the said argument has no force, because it a settled principle of law by

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<sup>3</sup> Tabassum Shaheen vs. Uzma Rahat (2012 SCMR 983) para. 6; Sheikh Muhammad Iftikhar Ahmad vs. Faiz Ahmad (2023 SCMR 2158)

now that if a suit is dismissed and then restored, the restoration order relates to back period and a transfer/sale after dismissal and before restoration is subjected to the principle of *lis pendens* embodied in Section 52 of the Transfer of Property Act, 1882<sup>4</sup>. However, it is notable fact that in the present case, the petitioner(s) purchased the disputed property pm 12.07.2005 through mutation No.736 when the proceedings in the suit were in progress after its restoration on 28.06.2005 after dismissal for non-prosecution on 25.06.2025. Therefore, even otherwise, the above said stance and argument loses its significance and is not available to the petitioner(s).

7. In the light of foregoing discussion, it is held that the respondents No.2 to 4 had acquired the title to the suit property subject to the final outcome of the *lis* and as such are bound by the result of the suit *stricto sensu* in all respects, as their transferor i.e. respondent No.5 would be bound.

8. Pursuant to the above discussion, the High Court erred in law while passing the impugned order dated 12.07.2010, which suffers from material illegality; therefore, the cannot be allowed to sustain further. Resultantly, the impugned order is set aside by allowing the appeal in hand, consequent whereof the order dated 22.01.2008 passed by learned Addl. District Judge –I, T.T. Singh stands restored.

**JUDGE**

**JUDGE**

Announced in open court on 10.07.2025.

**JUDGE**

Lahore, the  
10<sup>th</sup> July, 2025  
NOT APPROVED FOR REPORTING  
M.A. Hassan

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<sup>4</sup> Malik Amanullah v. Haji Muhammad Essa and others (2024 SCMR 1258)