



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 27660 OF 2025)**

ALKA SHIRIRANG CHAVAN & ANR. APPELLANT(S)

VERSUS

**HEMCHANDRA RAJARAM
BHONSALE & ORS. RESPONDENT(S)**

WITH

**CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 27868 OF 2025)**

JUDGMENT

UJJAL BHUYAN, J.

Leave granted.

2. These two civil appeals by special leave are directed against the judgment and order dated 19.12.2024 passed by the High Court of Judicature at Bombay (briefly 'the High Court' hereinafter) in Second Appeal No. 396 of 2022 (Alka

Shrirang Chavan and Anr. Vs. Hemchandra Rajaram Bhonsale & Ors.) and Second Appeal (ST) No. 22336 of 2022 (*Jaymala Shriram Date Vs. Hemchandra Rajaram Bhonsale and Ors.*).

2.1. Be it stated that by the impugned judgment and order dated 19.12.2024, the High Court has dismissed both the second appeals preferred by the appellants holding that there is no merit in any of the substantial questions of law raised by the appellants. However, the High Court granted stay for a period of three months.

3. Relevant facts may be briefly noted.

4. Respondent No. 1 is the plaintiff (decree holder). He had entered into an agreement for sale with the defendant Rajaram Bajirao Pokale on 26.04.1973.

5. Since the defendant failed to perform his part of the contract, respondent No. 1 (plaintiff) instituted Regular Civil Suit No. 910 of 1986 on 28.04.1986 in the Court of learned Civil Judge, Junior Division, Pune against respondent No. 2 i.e. the defendant (judgment debtor). In the said suit, plaintiff sought for a decree ordering the defendant

to execute the sale deed in favour of the plaintiff. In the event defendant failed to execute the sale deed, the court be pleased to execute the sale deed through its officers and to put the plaintiff in actual possession of the suit property.

6. On 02.05.1986, respondent No. 1 (plaintiff) registered *lis pendens*.

7. During the period from 07.05.1987 to 31.08.1987, respondent No. 2 (judgment debtor) by eight sale deeds transferred the right, title and interest of various parts of the suit property to different persons. Jaymala Shriram Date, the appellant in Second Appeal (ST) No. 22336 of 2022, is claiming right, title and interest on the basis of one such registered sale deed dated 07.07.1987.

8. In the year 1989, one Shri Sarangdhar, one of the transferee *pendente lite*, constructed a bungalow on an area admeasuring 5R, which is part of the suit property.

9. Learned 3rd Joint Civil Judge, Junior Division, Pune *vide* the judgment and order dated 30.11.1990 decreed Regular Civil Suit No. 910 of 1986. Operative portion of the decree dated 30.11.1990 reads as under:

- (1) The suit is decreed ex parte.
- (2) The plaintiff is directed to pay Rs. 1775.00 to the defendant and defendant is directed to execute the document of sale-deed in respect of the suit land bearing Survey No. 155 Pot Hissa 3 admeasuring 36 gunthas situated at village Dhayari, Taluka Haveli, District Pune in favour of the plaintiff, within two months from this order.
- (3) If the defendant fails to execute the sale-deed in favour of the plaintiff, then the plaintiff is at liberty to get the document of sale deed executed through Court Commissioner and the defendant is directed to bear its cost.
- (4) The defendant is also directed to hand over vacant possession of the suit land peacefully to the plaintiff.
- (5) Defendant shall pay costs of this suit to the plaintiff and bear his own.

10. Regular Darkhast No. 205 of 1991 i.e. execution petition was filed by respondent No. 1 (decree holder) against respondent No. 2 on 03.07.1991 for execution of the decree.

11. On 25.03.1993, on orders of the Executing Court, the Court Commissioner on behalf of respondent No.

2 (judgment debtor) executed the sale deed in favour of respondent No. 1 (decree holder).

12. Respondent No. 2 (judgment debtor) filed an application under Section 47 of the Code of Civil Procedure, 1908 ('CPC' for short) below Ex. 28 in Regular Darkhast No. 205 of 1991 on 09.08.1994 stating that he had transferred the right, title and interest over the suit property to various purchasers in or about 1987. Therefore, he prayed that the sale deed executed by the Court Commissioner in favour of respondent No. 1 (decree holder) be cancelled.

13. By registered sale deed dated 27.11.1995 and by two separate registered sale deeds, both dated 16.11.1996, appellants in Second Appeal No. 396 of 2022 i.e. Alka Shrirang Chavan and Pradip Shrirang Chavan became owners of the land admeasuring 15 gunthas of the suit property including the land admeasuring 5R owned by Shri Sarangdhar who had constructed a bungalow thereon in the year 1989.

14. On 11.04.1996, Civil Suit No. 1720 of 1996 was filed by respondent No. 2 (judgment debtor) against respondent No. 1 (decree holder) for cancellation of the sale deed dated

25.03.1993. However, this civil suit was dismissed for non-prosecution on 03.03.2004.

15. In the meanwhile, respondent No. 2 (judgment debtor) filed an appeal on 10.11.1997 against the judgment and decree dated 30.11.1990 passed in Regular Civil Suit No. 910 of 1986. Alongwith the appeal, Miscellaneous Civil Application No. 850 of 1997 was also filed by respondent No. 2 (judgment debtor) for condonation of delay in filing the appeal. However, the Appellate Court *vide* order dated 26.06.1998 dismissed Miscellaneous Civil Application No. 850 of 1997 with cost. Consequently, the appeal also stood rejected.

16. Thereafter, respondent No. 2 (judgment debtor) filed Civil Revision Application No. 38 of 1999 before the High Court against the order dated 26.06.1998 whereby Miscellaneous Civil Application No. 850 of 1997 was dismissed. However, the said civil revision application was dismissed by the High Court for non-prosecution on 27.01.1999.

17. In the meanwhile respondent No. 2 (judgment debtor) had instituted Civil Suit No. 1720 of 1996 against

respondent No. 1 (decree holder) for cancellation of the sale deed dated 25.03.1993. However, the same was dismissed for non-prosecution on 03.03.2004.

18. Thus, the judgment and decree dated 30.11.1990 as well as the sale deed executed by the Court Commissioner in favour of respondent No. 1 (decree holder) on 25.03.1993 attained finality.

19. The Executing Court by order dated 18.07.2013 rejected the application below Ex. 28 filed by respondent No. 2 (judgment debtor) under Section 47 CPC in Regular Darkhast No. 205 of 1991.

20. Assailing the aforesaid order dated 18.07.2013, respondent No. 2 (judgment debtor) filed Civil Revision Application No. 851 of 2013 before the High Court but the same was dismissed *vide* the order dated 14.03.2016. While dismissing the revision application, the High Court held as follows:

9. Judgment debtor has also contended in paragraph 4 of application Ex. 28 that he had laid the plots in the suit property and sold the plots to various persons in 1997. If that be so, judgment debtor cannot be said to have any locus to maintain

proceedings under Section 47 of CPC. That apart, no such plea was taken in the earlier round of litigation. In my opinion, the entire attempt on the part of judgment debtor is to delay handing over possession. The decree of specific performance was passed on 30.11.1990 and till date decree holder is not put in possession.

21. Respondent No. 1 (decree holder) filed an application marked as Exhibit 190 on 02.04.2016 for issuance of possession warrant. Writ was issued for measurement of the suit property etc while directing the application below Exhibit 190 to be kept in abeyance till receipt of report.

22. Measurement having been done, report was submitted. At that stage, respondent No. 1 (decree holder) filed application under Exhibit 224 for possession warrant. On 09.02.2018, the Executing Court by passing order below Ex. 224 in Regular Darkhast No. 205 of 1991 issued possession warrant under Order XXI Rule 35 CPC for 18.01.2019.

23. When respondent No. 1 (decree holder) accompanied by bailiffs and policemen went to the suit

property armed with the possession warrant for taking possession of the suit property, appellants resisted and obstructed possession.

24. Simultaneously, appellants as obstructionists raised objections below Ex. 236 on 18.01.2019 itself to the execution of the decree relating to handing over of possession on the ground that they are the owners of the suit property and that they are residing in the house constructed thereon.

25. Opposing the application below Ex. 236, respondent No. 1 (decree holder) filed two applications on 11.02.2019 for removal of obstruction bearing Ex. 238 and Ex. 238A under Order XXI Rule 97 CPC. By order dated 29.02.2020, the Executing Court i.e. the 26th Joint Civil Judge, Senior Division, Pune allowed the applications filed by respondent No. 1 (decree holder) and rejected the objection of the obstructionists (appellants). Thereafter, the Executing Court issued possession warrant under Order XXI Rule 97. More particularly, the Executing Court directed removal of obstruction in execution of the decree, further directing the obstructionists i.e. the appellants to vacate the

premises within one month from the date of the said order.

Relevant portion of the order dated 29.02.2020 is as follows:

21. It is well settled that the Executing Court cannot go behind the decree. The decree in R.C.S. No. 910/1986 has already attained finality. Though the obstructionists filed documents list Ex. 270 showing that since 1985 till date there were several execution of sale deeds, mutation entries, 7/12 extracts and other entries in revenue record, completion certificates, construction of buildings etc. will not be helpful to the obstructionists as they have purchased the suit land during the pendency of R.C.S. No. 910/1986. Moreover, the plaintiff/D.H. had already registered in notice of *lispendens* on 02.05.1986. The obstructionists have purchased the part of the suit land during pendency of the suit, therefore, the submission of learned counsel for obstructionists that decree is not binding upon the obstructionists cannot be taken into consideration. The authorities relied by the obstructionists are not applicable in this case as the decree is executable and attained finality and the same is binding upon the obstructionists also, thus, I answer point Nos. 1 and 2 in affirmative in result of point No. 3 I pass following order:

26. The aforesaid judgment and decree dated 29.02.2020 of the Executing Court was challenged by the obstructionists (appellants) by filing Regular Civil Appeal No.

169 of 2020 (appellants – Alka Shrirang Chavan and Pradip Shrirang Chavan) and Regular Civil Appeal No. 68 of 2022 (appellant – Jaymala Shriram Date).

27. Appellants had also filed a stay application in Regular Civil Appeal No. 169 of 2020. However, the same was rejected by the appellate court *vide* the order dated 16.07.2020.

28. Challenging the legality and validity of the aforesaid order dated 06.07.2020, appellants in Regular Civil Appeal No. 169 of 2020 filed Writ Petition No. 3637 of 2021 which was dismissed by the High Court *vide* the judgment and order dated 03.08.2021, relevant portion of which reads thus:

16. Petitioners are purchasers of the suit property after initiation of R.C.S. No. 910/1986 as it is claimed by the petitioners that their predecessor-in-title purchased the suit property from judgment debtor-defendant to the suit sometime in 1987 and in 1995/1996, title vested in them by virtue of registered sale deed.

17. As such, claim by the petitioners that they have purchased the property without notice cannot be accepted. Apart from above, it is quite apparent that all the efforts on the part of judgment debtor including that of raising an

objection under Section 47 of the Code of Civil Procedure, 1908 is already rejected by this Court vide order dated 14.03.2016. That being so, petitioners cannot claim better title than his predecessor viz. judgment debtor as he has stepped into the shoes of judgment debtor-respondent No. 2.

18. Apart from above, petitioner though appears to have knowledge about Revision being preferred by the judgment debtor being Revision (ST) No. 7769/2021 which was dismissed on 01.03.2021, same is not brought to the notice of this Court by placing appropriate documents on record but for only mention about the same in independent list of dates and events submitted before this Court. It appears that decree passed in 1990 is not permitted to be executed for last 30 years even though sale deed pursuant to the decree for specific performance was executed in favour of respondent No. 1 decree holder on 25.03.1993.
19. Assistant Superintendent, Court of Senior Division, Pune in compliance with the decree in execution proceedings on March 25, 1993 executed the sale deed of the suit property in favour of decree bolder whereas petitioners have purchased part of the suit property on 27.11.1995 and 16.11.1996. As such, it cannot be inferred that petitioners are purchasers of the suit property without notice.

20. Considering the very conduct of the petitioners-objectors referred above, this Court is prompted to infer that they are equally responsible for prolonging the execution proceedings.

21. As such, petition fails, stands dismissed. Decree if not already executed as directed by the Executing Court, to be executed expeditiously.

29. Respondent No. 2 (judgment debtor) then filed an application bearing Ex. 355 for dismissal of Regular Darkhast No. 205 of 1991. The said application was dismissed by the Executing Court *vide* the order dated 01.03.2021.

30. This order dated 01.03.2021 was assailed by the appellants by filing Civil Revision Application (ST) No. 7769 of 2021 which was dismissed by the High Court *vide* the order dated 15.04.2021 by directing that Regular Civil Appeal No. 169 of 2020 and the other connected civil appeal should be decided expeditiously within three months.

31. The appellate court i.e. District Judge – 13, Pune *vide* the common judgment and order dated 12.04.2022 dismissed both Regular Civil Appeal No. 169 of 2020 and Regular Civil Appeal No. 68 of 2022.

32. Aggrieved thereby, appellants preferred Second Appeal No. 396 of 2022 and Second Appeal (ST) No. 22336 of 2022 before the High Court.

33. By order dated 02.05.2022, High Court admitted the two second appeals on the following substantial questions of law, further directing that the Executing Court shall not proceed further. The substantial questions of law so framed are as under:

- (i) Whether on the facts and in the circumstances of the case, the decree for specific performance passed in Regular Civil Suit No. 910 of 1986 is executable when the decree holder has not acquired title to the suit land by sale deed dated 25.03.1993 executed by the Court Commissioner?
- (ii) Whether the learned courts below erred in law in not deciding the vital issue as to whether the decree holder is entitled to recover possession of the suit land in execution of decree for specific performance?

34. By the impugned judgment and order dated 19.12.2024, the High Court dismissed both the second

appeals by holding that there is no merit in the two substantial questions of law so framed. However, in the interest of justice, the interim relief granted by the High Court directing the Executing Court not to proceed further has been extended for a period of three months.

35. This Court *vide* the order dated 19.09.2025 issued notice in the related special leave petitions, further directing the parties to maintain *status quo*. The order dated 19.09.2025 is as under:

1. Delay condoned.
2. Application of respondent seeking permission to appear and argue in person is allowed.
3. The submission on behalf of the petitioner is that pursuant to the decree for specific performance in favour of the first respondent, the court executed a sale deed on behalf of the judgment debtor. However, on the date when the sale deed was executed, the judgment debtor had already lost title as he had transferred the suit property, but the transferee was not joined to execute the sale deed. It is argued that as the transferee *lis pendens* was not privy to the sale deed executed in favour of the decree holder, and the judgment debtor had already lost title by the date when the sale deed was executed, there was no valid title

transferred in favour of the decree holder so as to enable him to maintain a claim for possession from the transferee of the transferee *lis pendens* (i.e., the petitioner).

4. The decree holder (i.e., respondent) has appeared in person along with his son, who is an advocate. He prays for opportunity to file brief written submissions to elucidate that since *lis pendens* was registered, transferee *lis pendens* was not required to be joined as a party and, therefore, to create a valid title, there was no necessity to implead the subsequent transferees in the execution proceeding.
5. Considering the question of law that emerges for our consideration, we request both parties to submit their brief written submissions along with the citations of the authorities which they propose to rely.
6. List these matters on 06.10.2025.
7. In the meantime, the parties shall maintain *status quo*.

36. Mr. Vinay Navare, learned senior advocate for the appellants, at the outset submits that the impugned judgment and order of the High Court dated 19.12.2024 is wholly untenable on facts as well as on law. He submits that appellants are *bona fide* subsequent purchasers of the suit

property. By a registered sale deed dated 27.11.1995 and thereafter again by two separate registered sale deeds, both dated 16.11.1996, appellants had purchased 15R part of the suit land from Laxmibai Maruti Shinde, Sushma Mohan Kulkarni and Ramakant Gajanan Sarangdhar who had purchased the said 15R part of the suit land from respondent No. 2 in the year 1987. Thus, appellants had acquired title over the said 15R part of the suit land whereafter they are in actual physical possession over the said land.

36.1. High Court had failed to appreciate that respondent No. 1 had notice of the transfer of the suit property by the judgment debtor (respondent No. 2) by way of eight registered sale deeds in 1987 to the purchasers including the vendors of the appellants; that the names of the purchasers were mutated in 7/12 extract of the suit land; and that a bungalow was constructed by the vendor of the appellants in the year 1989. Hence, the subsequent purchasers of the suit land including the appellants should have been joined to the sale deed dated 25.03.1993 executed by the Court Commissioner for passing on title which still

reside with them. In this regard, learned senior counsel has placed reliance on a decision of this Court in *Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited*¹ to contend that transfer *pendente lite* is neither illegal nor *void ab initio* though it remains subservient to rights effectually determined by the court in the pending litigation. Therefore, the transferees *pendente lite* should have been impleaded in the conveyance or in the execution proceedings or atleast in the application for possession which would have enabled such subsequent purchasers to raise their defence.

36.2. Mr. Navare, learned senior counsel, submits that the High Court erred by not considering the law laid down by this Court in *Lala Durga Prasad Vs. Lala Deep Chand*². In the said decision, it has been held that the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff.

¹ (2013) 5 SCC 397

² (1953) 2 SCC 509

36.3. Learned senior counsel further submits that transferee *lis pendens* is not void. High Court failed to appreciate that the decree for specific performance merely recognizes claim for specific performance of contract for sale; it does not elevate the status of the decree holder to that of owner of the property. In fact, it does not create any right, title and interest in or charge over the immovable property in favour of the decree holder. Hence, the decree holder i.e. respondent No. 1 has not acquired title over the suit land by virtue of the sale deed dated 25.03.1993 executed by the Court Commissioner without joining the subsequent purchasers including the appellants to the sale deed.

36.4. In this connection, Mr. Navare asserts that the subsequent purchasers including the vendors of the appellants had acquired valid title to the suit land by way of registered sale deeds executed by the judgment debtor (respondent No. 2) in the year 1987 during the pendency of the suit as Section 52 of the Transfer of Property Act, 1882 ('Transfer of Property Act' hereinafter) does not annul the *lis pendens* transfer. Hence, the subsequent purchasers including the appellants had acquired valid title to the suit land.

36.5. It is further submitted that High Court had failed to appreciate that under Order XXI Rule 101 CPC, all questions including those relating to right, title and interest over the property arising between the parties to the proceedings or their representatives on application under Order XXI Rule 97 CPC are to be determined by the court dealing with the application. Hence, the question raised by the appellants that the decree holder had not acquired title over the suit land because he had not joined the subsequent purchasers including the appellants to the sale deed dated 25.03.1993 is fully justified calling for an affirmative response from the High Court.

36.6. Merely because appellants are *lis pendens* purchasers, their objection to the execution could not have been rejected as has been done in the instant case.

36.7. That apart, learned senior counsel has highlighted that respondent No. 1 (decree holder) had initiated proceedings for delivery of possession only on 09.02.2018 i.e. 27 years after the execution petition was filed under Order XXI Rule 11 CPC. In the meanwhile, much development had taken place including change of ownership by way of registered sale

deeds. Adverting to the decision of this Court in *Anwarbi Vs. Pramod D.A. Joshi*³, Mr. Navare submits that in view of the obstruction so caused, it was for the decree holder to have taken appropriate steps under Order XXI Rule 97 CPC for removal of the obstruction and to have the rights of the parties including that of the obstructionists adjudicated under provisions of Order XXI Rule 101 CPC.

36.8. He, therefore, submits that the belated application filed by respondent No. 1 (decree holder) for possession of the suit land was not maintainable. This aspect was not considered. In this connection, he has referred to Articles 129 and 134 of the Limitation Act, 1963 and submits that the High Court had overlooked the above aspect of the matter.

36.9. Finally Mr. Navare, learned senior counsel, submits that the impugned judgment and order requires a re-look. Therefore, the same may be set aside and quashed.

37. Respondent No. 1 appearing in person submits that there is no merit at all in the civil appeals. No such law exists which permits joining of the transferee *pendente lite*

³ (2000) 10 SCC 405

to the sale deed which was executed by the Court Commissioner when execution of the decree has attained finality and rights of the obstructionists have been adjudicated under Order XXI Rules 97 to 101 to the complete satisfaction of the court. In this connection, he submits that all the courts below upon hearing the contentions advanced by the obstructionists have upheld the decree in favour of the decree holder (respondent No. 1).

37.1. Further submission is that there is concurrence in the findings of all the courts below. All the courts have rejected the contention of the obstructionists that they have independent title over the suit property. On the contrary, it was admitted by the obstructionists that they are bound by the decree which was passed in favour of respondent No. 1 (decree holder) on 30.11.1990. Notwithstanding the same, when respondent No. 1 (decree holder) went for execution of the decree at the suit property, obstructionists offered resistance to execution of the decree by not letting the possession warrant from getting executed on 18.01.2019. Within 30 days thereafter respondent No. 1 (decree holder)

filed application before the Executing Court for removal of obstruction.

37.2. Appellants i.e. obstructionists had purchased a portion of the suit property during pendency of Regular Civil Suit No. 910 of 1986 and after registration of the *lis pendens* notice. Hence, their purchase is governed by Section 52 of the Transfer of Property Act. That being so, such transactions are *pendente lite* with the decree of specific performance binding on them. All the transferee *pendente lite* have no right or *locus standi* to obstruct execution of the decree for possession as they have stepped into the shoes of the judgment debtor.

37.3. If the contention of the appellants is accepted, then it will defeat the very object of Section 52 of the Transfer of Property Act. This will amount to the Executing Court going behind the decree which is not permissible.

37.4. Such a transferee, as the appellants in this case, is subservient to the decree. In other words, he is bound by the ultimate decree of the civil court. In this case, appellants are bound by the directions given to the judgment debtor (respondent No. 2) to execute the sale deed in favour of the plaintiff (decree holder) and in the event of failure to do so,

the Court Commissioner to execute the sale deed in favour of the plaintiff (decree holder) and upon such execution, the title over the suit land to pass on to the plaintiff (decree holder). A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. In fact, title of the obstructionists stood extinguished under Section 52 of the Transfer of Property Act.

37.5. A combined reading of Section 52 of the Transfer of Property Act read with Section 19(b) of the Specific Relief Act and Section 47 CPC alongwith Order XXI Rules 97, 98 and 101 thereof would show that title of a transferee *pendente lite* cannot supersede the decree. It is subject to the said decree and such transferee is bound by the decree.

37.6. He further submits that once the objection/obstruction is adjudicated by the court under the aforesaid provisions and the court is satisfied that such obstruction is caused by the transferees, then Order XXI Rule 98 CPC mandates removal of the obstructionists and delivering possession of the suit property to the decree holder. That being the legal framework, appellants cannot claim any right, title and interest over the suit property once the sale deed is executed

by the court which makes the title of the decree holder valid as per decree of the court. In this connection, he pointed out the scheme of Order XXI Rules 97 to 102 CPC read with the Bombay Amendment.

37.7. According to respondent No. 1, appellants had purchased portions of the suit property after institution of the civil suit on 28.04.1986 and after registration of *lis pendens* on 02.05.1986. Adverting to Section 52 of the Transfer of Property Act, he submits that in a suit or proceeding 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. The Explanation to Section 52 makes it very clear that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint and continues till such time the suit is disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained.

37.8. Contention of the appellants that in order to convey title over the suit property to the decree holder the obstructionists should have been joined in the conveyance in order to pass on title to the decree holder which currently vests with the obstructionists is completely wrong and without any substance. This is because the doctrine of *lis pendens* does not annul the conveyance of such transferee *pendente lite* but makes it subservient to the rights of the parties and dependent upon the final decision of the suit. That being the position, no valid title vested with the obstructionists or any of the transferee *pendente lite*. In this connection, respondent No. 1 has referred to the decision of this Court in *Jayaram Mudaliar Vs. Ayyaswami*⁴ which has been approved in the subsequent decision in *Celir LLP Vs. Somati Prasad Bafna*⁵. He also places reliance on a decision of this Court in *Sanjay Verma Vs. Manik Roy*⁶.

37.9. Respondent No. 1 asserts that the doctrine of *lis pendens* is in accordance with the principles of equity, good conscience and justice. It is a principle of public policy. Any

⁴ (1972) 2 SCC 200

⁵ (2024) SCC Online SC 3727

⁶ (2006) 13 SCC 608

dilution of Section 52 of the Transfer of Property Act would defeat the rights of the parties and undermine the very sanctity of the judicial process.

37.10. In so far reliance placed by learned senior counsel for the appellants on the decision of this Court in *Lala Durga Prasad*, respondent No. 1 submits that the factual context in which the decision in *Lala Durga Prasad* was rendered is totally different from the present case. The distinction has been clearly brought out by the High Court. In this connection, he has referred to paragraphs 27, 31, 32, and 33 of the impugned judgment.

37.11. He finally submits that by one method or the other appellants have been frustrating execution of the decree in favour of respondent No. 1 for more than three decades. There is no merit at all in the civil appeals. Therefore, the civil appeals are liable to be dismissed.

38. Submissions made by learned counsel for the parties have received the due consideration of the Court.

39. At the outset, let us advert to Section 52 of the Transfer of Property Act on which the entire *lis* between the

parties are centered around. Section 52 of the Transfer of Property Act reads thus:

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.

40. This section has been subjected to judicial dissection on numerous occasions. It is not necessary for us to advert to the long line of precedents inasmuch as two recent judgments of this Court have succinctly summed up the essence and amplitude of this provision. Section 52 of the Transfer of Property Act encapsulates the doctrine of *lis pendens*.

41. In *Celir LLP*, this Court examined the expression ‘*lis pendens*’ in the following manner:

155. The term “*lis pendens*” as explained in the Law Lexicon is as under:—

“*Lis* means a suit, action controversy, or dispute, and *lis pendens* means a pending suit. The doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim *pendente lite nihil innovetur*, that is, pending the suit nothing should be changed.

A pending suit.

As soon as proceedings are commenced to recover or charge some specific property [Ex parte Thornton [L.R.] 2 Ch. 178] there is “*lis pendens*” - a pending suit, the consequence of which is that until the litigation is at an end

neither litigant can deal with the property to the prejudice of the other.

41.1. Explaining the aforesaid doctrine, this Court has held that nothing new can be introduced during the pendency of a petition and if anything new is introduced, the same would be subject to the final outcome of the petition. This Court explained that the doctrine of *lis pendens* is duly recognized in Section 52 of the Transfer of Property Act which declares that during the pendency of any suit 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 proceedings. Explanation to Section 52 clarifies that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or institution of the proceeding in a court and shall continue until the suit or proceeding is disposed of by a final decree or order and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of expiry of any period of limitation. This Court held thus:

156. As per the doctrine of *lis pendens*, nothing new can be introduced during the pendency of a petition and if at all anything new is introduced, the same would also

be subject to the final outcome of the petition, which would decide the rights and obligations of the parties.

157. The doctrine of *lis pendens* is duly recognized in Section 52 of the TPA which states that during the pendency in any court of any suit 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 proceedings. The explanation to the provision states that for the purposes of the Section, the pendency of a suit or proceedings shall be deemed to commence from the date of the presentation of the plaint or institution of the proceeding in a court, and shall continue until the suit or proceeding is disposed by a “final decree or order” and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation.

41.2. Elaborating further, this Court culled out five conditions which must be fulfilled for application of the doctrine of *lis pendens*. It has been noted that the only exception to the principle of *lis pendens* is when the property is transferred under the authority of the court. But where one of the parties to the suit transfers the suit property or a portion thereof to a third party, the latter would be bound by the result of the proceedings even if he did not have notice of

the suit or proceeding. Relevant portion of the decision of this Court in *Celir LLP* is extracted hereunder:

158. The following conditions ought to be fulfilled for the doctrine of *lis pendens* to apply:—

- i. There must be a pending suit or proceeding;
- ii. The suit or proceeding must be pending in a competent court;
- iii. The suit or proceeding must not be collusive;
- iv. The right to immovable property must be directly and specifically in question in the suit or proceeding;
- v. The property must be transferred by a party to the litigation; and,
- vi. The alienation must affect the rights of any other party to the dispute.

159. In short, the doctrine of *lis pendens*, which Section 52 of the TPA encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding.

41.3. It was canvassed on behalf of the subsequent transferee that it was a *bona fide* third party purchaser of the secured asset since it was neither arrayed as a party to the

proceedings in the main appeals nor was issued a notice of the said proceedings either by the petitioner or by the bank. Repelling such contention, this Court referred to its previous decision in *Sanjay Verma* where it was held that the principle of *lis pendens* enshrined in Section 52 of the Transfer of Property Act is not only based on equity, good conscience and justice but is also a principle of public policy. No party can claim exemption from the application of this doctrine on the ground of *bona fide* or good faith. Further, this Court referred to another of its earlier decisions in *Guruswamy Nadar Vs. P. Lakshmi Ammal*⁷ where it was held that the principle of *lis pendens* will apply irrespective of whether the subsequent purchaser had bought the property, which is a subject-matter of a pending proceeding, in good faith or not.

42. It may be mentioned that in a recent judgment of this Court in *M/s. Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta Sujatha Reddy*⁸ it has been held that the doctrine of *lis pendens* kicks in the moment a proceeding is instituted

⁷ (2008) 5 SCC 796

⁸ 2024 SCC OnLine SC 3214

irrespective of whether such institution or filing is defective or notice is yet to be issued by the court.

43. One of the questions which fell for consideration in *Danesh Singh Vs. Har Pyari*⁹ is whether transfer of the suit property in favour of respondent Nos.1 and 2 is hit by Section 52 of the Transfer of Property Act and the doctrine of *lis pendens*? It was in that context this Court looked into Section 52 and held as follows:

49. Section 52 of the 1882 Act stipulates that during the pendency of any suit in a court of competent jurisdiction in which any right to the immovable property is directly and specifically in question, such property cannot be transferred or otherwise be dealt with by any party to the suit or proceedings with a view to affect or defeat the rights of any other party under any decree or order. The only exception that the provision carves out is with regard to a situation where the transfer of the property is made permissible under the authority of the court and in accordance with the terms imposed by the court.

50. The explanation to the section further elaborates that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint and would continue until the suit is disposed of by a final decree, and the “complete

satisfaction or discharge of such decree" has been obtained, unless the same cannot be obtained due to the expiry of the prescribed limitation period.

43.1. This Court also referred to its earlier decision in *Celir LLP* and noted the essentials of Section 52. Thereafter, this Court held thus:

52. This Court in *Celir LLP* (supra) had also emphasized that such a *pendente lite* transferee would be bound by the result of the proceedings irrespective of whether they had notice of the pending suit or not. In other words, the lack of knowledge of the proceedings would not be a valid defence against the application of the doctrine of *lis pendens*.

44. Section 52 has undergone an amendment in the State of Maharashtra by virtue of the Bombay Amendment Act, 1939 (Act XIV of 1939). Section 52, as amended in Maharashtra, stands restructured in as much as there are two sub-sections with an explanation, sub-section (2) being the Maharashtra insertion. Section 52 as amended in Maharashtra reads as under:

52. Transfer of property pending suit relating thereto. —

(1) During the pendency in any court having authority within the limits of India excluding the

State of Jammu and Kashmir 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, if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered 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.

- (2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particulars, namely:
 - (a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;
 - (b) the description of the immovable property the right to which is in question;
 - (c) the court in which the suit or proceeding is pending;
 - (d) the nature and title of the suit or proceeding; and
 - (e) the date on which the suit or proceeding was instituted.

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 proceedings 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.

45. The aforesaid amendment has been examined in *Celir LLP*. This Court has held that the requirement of registration of notice of pendency of suit or proceeding is to prevent any undue or unwarranted hardship to a third party who even after a reasonable due diligence has *bona-fidely* purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequences of losing the rights by a mechanical application of *lis pendens*. This additional requirement is only for effective application of the doctrine of *lis pendens*. The objective is to discourage any thwarting or frustration of rights of the litigating parties by unscrupulous and unanticipated transactions. This Court cautioned against mechanical application of the aforesaid rule because if it is held that absence of notice registration

would render the doctrine of *lis pendens* inapplicable, it would encourage exploitation of procedural gaps and thereby undermine the very sanctity of the judicial process. Such an interpretation would lead to a very chilling effect whereby third parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or mischievously execute back dated agreements in collusion with a party to a *lis* prior to registration of such notice of pendency to circumvent the due court process. This Court held thus:

171. We have carefully gone through the aforesaid state amendment made to Section 52 of the TPA. The amended Section 52 sub-section (1) of the TPA casts upon a party who is claiming any right to a property which is a subject matter of any pending suit or proceeding an additional duty to register a notice of pendency in respect of such property so as to caution and put to notice any third-party who might otherwise be unaware of such proceeding or litigation despite the best of due diligence either due to inadvertence or deliberate misleading by one of the parties to the *lis* and as result might be genuinely considering to purchase or acquire any right in the subject-matter proceeding. The requirement of registration of notice of pendency is to prevent any undue or unwarranted hardship to such

third-parties who even after a reasonable due diligence have bona-fidely purchased the property believing it to be free from the encumbrances of any pending proceeding only to later face the adverse consequence of losing their rights by a mechanical application of *lis pendens*.

172. This additional requirement of registration of notice of pendency is for the benefit of the party claiming any right in such subject-matter property and also for the benefit of any third-party interested in such subject-matter property by enabling the former to claim the benefit of *lis pendens* as an absolute right after having duly taken steps towards ensuring that the public is well-aware of the impeding litigation in respect of such property by registering a notice of pendency and to enable the latter to ascertain the veracity of title of such property by exercise of its due diligence. Although, the said provision is for the benefit of the third-party, yet such subsequent purchasers cannot as a matter of absolute right claim any title to such property solely on the ground of want of any notice of pendency being registered. To hold otherwise would undermine the object and purpose of the doctrine of *lis pendens* which is based on the principle of equity, good conscience, and public policy and discourage any thwarting or frustration of rights of the parties so litigating by unscrupulous and unanticipated transactions.

173. The vital essence of this additional duty imposed upon the party claiming a right to a property which is a subject matter of a pending proceeding, is only to aid a

third-party to exercise its due diligence and obviate the possibility of any dishonesty, misrepresentation or fraud by a party in order to gain an undue advantage or benefit despite the pendency of proceedings. However, if the absence of notice registration were to render the doctrine entirely inapplicable, it would lead to exploitation of procedural gaps by parties who deliberately delay or avoid registering such notices to defeat substantive rights of the parties and undermine the very sanctity of judicial proceedings. Such an interpretation would lead to a very chilling effect whereby, third parties despite being expected to verify the title and status of the property would simply abdicate their duty to conduct thorough due diligence in transactions involving immovable properties or that despite being fully aware of the pendency of such proceedings would be able to deviously claim absolute rights to such property or worse, mischievously execute back-dated agreements in collusion with a party to a *lis* prior to registration of such notice of pendency to circumventing the very proceedings and render them infructuous.

46. At this stage, we may also advert to the provisions of Section 19 of the Specific Relief Act, 1963 ('the Specific Relief Act' hereinafter). Section 19 is included in Chapter II of the Specific Relief Act which deals with specific performance of contracts. Heading of Section 19 is 'Relief against parties and

persons claiming under them by subsequent title'. Section 19 reads thus:

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—

- (a) either party thereto;
- (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;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

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 Vs. Moorasarappa*¹⁰, the subsequent purchasers were seeking to bring themselves within the status of *bona fide* purchaser under Section 19(b) of the Specific Relief Act. It was in that context, this Court examined Section 19(b) as under:

¹⁰ 2025 SCC Online SC 2378

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 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 Vs. Bano*¹¹, 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 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:

¹¹ (2000) 6 SCC 685

69. Similarly, in *Durg Singh Vs. Mahesh Singh*¹², 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 emphasized, includes not merely actual knowledge but also constructive and imputed knowledge.

¹² 2004 SCC Online MP 9

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.

51. We may now refer to Section 47 CPC which deals with questions to be determined by the court executing decree. As per sub-section (1), all questions arising between

the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Sub-section (3) clarifies that where a question arises as to whether any person is a representative of a party to the suit or not, such question shall be determined by the Executing Court. While according to Explanation I, a plaintiff and a defendant are parties to the suit, Explanation II(a) makes it clear that for the purposes of Section 47, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed and clause (b) of Explanation II says that all questions relating to delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of Section 47.

51.1. Thus, Section 47 CPC provides that all questions which arise between the parties to the original suit in which the decree was passed or their representatives and which relate to the execution, discharge or satisfaction of the

decree shall be determined by the Executing Court. There is a bar to filing of a separate suit in matters relating to the questions covered by Section 47.

52. Order XXI CPC deals with execution of decrees and orders.

53. Rule 97 of Order XXI CPC deals with resistance or obstruction to possession of immovable property. Rule 97 reads thus:

97. Resistance or obstruction to possession of immovable property.— (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

53.1. Thus, what Rule 97 contemplates is a situation where the decree holder for possession of immovable property is resisted or obstructed by any person in obtaining possession of the suit property. In such a case, the decree

holder may make an application to the Executing Court complaining of such resistance or obstruction. Sub-rule (2) makes it very clear that when such an application is made, the Executing Court shall proceed to adjudicate upon the application in accordance with the provisions contained in Rule 97 of Order XXI.

54. Then comes Rule 98 which deals with orders after adjudication. Rule 98 is as under:

98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is

still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

54.1. Sub-rule (1) of Rule 98 says that upon hearing such an application, the Executing Court may make an order allowing the application or dismissing the application. In the event the application is allowed, a consequential direction should follow putting the applicant into possession of the suit property. Sub-rule (2) specifically deals with the resistance or obstruction put forth by any person to obtaining possession of the suit property, including in a situation where the transfer was made during the pendency of the suit or execution proceeding. It says that where upon adjudication, the Executing Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf or by a transferee where the transfer was made during pendency of the suit or execution proceeding, the Executing Court shall direct that the applicant be put into possession of the suit property. If the

resistance continues further, the Executing Court has the mandate to order such person including the judgment debtor to be detained in civil prison for a term which may extend to thirty days.

54.2. There is a Bombay amendment to Rule 98(2) *vide* the Maharashtra Government Gazette notification dated 15.09.1983 which has come into effect from 01.10.1983. As per this amendment, in addition to civil imprisonment, the Executing Court also has the mandate to order the persons whom it holds responsible for putting such resistance or obstruction to pay jointly or severally in addition to costs, reasonable compensation to the decree holder or the purchaser, as the case may be, for the delay and expenses caused to him in obtaining possession.

55. This brings us to Rule 101 of Order XXI which says that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 (or under Rule 99) or their representatives, and relevant to the adjudication to the application, shall be determined by the

Executing Court dealing with an application under Rule 97 (or under Rule 99) and not by a separate suit.

55.1. There is a Bombay amendment to Rule 101 *vide* the Maharashtra Gazette dated 15.09.1983 w.e.f. 01.10.1983 whereby a proviso has been inserted. The proviso deals with a situation where the Executing Court is not competent to decide such a question due to want of pecuniary jurisdiction. Since such an issue does not arise for consideration in this case, we are of the view that it may not be necessary to further dilate on the Bombay amendment to Rule 101.

56. Though Rule 102 says that Rules 98 and 100 are not applicable to a transferee *pendente lite*, the same has been omitted by the aforesaid Bombay amendment *vide* the Maharashtra Gazette dated 15.09.1983 w.e.f. 01.10.1983. However, as per this amendment, in Rule 100, a proviso has been added. Rule 100 as applicable to the State of Maharashtra is extracted as under:

100. Order to be passed upon application complaining of dispossession. –

Upon the determination of the questions referred to in rule 101, the court shall, in accordance with such determination,-

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.

Where it is determined that the application is made by person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed, the court shall dismiss the application under sub-rule (a) above.

57. Rule 103 makes it clear that where any application has been adjudicated upon under Rule 98 or under Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

58. Thus Rules 97 to 103 of Order XXI CPC provides the procedural framework when a decree holder seeks possession of immovable property and is resisted or obstructed by any person in obtaining such possession. It is

not necessary to repeat what we have already analysed supra.

59. In *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust*¹³, a sub-tenant, who was not a party to a decree for eviction, resisted execution of the decree and the court ordered an inquiry under Section 151 CPC. The High Court upheld that order and that was challenged in appeal before this Court. While disagreeing with the view taken by the High Court that resistance or obstruction made by a third party to the decree for execution cannot be gone into under Order XXI Rule 97 CPC, this Court observed as under:

9.Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the

¹³ (1998) 3 SCC 723

court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

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 an 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 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.

11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that

such questions must be relevant to the adjudication of the complaint.

12. The words “all questions arising between the parties to a proceeding on an application under Rule 97” would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

13. In the above context we may refer to Order 21 Rule 35(1) which reads thus:

“35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

59.1. This Court held that it is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and whether he refuses to vacate the property. It has been held thus:

14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.

60. *NSS Narayana Sarma Vs. Goldstone Exports (P) Ltd.*¹⁴, also makes an analysis of Order XXI Rules 97 to 101 CPC. In this case, the contest was between two sets of transferees of the subject property, including the appellants. The objections filed by the appellants under Order XXI Rule 99 read with Rule 101 CPC having been dismissed by the High Court as non-maintainable, the appellants were before this Court assailing the judgment of the High Court. In that context, this Court examined the aforesaid provisions in the following manner:

15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled

¹⁴ (2002) 1 SCC 662

to possession of the property encounters obstruction from “any person”. From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with “all issues” relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application *shall be determined by the court dealing with the application and not by a separate suit* and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed

by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case.

60.1. After advertizing to *Silverline* and other decided cases, this Court concluded as under:

19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree.....

61. The next case on this issue is *Usha Sinha Vs. Dina Ram*¹⁵. After agreeing with the proposition of law laid down in *Silverline*, this Court held as under:

¹⁵ (2008) 7 SCC 144

25. We are in respectful agreement with the proposition of law laid down by this Court in *Silverline Forum*. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment-debtor during the pendency of the suit has *no independent right* to property to resist, obstruct or object execution of a decree. Resistance at the instance of 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 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.

62. Having noticed the broad legal framework, we may now revert back to the facts of this case which as we have adverted supra are not disputed. Nonetheless, for proper application of the legal principles we may briefly summarize the admitted factual position.

63. Respondent No. 1 (plaintiff) had entered into an agreement for sale of the subject property with the defendant (judgment debtor) on 26.04.1973. Since the defendant failed to perform his part of the contract, respondent No. 1 as the plaintiff instituted Regular Civil Suit No. 910 of 1986 on 28.04.1986. Thereafter, on 02.05.1986, respondent No. 1 (plaintiff) registered *lis pendens*.

63.1. During the pendency of the suit, from 07.05.1987 to 31.08.1987, respondent No. 2 (judgment debtor) by eight sale deeds transferred the right, title and interest of various parcels of the suit property to different persons from whom the present appellants further purchased portions of the suit property. In the year 1989, one of the transferee *pendente lite* constructed a bungalow over a part of the suit property.

63.2. The trial court *vide* the judgment and order dated 30.11.1990 decreed the suit in favour of respondent No. 1 (plaintiff).

64. Within a period of one year from the date of the said judgment and decree, respondent No. 1 filed execution petition being Regular Darkhast No. 205 of 1991 against respondent No. 2 (judgment debtor) on 03.07.1991.

64.1. On 25.03.1993, on orders of the Executing Court, the Court Commissioner executed the sale deed in favour of respondent No. 1 (judgment debtor), thus transferring title over the suit property to respondent No. 1 (decree holder).

64.2. Though respondent No. 2 (judgment debtor) attempted to belatedly challenge the judgment and decree dated 30.11.1990, the same was unsuccessful. Further, his challenge to execution of sale deed by the Court Commissioner was also rejected by all the courts. As a result, the said judgment and decree dated 30.11.1990 and execution of the sale deed by the Court Commissioner in favour of respondent No. 1 (decree holder) on 25.03.1993 attained finality.

64.3. Again, though respondent No. 2 (judgment debtor) had resisted the execution petition of respondent No. 1 (plaintiff), the same was dismissed by the Executing Court *vide* the order dated 18.07.2013. Though this order dated 18.07.2013 was challenged by respondent No. 2 in civil revision, the High Court did not entertain such revision application.

64.4. In the execution proceedings i.e. in Regular Darkhast No. 205 of 1991, on completion of various procedural steps, the

Executing Court passed order on 09.02.2018 issuing possession warrant for 18.01.2019.

64.5. Appellants as obstructionists resisted execution on 18.01.2019 and raised objections before the Executing Court on 18.01.2019 itself. Opposing such objections, respondent No. 1 (decree holder) filed applications on 11.02.2019 for removal of obstruction. By order dated 29.02.2020, the Executing Court allowed the application of respondent No. 1 (decree holder) and rejected the objection of the obstructionists. Executing Court directed the obstructionists i.e. the appellants to vacate the premises within one month from the date of the said order.

64.6. This order dated 29.02.2020 of the Executing Court was assailed by the appellants in appeal. However, the appellate court *vide* the judgment and order dated 12.04.2022 dismissed the appeals.

64.7. In the meanwhile, respondent No. 2 (judgment debtor) filed an application before the Executing Court for dismissal of Regular Darkhast No. 205 of 1991 which was however dismissed *vide* the order dated 01.03.2021. Though

there was a further challenge before the High Court by way of revision application, the same was also dismissed.

64.8. Against the appellate judgment and order dated 12.04.2022, the related second appeals were filed by the appellants which came to be dismissed by the High Court *vide* the impugned judgment and order dated 19.12.2024.

65. In the aforesaid factual background, it is clear as day light that the rights of the appellants who are subsequent purchasers are subservient to the rights of the decree holder. After the judgment and decree of the trial court and following execution of the sale deed by the Court Commissioner, a valid title *qua* the suit property passed on to respondent No. 1 (decree holder). Admittedly in the present case, the transfer of the suit property is *pendente lite*. Therefore, the doctrine of *lis pendens* as encapsulated in Section 52 of the Transfer of Property Act is squarely applicable. All the courts have recorded a clear finding of fact that the appellants were fully aware of the pendency of the suit. However, even that is not necessary. As has been held by this Court in *Silverline*, the scope of adjudication is limited to the only question as to whether the objector who has resisted execution is a

transferee *pendente lite* or not and if the finding is in the affirmative, then such a transferee has no right to resist. In so far the present case is concerned, the rights of the appellants have been duly adjudicated under Order XXI Rules 97 to 102 CPC to the complete satisfaction of the Executing Court. That being the position, there is no merit at all in the case projected by the appellants and the Executing Court rightly passed the order dated 29.02.2020.

66. Reliance placed by Mr. Navare on *Thomson Press* is totally misplaced. There is no dispute to the proposition that transfer *pendente lite* is neither illegal nor *void ab initio*. But it remains subservient to the decree that may be passed by the court. Now that the decree and conveyance in favour of respondent No. 1 have attained finality, the transferee *pendente lite* i.e. the appellants have to give way and hand over actual physical possession of the suit property to respondent No. 1.

67. Mr. Navare, learned senior counsel for the appellants also placed heavy reliance on the decision of this Court in *Lala Durga Prasad*. According to us, given the facts of this case, *Lala Durga Prasad* will have no application at all. High Court has

noted in paragraph 26 of the impugned judgment the factual position in *Lala Durga Prasad* which is clearly distinguishable from the facts of the present case.

Thereafter, High Court held as under:

27. Thus, it is clear that in the said case the issue involved is not a transaction *pendente lite* but the transaction is a subsequent transaction after the execution of agreement dated 7th February 1942 executed with the Plaintiff. However; the subsequent transaction executed on 4th April 1942 in favour of the Appellants in that case, has been executed prior to filing of the Suit and therefore the original vendor as well as the subsequent purchaser have been made parties to the Suit. Thus, the issue involved in the case of *Lala Durga Prasad* (supra) is totally different. In that case, the vendor executed agreement with the Plaintiff on 7th February 1942. Thereafter, with subsequent purchaser a transaction was executed on 4th April 1942 and the property has been sold.

67.1. High Court referred to paragraphs 40 and 41 of *Lala Durga Prasad* and held that in the factual context of that case, Section 52 of the Transfer of Property Act was not attracted. Relevant portion of the finding of the High Court is extracted as under:

28. Thus, it is clear that the factual position in said *Lala Durga Prasad* (supra) and Paragraph 40 and 41

in said *Lala Durga Prasad* (supra), clearly shows that in the said decision Section 52 of the TP Act and the parameters concerning the same are not under consideration and in fact in those cases Section 52 is not even applicable. In the said decision, admittedly the sale in favour of subsequent purchaser by the Defendant/Vendor is before filing of the Suit by the Plaintiff. Thus, the said decision of *Lala Durga Prasad* (supra) has no application to the facts of the present case.

67.2. Concluding the analysis, the High Court held that if the subsequent transferee acquires right, title and interest with respect to the subject property before filing of the suit, the law laid down in *Lala Durga Prasad* would be applicable. In paragraph 41 of the impugned judgment, the High Court noted that since in the present case, the transfers are *pendente lite*, such transactions are covered by Section 52 of the Transfer of Property Act and hence the law laid down in *Lala Durga Prasad* would have no application.

68. We are in complete agreement with the views expressed by the High Court. *Lala Durga Prasad* was a case which arose out of a vendee's suit for specific performance of a contract of sale dated 07.02.1942. The only question

which this Court was called upon to decide except for certain subsidiary matters was whether the agreement dated 07.02.1942 was a concluded one or not. Appellant's case was that the plaintiff's so-called agreement of 07.02.1942 was not a concluded one as the parties never reached finality. In the facts of that case, this Court held that there was a completed contract on 07.02.1942 which the plaintiff was entitled to have specifically performed. It was in that context, this Court considered the question viz., the proper form of decree in such cases. At this stage, it may be mentioned that the vendor in this case was the first defendant who had migrated to Pakistan following partition and his property was taken over by the Custodian, Uttar Pradesh. After noticing that the practice of the courts in India till that point of time was not uniform, this Court opined that in such cases the proper form of decree would be to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor;

all he does is to pass on his title to the plaintiff. Therefore, it is quite evident that the fact situation in *Lala Durga Prasad* is distinguishable from the present case and in any view of the matter, Section 52 of the Transfer of Property Act was not at all an issue therein. As such, this judgment can be of no assistance to the appellants.

69. Towards the end of the hearing, Mr. Navare, tried to introduce the question of limitation by contending that respondent No. 1 (decree holder) had slept over his rights. Despite being fully aware of transfer of the suit land and construction of permanent structure thereon, he moved for possession warrant only in the year 2018; rather, he filed application in 2019 seeking removal of obstruction. In this regard, learned senior counsel has placed reliance on Articles 129 and 134 of the Limitation Act, 1963 ('the Limitation Act' hereinafter).

70. I am afraid, such a submission has no merit at all and has to be recorded only to be rejected. The point of limitation was nowhere pleaded by the appellants including before the High Court. In fact, no such substantial question of law was framed by the High Court. All throughout the

proceedings, it was the case of the appellants that they being subsequent purchasers, they ought to have been brought on record while executing the sale deed and also during execution proceeding. As already noted above, appellants being transferee *pendente lite*, the doctrine of *lis pendens* applies with full force to them. That apart, respondent No. 1 (decree holder) had sought for execution within a period of one year from the date of the judgment and decree of the trial court.

71. Article 129 of the Limitation Act prescribes a period of limitation of 30 days for filing an application for possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree. This period of 30 days is to be counted from the date of resistance or obstruction. Likewise, under Article 134, the period of limitation for delivery of possession by a purchaser of immovable property at a sale in execution of a decree is one year which limitation period would begin to run from the date when the sale becomes absolute. Obviously, Article 134 is not attracted in the present case. Respondent No. 1 got the title over the suit

land transferred to him by way of a sale deed executed by the Court Commissioner since respondent No. 2 failed to comply with the judgment and decree of the trial court. In so far Article 129 is concerned, the present appellants raised objections to the execution of the decree concerning handing over of possession on 18.01.2019. Respondent No. 1 filed the application for removal of obstruction on 11.02.2019, which is well within the period of 30 days.

72. Thus on a thorough consideration of all aspects of the matter, we do not find any error or infirmity in the view taken by the High Court. There is no merit in the two appeals which are liable to be dismissed.

73. Appellants are directed to hand over actual physical possession of the suit property to respondent No. 1 (decree holder) on or before 15.02.2026.

74. We were seriously pondering whether to conclude the judgment here or to proceed further for issuing certain directions, considering the peculiar facts of this case, which in the very nature of things would be under Article 142 of the Constitution. The related suit was instituted by respondent No. 1 in the year 1986 for specific performance of contract

dated 26.04.1973. The decree is dated 30.11.1990. Execution proceedings were initiated on 03.07.1991. Court Commissioner executed sale deed on 25.03.1993. Since then it has been more than 3 decades but respondent No. 1 is yet to enjoy the fruits of his litigation success as actual physical possession of the suit property has still not been handed over to him, despite adjudication of the objection of the appellants as obstructionists to the complete satisfaction of the Executing Court. In the process, he has suffered multiple rounds of litigation either at the hands of the judgment debtor or at the instance of the appellants. In order to ensure that respondent No. 1 (decree holder) does not have to undergo the ordeal of further frivolous litigation thus prolonging his hardship, we deem it appropriate to issue certain direction(s). Accordingly, we direct that no further application(s) or petition(s) either by the appellants or by the judgment debtor i.e. respondent No. 2 or by any other person claiming right *qua* the suit property through them shall be entertained by any court. We consider such a direction to be necessary to ensure that respondent No. 1 is

not subjected to any further harassment which will meet the ends of justice.

75. Consequently, both the appeals are dismissed in the aforesaid terms. No cost.

.....J.
[**MANOJ MISRA**]

.....J.
[**UJJAL BHUYAN**]

NEW DELHI;
JANUARY 12, 2026.