

**Padmaja Vs. Sajeev**

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**Court :** Kerala

**Decided On :** Mar-09-2005

**Reported in :** 2006(1)KLT265

**Judge :** K.T. Sankaran, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 19, 21, 22, 28, 28(1), 28(2), 28(3) and 28(4); [Transfer of Property Act, 1882](#) - Sections 52 and 100; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13 - Order 21, Rules 35, 58, 63, 93, 97 to 101, 102 and 103 - Order 22, Rule 10; Code of Civil Procedure (CPC) (Amendment) Act, 1976

**Appeal No. :** C.R.P. No. 2163 of 2003

**Appellant :** Padmaja

**Respondent :** Sajeev

**Advocate for Def. :** C.M. Andrews, Adv.

**Advocate for Pet/Ap. :** V.V. Surendran and; P.A. Harish, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**K.T. Sankaran, J.**

1. The questions of law arising for consideration in this revision are: (1) Whether a subsequent transferee of the property which was the subject matter of a suit for specific performance is entitled to invoke Sections 19(b), 22 or 28 of the Specific Relief Act; and (2) Whether a transferee against whom Section 52 of the Transfer of Property Act applies is entitled to be heard in opposition to the execution of the document and delivery of possession in favour of the decree holder.

2. The suit, O.S.No. 774 of 1993, on the file of the Court of the Subordinate Judge of Kozhikode was filed by the first respondent in this revision against respondents 2 and 3, for specific performance of an agreement for sale dated 30.5.1993, executed between the plaintiff and the first defendant. The second defendant was impleaded in the suit on the ground that he was a subsequent transferee. The suit was filed on 16.11.1993. Since the first defendant contended that he had transferred the property to the second defendant, he was impleaded as per order in I.A.No. 2147 of 1994 dated 21.3.1995. The second defendant contended in the written statement that he assigned the property to third parties.

3. The trial court passed a decree on 12.4.1996 for return of the advance amount and damages. The prayer for specific performance of the contract to transfer the property in favour of the plaintiff was declined by the trial court. The plaintiff filed A.S.No. 276 of 1997 before this Court challenging the judgment and decree of the trial court. This Court set aside the judgment and decree of the trial court and passed a decree for specific performance of the agreement for sale. This Court directed the plaintiff to deposit the purchase price within a period of two months. The amount was not deposited within time. C.M.P.No. 2726 of 2002 was filed by the plaintiff/decreed holder for extension of the period for deposit of the purchase price. This Court allowed the prayer and time was extended by two weeks from the date of passing of the order dated 16.10.2002. On the basis of that order, the decree holder deposited the consideration for the transaction before the trial court on 28.10.2002.

4. Thereafter, the revision petitioner, who was not a party to the suit, filed I.A.No. 4857 of 2002 before the trial court under Section 22 and 28 of the Specific Relief

Act. The prayer made in that application was for a declaration that the revision petitioner is a bona fide purchaser, that the judgment and decree are not binding on her and that the plaintiff/decreed holder is not entitled to get the document of title executed in his favour in respect of the plaint schedule property. In that application, the revision petitioner stated that she came to know of the decree only on 16.11.2002.

5. The trial court dismissed the application by the order impugned in this revision holding that the revision petitioner is a transferee pendente lite and that her remedy, if any, is only to file a separate suit and not to file an application as she did in the case on hand. The trial court held that Sections 22 and 28 of the Specific Relief Act are not applicable to the case. It is to be noted that though the revision petitioner invoked the benefit of Section 19(b) of the Specific Relief Act before this Court, the application filed before the trial court was not under that section.

6. As submitted by the counsel on either side, certain facts are not in dispute. The agreement executed between the plaintiff and the first defendant is dated 30.5.1993. The suit was filed on 16.11.1993 and it was decreed on 12.4.1996. During the pendency of the suit, the first defendant sold the plaint schedule property to the second defendant as per the assignment deed dated 18.11.1993. The second defendant in turn, sold the property to one Jayaraman as per document dated 19.7.1994. Jayaraman sold the property to Balaraman as per document dated 13.6.1995. After the passing of the decree, Balaraman sold the property to Syamji as per assignment deed dated 27.10.1997. Syamji in turn sold the property to Padmaja, the revision petitioner, as per sale deed dated 23.11.1999. Therefore, we have got two sets of transferees, namely, assignees during the pendency of the suit and two other subsequent assignees who allegedly got rights after the decree was passed. Now the latest transferee claims that she is not bound by the decree and that she is entitled to object to the execution of the document of title in favour of the plaintiff/decreed holder.

7. Counsel for the revision petitioner submitted that Section 19(b) of the Specific Relief Act squarely applies to the case on hand. He also contended that Sections 22 and 28 of the Specific Relief Act would also be attracted in the facts and

circumstances of the case. According to the revision petitioner, she was quite unaware of the agreement between the plaintiff and the first defendant and of the pendency of the suit for specific performance. Therefore, according to her, she is a bona fide purchaser for value without notice and on that ground she is not bound by the decree. A contention was put forward by the revision petitioner that a bona fide purchaser is entitled to resist the execution of the decree or any proceeding in which the document is sought to be executed in favour of the decree holder, by putting forward the legitimate rights of the revision petitioner as a bona fide purchaser and the Court is bound to consider her case on the merits. The revision petitioner contended that though two months' time was granted to the decree holder to deposit the balance sale consideration, it was not complied with for a period of more than one year. The application filed by the decree holder before this Court for extension of time for deposit of the balance sale price does not appear to have been opposed by the defendants. The counsel submits that the defendants in the suit were not at all interested in the subject matter of the suit by the time the decree was passed and subsequently when extension of time was sought before this Court. The revision petitioner further contends that before the extension of time for depositing, the right to get the contract rescinded and to object to execution of the document in favour of the decree holder was available to the defendants and that right still continues in favour of the subsequent assignee, the revision petitioner, as she was not heard before extension of the time for deposit. The counsel for the petitioner submits that there is no prayer in the plaint for delivery of possession and the possession of the property admittedly not having passed to the decree holder, the revision petitioner is entitled to oppose any relief for granting possession in favour of the decree holder. This right, according to the counsel for the revision petitioner, enures to benefit of the subsequent transferee though the transfer was made after the suit.

8. The counsel for the respondents, on the other hand, submits that the trial court had clearly found that the second defendant was not a bona fide transferee for consideration. The contention raised by the first defendant before the trial court was that he had entered into Ext.B1 agreement with a stranger for purchase of another property and since the plaintiff did not comply with the terms of the suit agreement in time, he suffered loss. The counsel pointed out that the second

defendant is a witness to Ext-B1 agreement. The trial court found that the first defendant did not suffer any loss arising out of Ext.B1 agreement and that the second defendant was aware of the agreement between the plaintiff and the first defendant. The Appellate Court in A.S.No. 276 of 1997 held that the second defendant is not a bona fide transferee at all and that the second defendant was aware of the suit agreement between the plaintiff and the first defendant. It was also found by this Court that the second defendant is not entitled to any benefit under Section 19(b) of the Specific Relief Act. According to the counsel for the respondents, the case is clearly covered by the principle of lis pendens and the revision petitioner being the last transferee in the series of transactions which took place during the pendency of the suit and subsequent to the decree, she is not entitled to any benefit either under Section 19(b) or under Sections 22 or 28. He submitted that Section 52 of the Transfer of Property Act would override any benefit available under Section 19(b) of the Specific Relief Act. Regarding the contention that delivery of possession is not asked for and, therefore, the decree holder is not entitled for delivery, counsel for the respondents submitted that delivery or possession is an incidence of the decree for specific performance of the contract. Since there is no other relief to be granted before effecting delivery of the property, he submitted that this is not a case where a decree for partition or a relief for partition or any other relief should be granted in order to get delivery of possession and, therefore, a prayer for delivery of possession was not at all necessary to be made in the suit. According to the respondents, the right, if any, of the revision petitioner is subservient to the result of the suit, she being bound by the decree and any proceeding or order passed in the suit. The revision petitioner is not entitled to challenge the correctness of the decree or any subsequent order in the proceedings for execution of the decree.

9. For the sake of convenience, it is apposite to extract Section 19(b), 22 and 23 of the Specific Relief Act.

19. Relief against parties and persons claiming under them by subsequent title:-- Except this Chapter, contract may be as otherwise provided by specific performance of a enforced against -

a) ...

(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;

22. Power to grant relief for possession, partition, refund of earnest money, etc.-

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for--

(a) possession, or partition and separate possession, of the property in addition to such performance;

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under Clause (a) or Clause (b) of Sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under Clause (b) of Sub-section (1) shall be without prejudice to its powers to award compensation under Section 21. 28. Rescission in certain circumstances of contracts for the sale on lease of immovable property, the specific performance of which has been decreed:--

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the Court may allow, pay the purchase money or other sum which the Court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is

made, to have the contract rescinded and on such application the Court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under Sub-section (1), the Court--

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in Sub-section (1), the Court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:--

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the Court.

The expression 'any person suing for the specific performance of a contract' occurring in Section 22 of the Specific Relief Act makes the position clear that the Section can be invoked only by the plaintiff in the suit. The relief that can be had

under Section 22 could be for possession, or partition and separate possession, in addition to specific performance, or for refund of earnest money or deposit. The relief as prayed for by the petitioner does not fall within the scope of Section 22 of the Act. She has not prayed for possession or partition and separate possession or for refund of the earnest money or deposit. On the other hand, she seeks for a declaration that she is a bona fide purchaser, that the decree is not binding on her and that the plaintiff is not entitled to get the document of title executed in his favour or to get possession. Such a prayer for declaration is clearly outside the purview of Section 22.

10. Section 28(1) can be invoked only at a stage when the purchaser or lessee does not, within the period allowed by the decree or such further period as the Court may allow, pay the purchase money. The person who could make an application under Section 28(1) is evidently the vendor or lessor. The prayer that could be made in an application under Section 28(1) is to have the contract rescinded. Sub-section (2) of Section 28 provides for the consequences of rescission of the contract under Sub-section (1). Sub-section (3) speaks of the relief that can be granted to the purchaser or lessee on compliance of the decree for payment. Sub-section (4) of Section 28 provides that no separate suit shall lie in respect of any relief which could be claimed under Section 28. Going by Sub-section (1) of Section 28 and the relief that could be granted and the consequences that may follow in entertaining an application, as provided under Sub-section (2), it is clear that the reliefs prayed for by the petitioner in the present case are outside the scope of Section 28.

11. The next point to be considered is whether the petitioner is entitled to seek protection under Section 19(b) of the Specific Relief Act. Section 19 provides that the specific performance of a contract may be enforced against either party thereto, or any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) does not say whether a title arising subsequent to the contract could be a title which arises subsequent to the institution of the suit. It only contemplates a situation where a third party acquires title subsequent to the contract entered into between the parties to the



suit. Such a third party must be a transferee for value who has paid the money in good faith and without notice of the original contract. The question is, whether a subsequent purchaser who acquired title subsequent to the institution of the suit could claim the benefit of Section 19(b) of the Specific Relief Act claiming to be a transferee for value in good faith and without notice of the original contract. To answer this question, we have to seek the aid of Section 52 of the Transfer of Property Act as well. Section 52 of the Transfer of Property Act reads as follows:

52. Transfer of property pending suit relating thereto:--During the pendency many 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 proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation:-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

Section 52 is a bar on a party to the suit transferring the subject matter of the suit during the pendency of the suit without the authority of the Court. A transfer made by a party to the suit subsequent to the institution of the suit which affects the rights of the opposite party would not be recognized by the Court. Section 52 does not contemplate a case of the transferee being a bona fide purchaser. A defence that the transferee is a bona fide purchaser for value without notice of the earlier transaction is not a defence that could be taken in answer to the claim of bar under Section 52. The terms of Section 52 are clear and imperative. It cannot be said

that a purchaser without notice of earlier agreement would not be affected by the mandate of Section 52. In this context, it is relevant to note that Section 100 of the Transfer of Property Act recognizes the rights of any person who acquires the property for consideration and without notice of the charge. The charge under Section 100 could be created by act of parties or by operation of law. Section 52, on the other hand, can have operation during the pendency of a litigation.

12. The counsel for the petitioner contended that where obstruction is made by third parties to delivery of the property in execution of the decree for delivery, the Court is bound to consider the claims or objections raised by them, in view of the provisions of Rules 97 to 101 of Order XXI of the Code of Civil Procedure as amended by the Amendment Act of 1976. Though the execution and registration of the document following a decree for specific performance do not strictly arise in execution, the provisions of Rules 97 to 101 would apply, according to the counsel for the petitioner. It is true that to get the document registered by the judgment debtor, or if he refuses, by the court, no execution petition need be filed. The application can be filed by the decree holder on the original side of the suit as provided under Section 28(3) of the Specific Relief Act. (See *Joseph v. Joseph* 1997 (1) KLT 663) in such a case, whether objection to the execution of the document or to any other incidental relief that could be granted under Section 22 of the Act, could be made by a third party who claims right, title and interest in respect of the property, is the further question to be considered.

13. The view taken by the Kerala High Court in respect of an application made by an obstructor to delivery was that an obstructor is not entitled to file an application under Rule 97 Order XXI CPC before delivery has been effected and that the remedy of the third party obstructor is only to approach the Court under Order XXI Rule 99 CPC. This was the consistent view of this Court in the decisions reported in *Prabhakaran v. Kuttian Prakashan* 1985 KLT 225, *Varadaraja Iyer v. Kunhippa & Co.* 1987 (1) KLT 570, *Devassia Joseph v. Vysya Bank Ltd.* 1990 (2) KLT 339, *Moidu v. Parthasarathy and Ors.* 1991 (1) KLJ 497 and in *Moosakutty v. Land Board* 1991 (2) KLT SN 11. But these decisions to that extent are not good law in view of the subsequent decisions of the Supreme Court in *Bhanwar Lal v. Satyanarain and Anr.* : AIR 1995 SC358 , *Babulal v. Raj Kumar* : [1996]2SCR763 ,

Samir Sobhan Sanyal v. Tracks Trade Pvt. Ltd. and Ors. : AIR 1996 SC2102 ,  
Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal : [1997]1SCR463 , Silverline  
Forum Pvt. Ltd. v. Rajiv Trust and Anr. : [1998]2SCR587 , Shreenath and Anr. v.  
Rajesh and Ors. : [1998]2SCR709 , Anwarbi v. Pramod D.A. Joshi and Ors. :  
(2000)10SCC405 , Tanzeem-E-Sufia v. Bibi Haliman and Ors. :  
[2002]SUPP2SCR8 and Prasanta Banerji v. Pushpa Ashoke Chandani and Ors. :  
(2002)9SCC554 ,

14. In Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal : [1997]1SCR463 , the  
Supreme Court held thus:

In short the aforesaid statutory provisions of Order XXI lay down a complete code  
for resolving all disputes pertaining to execution of decree for possession obtained  
by a decree-holder and whose attempts at executing the said decree meet with  
rough weather. Once resistance is offered by a purported stranger to the decree  
and which comes to be noted by the Executing Court as well as by the decree-  
holder the remedy available to the decree-holder against such an obstructionist is  
only under Order XXI, Rule 97 Sub-rule (1) and he cannot by-pass such  
obstruction and insist on re-issuance of warrant for possession under Order XXI,  
Rule 35 with the help of police force, as that course would amount to by-passing  
and circumventing the procedure laid down under Order XXI, Rule 97 in  
connection with removal of obstruction of purported strangers to the decree. Once  
such an obstruction is on the record of the Executing Court it is difficult to  
appreciate how the Executing Court can tell such obstructionist that he must first  
lose possession and then only his remedy is to move an application under Order  
XXI, Rule 99, CPC and pray for restoration of possession...

In Babulal v. Raj Kumar : [1996]2SCR763 , the Supreme Court held that a third  
party who resisted delivery of the immovable property on the basis of a decree for  
specific performance could maintain an application for deciding his rights. It was  
held that he need not wait till he is dispossessed and that executing court is  
required to determine the question of right, title and interest of the obstructor. In  
view of the law laid down by the Supreme Court in the aforesaid decisions, it  
cannot be said that a third party has no right to object to the execution of the

decree before he is dispossessed. As held by this Court, there is no execution proceeding as such in the case of a suit for specific performance, for the purpose of getting the document executed or for delivery of possession. Still the process by which the decree is implemented by what ever nomenclature it is called, is also a proper stage where the third party who objects to the decree could raise his objection. To my mind, all the provisions of Order XXI Rule 97 to 101 would apply to a proceeding in a suit for specific performance as well, though such application is not filed in an execution petition but is filed in the proceedings under Section 28(3) of the Specific Relief Act. The nomenclature is quite irrelevant; whether it is an execution petition or proceeding in an original suit is not the relevant criterion. Therefore, I hold that the application filed by the petitioner before the court below is maintainable for being considered on the merits.

15. The next question is whether the petitioner is precluded from objecting to the execution of the document or for delivery of possession on the ground that he is a subsequent transferee. The petitioner is the fifth transferee after the institution of the suit. It was held by this Court in A.S.No. 276 of 1997, which arose from the suit in question that the second defendant was fully aware of the agreement between the plaintiff and the first defendant. Therefore, any subsequent transferee shall also be imputed with the knowledge which the second defendant himself had. In other words, if the second defendant could not claim any valid title since he was fully aware of the earlier transaction, any of the subsequent assignees would also be not entitled to claim that right so as to deny the benefit of the decree to the plaintiff. If the Court were to hold that a subsequent transferee from the second defendant would not be visited with the disqualification which the second defendant had, that would result in upsetting concluded findings against the second defendant and in favour of the plaintiff and a defeated party could easily get over the findings by making a subsequent transfer. The Madras High Court held in Vijayalakshmi Leather Industries (P) Ltd. v. Narayanan 2003 (1) KLT SN 107 Page 77 that the expression 'transferee from the judgment debtor' occurring in Order XXI Rule 93 and 102 would also include the transferee of a transferee from the judgment debtor. It was held that if the expression 'transferee from the judgment debtor' is to be given a narrow interpretation, then the purpose of restriction of transfer pendente lite and the relevant provisions of the Code of Civil

Procedure would be redundant.

16. Counsel for the petitioner relied on the decisions reported in *Durga Prasad and Anr. v. Deep Chand and Ors.* : [1954]1SCR360 ; *Babu Lal v. Hazari Lal Kishori Lal and Ors.* : [1982]3SCR94 ; *Dwarka Prasad Singh and Ors. v. Harikant Prasad Singh and Ors.* : [1973]2SCR1064 ; *Ashan Devi v. Phulwasi Devi* AIR 2004 SC 511; and *Raj Kumar v. Sardari Lal and Ors.* : (2004)2SCC601 . In : [1954]1SCR360 (supra) it was held thus:

Where there is a sale of the same property in favour of a prior and subsequent transferee and the subsequent transferee has, under the outstanding in his favour, purchase money to the vendor, then in a suit for specific performance brought by the prior transferee, in case he succeeds, the question arises as to the proper form of decree in such a case. The practice of the Courts in India has not been uniform....

The decisions in : [1982]3SCR94 and : (1973)ILLJ226SC also deal with the same question. In *Ashan Devi v. Phulwasi Devi* AIR 2004 SC 511 it was held that the provisions of Order XXI Rule 97 and 99 are to be liberally construed to enable the executing Court to adjudicate the inter se claims of the decree holder and third parties in the execution proceedings, even in a suit for specific performance of an agreement to sell. The facts as discussed in paragraph 4 of the decision would clearly indicate that the title claimed by the obstructor came into existence in 1985 while the suit was instituted in 1987. Therefore, there was no scope for any application of the provisions of Section 52 of the Transfer of Property Act in the facts of that case. In the said case before the Supreme Court, the vendors did not contest the suit for specific performance and an *ex parte* decree was passed in favour of the plaintiff. In execution, a registered sale deed was executed in favour of the decree holder. When the proceedings for delivery of the property were made, the third party, the subsequent purchaser, approached the Court complaining about dispossession in execution of the decree.

17. In *Rajkumar v. Sardari Lal and Ors.* (2004) 1 SCC 601 it was held that impleadment of a *lis pendens* transferee is not as of right but in the discretion of the Court. In that case during the pendency of the suit relating to immovable

property, a third party purchased the property who was not aware of the litigation. The suit was decreed *ex parte* against the defendants. The assignee filed an application under Order IX Rule 13 of the Code of Civil Procedure to set aside the *ex parte* decree and also prayed for impleading under Order XXII Rule 10 CPC for bringing the assignee on record. The application filed by the assignee was allowed by the trial court, which was confirmed by the High Court in revision. The Supreme Court dismissed the appeal filed by the defeated party. The Supreme Court held thus:

5. The doctrine of *lis pendens* expressed in the maxim '*ut lite pendente nihil innovetur*' (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the [Transfer of Property Act, 1882](#). A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee *pendente lite* is treated in the eye of the law as a representative-in-interest of the judgment debtor and held bound by the decree passed against the judgment debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22 Rule 10 CPC. In case of an assignment, creation or devolution of any interest during the pendency of any suit. Order 22 Rule 10 CPC confers a discretion on the court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of & *lis pendens* transferee on record is not as of right but in the discretion of the court. Though not brought on record the *lis pendens* transferee remains bound by the decree.

18. The counsel for the petitioner further relied on the decisions in *Narayana Pillai v. Ponnuswami* 1978 KLT 512; *Narayana Pillai Chandrasekharan Nair v. Kunju Amma Thankamma* AIR 1980 Kerala 177; *Abdul Lathif v. Kunjupillai* 1990 (1) KLT SN 53 and *Joseph George v. Chacko Thomas* 1992 (1) KLT 6. I do not think those decisions would in any way apply to the facts of this case or the questions involved in this case.

19. The counsel for the petitioner, relying on : AIR1979 All124 contended that the benefit of Section 19(b) could be denied to a subsequent transferee only if there is a finding that the subsequent transferee had notice and that he is not a bona fide transferee. That decision was rendered in an appeal from a decree for specific performance and not in execution. The subsequent transferee could contend in the suit that the plaintiff is not entitled to the relief of specific performance. In the present case, that stage is over and the order impugned is passed in the proceedings for implementing the decree.

20. On the other hand, the counsel for the respondent contended that a pendente lite transferee is not entitled to any benefit and he cannot be heard to contend that he is a bona fide transferee without notice. The question of bona fide does not arise in the case where the suit is pending and the court is not expected to embark upon an enquiry as to the bona fides. According to the counsel for the respondents, once it is established that the transfer was made subsequent to the institution of the suit, a decree can straight away be executed against a judgment debtor and any other subsequent transferee who got rights subsequent to the institution of the suit.

21. In Chacko Pyli v. Ipe Varghese 1955 KLT 739, the Full Bench held:

A transfer pendente lite is good as between the parties thereto, only, the transferee's rights will be subject to the decree and execution thereof in the litigation pending which the transfer is made. The plaintiff or the decree holder would be entitled to ignore the transfer even if he has notice of it and proceed with the original party on record and the transferee would be bound by the ultimate result of the litigation even if he had no notice of it at any stage.

In Augusti v. Ramakrishna Panicker 1969 KLT 326, it was held that the question of notice is immaterial as the rule of lis pendens is based on expediency and not notice.

22. In Ram Peary and Ors. v. Gauri and Ors. : AIR1978 All318 , the Allahabad High Court considered the question whether Section 52 of the Transfer of Property Act is subject to Section 19(b) of the Specific Relief Act. It was held:

Thus, in the present case it may be that the subsequent transferee was entirely ignorant of any right on the part of the contractor, and also of the pendency of the suit filed against the vendor by such contractor, yet as the transfer was made to him by the vendor after the institution of the suit of the contractor and, while it was pending, the subsequent purchaser cannot set up against the contractor any right from which his vendor is excluded by the decree. The title of the subsequent purchaser is good against him on the ground of breach of covenant, but against the plaintiff contractor who seeks specific performance of the contract against the vendor, the subsequent transferee can be in no way better position than the vendor himself. It is well settled that in a suit for specific performance of contract in respect of immoveable property a right to immovable property is directly and specifically in question. (See *Gauri Dutt Mahraj v. Sheikh Sukur Mohammad* 75 Ind App 165 : AIR 1948 PC 147);. ...

Accordingly, we take the view that *lis pendens* affects the transferee *pendente lite* and Section 52 of the T.P. Act is not subject to Section 19(b) of the new Specific Relief Act. The conveyance in favour of the subsequent purchaser pending the suit brought by the plaintiff contract for specific performance of the contract between him and the vendor is taken 'as if it had never any existence'.

23. In *Sardar Hari Bachan Singh v. Major S. Har Bhajan Singh and Anr.* , it was held that the alienee *pendente lite* cannot claim any compensation for the improvements made by him in the property purchased by him and that the alienee *pendente lite* is not a necessary party to the suit.

24. In *Krishnaji Pandharinath v. Anusayabai and Anr.* : AIR1959 Bom475 , it was held that the application of the doctrine of *lis pendens* does not depend upon the purchaser having notice of the suit; even if the transferee *pendente lite* from a party has no notice of the suit, the rights of the other party to a suit in which a right to immovable property is directly and specifically in question under the decree cannot be prejudicially affected by the transfer. In *Har Prasad v. Sita Ram* AIR 1940 Allahabad 141, it was held that even though Section 52 does not operate to annul a transfer *pendente lite* it renders the transfer subservient to the rights of the parties to the action as determined by the judgment or decree passed in the



action.

25. In *Hurmat Ali v. Matlib Ali* AIR 1952 Assam 111, it was held that a transferee pendente lite is a representative of the transferor, the party to the suit and is also a person bound by the decree within the meaning of Order XXI Rule 35 read with Section 52 of the Transfer of Property Act even though he is not made a party to the suit or appeal.

26. In *Narayan Laxman Ayarkar and Ors. v. Vishnu Woman Dhawale and Anr.* : AIR1957 Bom117, it was held that transferee of a property pendente lite must be treated as a representative in interest and as such bound by the result of the suit and the decree can be executed against him although he was not a party to the suit.

27. The right of a transferee pendente lite is subservient to the decree and he is bound by the decree passed in the suit against his transferor. The decree can be enforced even against the transferee without notice. The benefit that could be claimed by a subsequent transferee under Section 19(b) of the Specific Relief Act would not be available to a transferee pendente lite. What is contemplated by Section 19(b) is a transfer subsequent to the original contract and the transferee being a bona fide purchaser without notice of the original contract. Section 19(b) does not apply in a case where a suit is filed before the transfer in favour of the subsequent transferee, in other words, the moment the suit is filed, the parties are governed by Section 52 of the Transfer of Property Act and would not be governed by Section 19(b) of the Specific Relief Act. Section 52 of the Transfer of Property Act overrides Section 19(b) of the Specific Relief Act. Both these provisions operate in different fields. Section 19(b) would have application to a transaction before suit while Section 52 operates against a transfer subsequent to the institution of the suit. So long as the subsequent transferee does not claim under a transfer which came into existence before the institution of the suit, he cannot claim to be a transferee for value in good faith as provided in Section 19(b) of the Specific Relief Act.

28. Before passing an order for removal of obstruction, Rule 98(2) of Order XXI contemplates satisfaction of the Court 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. To put it conversely in order to successfully obstruct delivery of the property covered by the decree, the obstructor must be able to establish that he is claiming under a title which did not come into existence during the pendency of the suit. There is no dispute in this case that the title claimed by the petitioner came into existence long after the institution of the suit. In *Ittiyachan v. Tomy* 2001 (3) KLT 117, it was held that an obstruction under Rule 97 of Order XXI CPC or an application for redelivery under Rule 99 of Order XXI CPC, can be maintained by a person who is not bound by the decree or who claims an independent right over the property. It was held thus:

After the amendment of the Code in the year 1976, mere possession by the claimant would not be sufficient. The claimant has also to show a right to possession independent of the judgment debtor. In that situation, it is necessary for the claimant in the present case, to show that he has got a right in the property which is not affected or which cannot be affected by the decree, in execution of which it was delivered.

In *Shylaja v. George Selvaraj* 2003 (3) KLT SN 198 at page 153 it was held thus:

If the resistance or obstruction to the execution of a decree 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 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 obtained in Order XXI Rule 102 of the Code of Civil Procedure. A pendente lite transferee would be bound by the result of the litigation...

Before the amendment of the Code of Civil Procedure in the year 1976, a person who objected to the execution of the decree or put forward a claim, could succeed if he proved that he had a bona fide claim to be in possession of the property. This was so under Rule 58 and under Rule 98 of Order XXI. A defeated party in such a proceeding could file a suit for establishing title under Rule 63 and Rule 103

respectively. The two tier litigation before the 1976 amendment was brought down to a single tier litigation by providing that the right, title and interest of the person who objects to the decree or delivery should be decided in the proceeding under Rule 97; or under Rule 58 of Order XXI in the case of an attachment. A defeated party in such a case, would not be entitled to institute another suit and he would be barred by res judicata in doing so in view of the order passed against him in such a proceeding. A title which is hit by Section 52 of the Transfer of Property Act could not be projected as a valid title to deny the fruits of a decree in favour of the decree holder. The question whether a subsequent transferee is having possession of the property or whether he paid proper consideration to his transferor or whether he was aware of the litigation is not at all material or relevant for consideration.

29. The foregoing discussions would lead to the conclusion that the revision petitioner is not entitled to the reliefs claimed by her in the application filed before the court below as I.A.No. 4357 of 2002.

The Civil Revision Petition fails and it is dismissed. However, without any costs.

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