
(2013) 04 AHC CK 0268
In the Allahabad High Court
Case No : Second Appeal No. 1003 of 2006

Shyoraj Singh and Others

APPELLANT

Vs

Zahir Ahmad and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 5, Order 41 Rule 11, 47

Transfer of Property Act, 1882 — Section 41, 43, 52

Citation : (2013) 8 ADJ 492 : (2013) 5 ALJ 336 : (2013) 99 ALR 271 : (2013) 120 RD 364

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Namwar Singh, S.N. Mishra, Sanjiv Singh and Lalit Kumar, for the Appellant; R.K. Pandey, Mohd. Arif and Sharda Madhyan, for the Respondent

Judgement

Sudhir Agarwal, J.—Heard Sri Namwar Singh and Sri. Lalit Kumar, Advocates for appellants and Sri. R. K. Pandey, Advocate for respondents. The only substantial question of law which was formulated in this appeal after hearing under Order 41, Rule 11, C.P.C. is:

Whether the sale-deed in favour of plaintiffs-appellants during pendency of suit, is void on the principle of lis pendens and if so, whether they are entitled to be substituted?

2. It is evident from record that Original Suit No. 115 of 1969 instituted by Sri Haji Bashir Ahmad (since deceased and substituted by his legal heirs) resulted in a compromise decree as a result whereof defendant-vendor, who executed sale deed in favour of plaintiffs, in respect to property in dispute, became incompetent to possess any right over the said property and hence could not have conferred title upon plaintiffs. The present plaintiffs-appellants are purchaser of disputed property during pendency of the aforesaid suit.

3. The present proceedings, however, have arisen from a subsequent Original

Suit No. 184 of 1996 instituted by plaintiffs-appellants in the Court of Civil Judge (Senior Division), Bulandshahar. The plaint case set up by plaintiffs is that property in dispute was purchased by plaintiffs from Smt. Saeedan, widow of Allah Diya, by sale-deed dated 21.09.1981. Prior thereto, one Haji Bashir Ahmad, instituted Suit No. 115 of 1969 for specific performance on the basis of a contract for sale dated 07.06.1966. Smt. Saeedan instead of executing sale-deed in favour of Sri Haji Bashir Ahmad, proceeded to execute a sale-deed in favour of Smt. Ramsakhi, Smt. Santosh Devi and Smt. Usha Devi which was illegal. These subsequent purchasers were also impleaded as defendant Nos. 3 to 5 in Suit No. 115 of 1969. Two more persons, namely, Alimuddin and Ramzani were also impleaded as defendant Nos. 6 and 7 in the aforesaid suit. The suit was contested by Smt. Saeedan alleging that she had only 1/3rd share in the disputed property while 2/3rd share belong to defendant Nos. 6 and 7.

4. The suit was decreed by Trial Court, i.e., Additional Civil Judge, Bulandshahar vide judgment and decree dated 13.01.1972, where-against Civil Appeal No. 139 of 1972 was filed by Alimuddin and Ramzani, the defendant Nos. 6 and 7, in the aforesaid suit. This appeal was allowed on 22.08.1976. This Court reversed Trial Court's decree and directed for deciding suit again. Thereagainst Sri Haji Bashir Ahmad preferred Appeal No. 734 of 1978 before Apex Court which was decided on 03.04.1978 whereby it was held that the direction of High Court while remanding matter was not to decide the entire suit afresh but the intention was that Trial Court shall first determine share of Smt. Saeedan and thereafter shall pass decree for specific performance to that extent. Consequently, five additional issues were framed in the Trial Court on 20.07.1982 whereby issue No. 8 was regarding share of Smt. Saeedan in the disputed property. While the matter was pending, Smt. Saeedan executed further sale-deed in respect of disputed property on 21.09.1981 in favour of plaintiffs-appellants in the present case. These appellants moved an Application No. 139A under Order XXII Rule 10, C.P.C. for impleadment as defendants in Original Suit No. 115 of 1969. In the meantime, Smt. Saeedan, Alimuddin and Ramjani also died hence their legal heirs were brought on record. The application seeking impleadment preferred by present appellants was rejected by Trial Court by order dated 26.02.1996, whereagainst the present appellants preferred Misc. Civil Appeal No. 50 of 1996 which was also dismissed by Third Additional District Judge, Bulandshahar vide order dated 28.07.1998. Thereagainst the present appellants came to this court in Second Appeal No. 1325 of 1998 but the same was also dismissed by vide judgment dated 24.11.1999.

5. In the meantime the Original Suit No. 115 of 1969, it appears, that, after rejecting present appellants' application for impleadment, was decreed finally on 27.02.1996, on the basis of a compromise entered between parties, wherein, it was admitted that Smt. Saeedan had only 1/3rd share in the entire property and rest 2/3rd was with defendant Nos. 6 and 7 therein. Consequently and in the light of decree passed by Trial Court, Smt. Saeedan executed sale-deed in respect of her 1/3rd share, in the dispute property, in favour of Sri Haji Bashir

Ahmad, vide sale-deed dated 14.03.1996.

6. The plaintiffs-appellants thereupon instituted Original Suit No. 184 of 1996 for cancellation of sale-deed dated 14.03.1996. The aforesaid suit was dismissed by Trial Court vide judgment and decree dated 07.01.2006 and thereagainst plaintiffs-appellants" Civil Appeal No. 17 of 2006 has also been dismissed by Additional District Judge, Court No. 3, Bulandshahar, i.e., Lower Appellate Court (hereinafter referred to as the "LAC") vide judgment and decree dated 06.11.2006. Hence this appeal.

7. Sri. Namwar Singh, learned counsel for the appellants, attempted to argue that compromise decree was illegal being in violation of remand order passed by this Court as clarified by Apex Court.

8. However, I do not find any strength in the submission and the argument is totally fallacious. The Apex Court required the Trial Court to decide first, the question of share of Smt. Saeedan. This question was decided in terms of compromise between the parties and Smt. Saeedan's share was held to be 1/3rd. The suit was decreed accordingly though based on compromise. It is this share which has been transferred by sale, by Smt. Saeedan, in favour of Sri Haji Bashir Ahmad, the decree holder, vide sale-deed dated 14.03.1996. It thus cannot be said that direction contained in remand order of this Court, as clarified by Apex Court, has not been observed or complied by concerned courts.

9. Now the only question which is to be considered is the one formulated above, for the reason, that, plaintiffs-appellants before this Court are purchaser of property which was part of disputed property in Original Suit No. 115 of 1969, during pendency of aforesaid suit.

10. It cannot be doubted that the sale-deed of plaintiffs-appellants, executed *Us pendens*, may not be void *ab initio* from its very inception so long as the suit is pending, but, once the suit is decided, the aforesaid document executed, *lis pendens*, will face the consequences of suit. In case the suit is decreed and execution of decree results in taking away the very subject matter of instrument executed *lis pendens*, such instrument shall be bad from its inception giving no right to incumbent in whose favour it had been executed.

11. The plaintiffs-appellants were not heirs and legal representatives of Smt. Saeedan. They were subsequent transferees during pendency of suit and, therefore, sought impleadment in that suit, which having already been negated by courts below and order has been upheld by this Court, the plaintiffs-appellants were clearly bound by the result of Original Suit No. 115 of 1969. After the same has been decreed, may be on the basis of compromise, the plaintiffs appellants, who were beneficiary during *lis pendens*, ceases to have no right over the property in dispute.

12. The doctrine of *lis pendens* is recognised u/s 52 of Transfer of Property Act, 1882 (hereinafter referred to as the "Act, 1882"). This doctrine is expressed in

the maxim "ut lite pendente nihil innovetur". It imposes a prohibition on transfer or otherwise dealing of any property, during the pendency of a suit, provided the conditions laid down in Section 52 are satisfied.

13. The principle of lis pendens, it is said, owe its origin to the maxim of Roman Law "Rem de qua controversia prohibetur in alium transferri", which means, where the subject in dispute owing to contest passes into the custody of the judiciary, parties to it are under an obligation not to withdraw it from the protection of the Judge.

14. Tracing back the genesis of doctrine, it relate back to a decision of 1857 in *Bellamy v. Sabine*, (1857) 1 De G & J 566 wherein Lord Justice Turner said:

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

15. The definition of lis pendens *Corpus Juris Secundum*, Vol. LIV, page 570, reads as under:

Lis pendens literally means a pending suit; and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over property involved in suit, pending the continuance of the action, and until final judgment therein.

16. A Division Bench in *Nathaji Anandrav Patil Vs. Nana Sarjerao Patil*, said that doctrine of lis pendens is not based on the equitable doctrine of notice but on the ground that it is necessary to administration of justice that decision of a Court in a suit should be binding not only on the litigant parties but all those who derives title from them pendente lite whether that notice to the suit or not. It refers to the decision in *Bellamy v. Sabine* (supra) and a more ancient judgment in *Bishop of Winchester v. Paine* (1805) 11 Ves. 197 where the Master of Rolls said:

Ordinarily, it is true, the decree of the Court binds only the parties to the suit. But he, who purchases during the pendency of the suit, is bound by the decree, that may be made against the person, from whom he derives title. The litigating parties are exempted from the necessity of taking any notice of a title, so acquired. As to them it is as if no such title existed. Otherwise suits would be indeterminable: or which would be the same in effect, it would be in the pleasure of one party, at what period the suit should be determined.

17. The Division Bench also referred to another decision of Vice Chancellor in *Metcalfe v. Pulvertoft* (1813) 2 Ves. & B. 204 where it was said:

The effect of the maxim, pendente lite nihil innovatur understood as making the

conveyance wholly inoperative, not only in the suit depending but absolutely to all purposes in all future suits and all future time, is founded in error.

18. A Division Bench of Bombay High Court in *Basappa Budappa Halavalad Vs. Bhimangowda Shiddangowda Patil*, the plaintiff brought a suit against his brother, Basangowda on 02.08.1918 for partition of joint family property. On 10.08.1918 Basangowda sold the property in suit which was included in the claim of his brother to defendant Nos. 1 and 2 therein. During pendency of suit, Basangowda died and his widow and children were substituted. The suit was decreed pursuant to a compromise between plaintiffs and heirs of Basangowda wherein half of suit property was awarded to plaintiff. Another suit was instituted against defendant Nos. 1 and 2 the predecessors of property from Basangowda during pendency of earlier suit for recovery of possession of half of suit property of earlier litigation. The Trial Court dismissed suit but the Lower Appellate Court applying Section 52 of Act, 1882 allowed appeal and decreed suit. It holds that defendant Nos. 1 and 2 by virtue of doctrine of *lis pendens* were bound by concerned decree. The matter came to High Court. It was argued that predecessors should have been made party in the earlier suit and since they had not joined the earlier litigation, the ultimate decree passed is not binding on them. Secondly it was contended that they are to be treated as representative of Basangowda within the meaning of Section 47 of C.P.C. and the second suit is barred thereunder since the plaintiff should have asked for possession of property in execution proceedings. Both the contentions were negative by High Court. The Court said referring to Section 52 of Act, 1882 and relying on decisions in *Gulabchand Manikchand v. Dhondi Valad Bhau* (1873) 11 BHCR 64 and a Full Bench decision in *Lakshmandas Sarupchand v. Dasrat*, ILC (1880) Bom 168 the Court said that it was immaterial whether the alienees *pendente lite* had or had not noticed all the pending proceedings, for, if this were not so, there would be no certainty that litigation would ever come to an end. In such cases the Courts do not recognise the allegations *pendente lite* as affording any proper ground for staying the suit.

19. Then the Court referred and followed Privy Council decision in *Faiyaz Husain Khan Vs. Munshi Prag Narain*, and said that *pendente lite* neither party to the litigation can alienate the property in dispute so as to affect his opponents. The subsequent death of Basangowda can make no difference to this principle. Further in the context of argument with reference to Section 47 C.P.C. the Court said that a transfer cannot be recognised by Court as giving subsequent purchases any right to be regarded as representatives for the purpose of attaching plaintiffs' right to sue.

20. In *Ramdhone Bulakidas Vs. Kedarnath Mohata and Others*, Hon''ble Ameer Ali, J. while construing Section 52 of Act, 1882 said that the Section although in general terms, does limit its own operation. It must be a suit in which the rights to immovable property are in issue; the order must be an order relating to rights to such property, and the transaction which will give place or be made subject to the order of the Court must be one which derogates from the other parties''

rights to the property in suit. His Lordship then explains what has been said above in para 14 of the judgment as under:

A cannot transfer his interest in X so as to affect any right in X which the Court might have established in favour of B, therefore that any order which the Court might have made as to the right of B in respect of X will override or prevail over any alienation by A. I think however that the order of the Court must relate to rights which the parties claim, or which they might have claimed in the property X. The Court cannot create proprietary right in B on grounds distinct from the property itself.

21. In other words the aforesaid doctrine is based on the principle that the parties to a suit cannot allowed to shorten the arms of Court in dealing with suit by giving effect to the transfers of disputed property to third party. In other words the doctrine is one of convenience.

22. In AIR 1948 147 (Privy Council) it was held that broad principle underlying Section 52 of Act, 1882 is to maintain status quo unaffected by act of any party to the litigation pending its determination and the expression ""decree" or "order" includes a decree or order made pursuant to the agreed terms of compromise.

23. In Krishnaji Pandharinath Vs. Anusayabai and Another, it was held that even after dismissal suit, the purchaser is subject to lis pendens of an appeal afterwards, if filed. The broad principles underlying Section 52 is to maintain status quo, unaffected by act of any party, to the litigation, pending its determination. The lis continues so long as a final decree or order has not been obtained and complete satisfaction thereof has not been rendered.

24. In Jayaram Mudaliar Vs. Ayyaswami and Others, the Court said:

It is evident that the doctrine, as stated in section 52, applies not merely to actual transfers of rights which are subject matter of litigation but to other dealings with it by any party to the suit or proceeding, so as to affect the right of any other party thereto. Hence it could be urged that where it is not a party to the litigation but an outside agency such as the tax collecting authorities of the Government, which proceeds against the subject matter of litigation, without anything done by a litigating party, the resulting transaction will not be hit by section 52. Again, where all the parties which could be affected by a pending litigation are themselves parties to a transfer or dealings with property in such a way that they cannot resile from or disown the transaction impugned before the Court dealing with the litigation the Court may bind them to their own acts. All these are matters which the Court could have properly considered. The purpose of Section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the Court which is dealing with the property to which claims are put forward.

25. In Jayaram Mudaliar Vs. Ayyaswami and Others, the Court also observed that

exposition of doctrine indicate that need for it arisen from the very nature of jurisdiction of the Court and their control over the subject matter of litigation so that parties litigating before it may not remove any part of subject matter outside the power of Court to deal with it and thus make the proceedings infructuous. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated. This has been followed in another decision in *Rajender Singh and Others Vs. Santa Singh and Others*, .

26. Section 52 has been construed by a three Judge Bench of Apex Court in *Dev Raj Dogra and others Vs. Gyan Chand Jain and others*, and it says that for application of said Section following conditions have to be satisfied:

1. A suit or a proceeding in which any right to immovable property must be directly and specifically in question, must be pending;
2. The suit or the proceeding shall not be a collusive one;
3. Such property during the pendency of such a suit or proceeding cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under any decree or order which may be passed therein except under the authority of Court. In other words, any transfer of such property or any dealing with such property during the pendency of the suit is prohibited except under the authority of Court, if such transfer or otherwise dealing with the property by any party to the suit or proceeding affects the right of any other party to the suit or proceeding under any order or decree which may be passed in the said suit or proceeding.

27. A Division Bench in *Mohammed Ali Abdul Chanimomin Vs. Bisahemi Kom Abdulla Saheb Momin and Another*, said that object of Section 52 is to subordinate all derivative interests or all interests derived from parties to a suit by way of transfer pendente lite to the rights declared by the decree in the suit and to declare that they shall not be capable of being enforced against the rights acquired by the decree-holder. A transferee in such circumstances therefore takes the consequences of the decree which the party who made the transfer to him would take as the party to the suit. This is founded on the principle of public policy and no question of good faith or bona fides arises. The transferee from one of the parties to the suit cannot assert or claim any title or interest adverse to

any of the rights and interests acquired by another party under the decree in suit. The principle of lis pendens prevents anything done by the transferee from operating adversely to the interest declared by the decree.

28. This Court in *Thakur Prasad v. Board of Revenue and others*, 1979 ALJ 1273 said that a transfer lis pendens is not a bad transfer. It is a transfer subject to result of ultimate decree that might be passed in the case.

29. In *Smt. Sayar Bai Vs. Smt. Yashoda Bai and Others*, the Court said that during pendency of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and would be bound by the claims which shall ultimately be pronounced. When a suit is filed in respect of immovable property, the jurisdiction, power or control over the property involved in the suit is acquired by the Court, pending the continuance of the action and until the final judgment is pronounced and any transaction or dealing of the property by the parties to the suit or proceedings would not affect the decree or order which may be passed by the Court.

30. In *Ramjidas Vs. Laxmi Kumar and Others*, following several authorities of different Courts including the Apex Court's decision in *Jayaram Mudaliar Vs. Ayyaswami and Others*, the Court observed that the purpose of Section 52 is not to defeat any just and equitable claim but only to subject them to the authority of Court which is dealing with the property to which the claims are put forward.

31. In *Lov Raj Kumar Vs. Dr. Major Daya Shanker and Others*, it was held:

31. The principles contained in Section 52 of Transfer of Property Act are in accordance with the principle of equity, good conscience or justice, because they rest upon an equitable and just foundation, that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. Allowing alienations made during pendency of a suit or an action to defeat rights of a plaintiff will be paying premium to cleverness of a defendant and thus defeat the ends of justice and throw away all principles of equity.

32. The Court went to the extent that even in those cases where Section 52 of Act, 1882, as such, is not applicable, since it is founded on the principle of justice, equity and good conscious, the principle as such can be applied. However, for the purpose of present case such wider doctrine may not be necessary but what has been observed with respect to Section 52 is unexceptionable.

33. In *Narendrabhai Chhaganbhai Bharatia Vs. Gandevi Peoples Co-op. Bank Ltd. and Others*, the Court said:

20. The principle underlying the object of the aforesaid provision is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The principles contained in this section are in accordance with the principle of equity, good conscience or justice because they rest upon an

equitable and just foundation, that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. Allowing alienations made during pendency of a suit or an action to defeat rights of a plaintiff bank will be paying premium to cleverness of a defendant and thus defeat the ends of justice and throw away all principles of equity.

34. In *Hardev Singh Vs. Gurmail Singh (Dead) by LRs.*, the Court said that Section 52 merely prohibits transfer. It does not say that the same would result in an illegality. The only declaration by application of Section 52 is that the purchaser during pendency of suit would be bound by result of litigation. The transaction, therefore, from its inception was not void or of no effect but would abide by the decision in pending suit. The real question up for consideration therein was in regard to Sections 41 and 43 of Act, 1882. The Court clarified doctrine of feeding the estoppel embodied in Section 43 which envisages that where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires the benefit of a subsequent acquisition goes automatically to the earlier grantee or as it is usually expressed, feeds the estoppel. The principle is based on equitable doctrine that a person who promise to perform more than he can perform must make good his contract when he acquires power of performance. The Court also clarified that transfer where is invalid the above doctrine will have no application.

35. The Apex Court recently in *Jagan Singh (Dead) through L.Rs. Vs. Dhanwanti and Another*, has favoured to apply principle of *lis pendens* irrespective of the fact, whether there was any stay order passed by Court or not. The Court said:

If such a view is not taken, it would plainly be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. The explanation to this section lays down that the pendency of a suit or a proceeding shall be deemed to continue until the suit or a proceeding is disposed of by 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. In the present case, it would be canvassed on behalf of the respondent and the applicant that the sale has taken place in favour of the applicant at a time when there was no stay operating against such sale, and in fact when the second appeal had not been filed. We would however, prefer to follow the dicta in *Krishanaji Pandharinath (supra)* to cover the present situation under the principle of *lis-pendens* since the sale was executed at a time when the second appeal had not been filed but which came to be filed afterwards within the period of limitation. The doctrine of *lis-pendens* is founded in public policy and equity, and if it has to be read meaningfully such a sale as in the present case until the period of limitation for second appeal is over will have to be held as covered u/s 52 of the T.P. Act.

36. The consensus of various Courts in the last more than two decades which includes almost all the High Courts as also the Apex Court, whose decision is law

of the land, is very clear that transactions which affects a property in dispute in a pending suit, executed during such pendency, would abide by the decision of Court and no right can be conferred upon a third party which is inconsistent to the ultimate decree passed by Court.

37. Faced with the situation, the effect and consequence of principle laid down in Section 52 of Act, 1882, Sri. Singh, learned counsel for the appellants contended that doctrine of lis pendens shall have no application where the suit has been decreed on the basis of a compromise.

38. This submission, in my view, also has no legs to stand and in any case it is also no more res integra but is well settled by various authorities.

39. Section 52 as it stands today in the statute book was slightly differently worded initially and read as under:

52. During the active prosecution in any Court having authority in British India Chief Justice, or established beyond the limits of British India by the Governor-General in Council of a contentious suit or proceeding in which any right to immoveable 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.

40. The aforesaid provision was amended subsequently by Amending Act No. 20 of 1929.

41. Be that as it may, the initial provision was attempted to be construed as if it would not apply to a compromise decree since it has used the words "contentious suit or proceeding". The matter was considered by a Full Bench in Annamalai Chettiar Vs. Malayandi Appaya Naick and Others, . Rejecting the contention, Court said that mere fact that there is a compromise shows that suit was originally contentious, otherwise there would be nothing to compromise. A decree is none the less a "decree" as defined in Code of Civil Procedure, even if it is based on compromise. The legal effects of decree contemplated by Section 375 (as the provision existed then in C.P.C.) do not defer from the legal effects of a "decree" where the suit has been fought to the end. The fact that a decree is given in accordance with the terms which have come to, between the parties, does not prevent the decree being the formal expression by the Court, of an adjudication, on a right claimed or a defence set up within the meaning of the definition. The Court (Charles Arnold White, Kt., C.J.) in para 13 of the judgment said:

13. I think Section 52 of the Transfer of Property Act should be construed as applying to the case of a compromise decree in the absence, of course, of anything in the nature of fraud or collusion. This seems to be the natural construction of the section and it is in accordance with the principles on which

the doctrine of lis pendens is based.

42. The above view was concurred by Subrahmanya Aiyar, J. and Benson, J., though they also wrote their separate opinions.

43. A Division Bench in Shyam Lal and Another Vs. Sohan Lal and Others, said that a transferee pendente lite is bound by the decree just as much as he were a party to the suit. Such transferee puts himself in privity with the suit, and must be treated, not as a stranger to the suit, but as a party to it and consequently bound by the terms of the decree in full. A decree based upon a compromise is just as much binding as a decree founded upon a decision on merits. This was followed subsequently by a Single Judge of this Court in Amarnath and Others Vs. Deputy Director of Consolidation, Kanpur and Another, .

44. In Dhiraj Singh v. Dina Nath, 1910 IC (8) 288 Judicial Commissioner followed the Full Bench judgment in Annamalai Chettiar (supra) to hold that the doctrine of lis pendens would apply in case of a compromise decree also.

45. The dictum laid down in Annamalai Chettiar (supra) has also been followed in AIR 1928 146 (Oudh) . The same view has been taken in Mt. Ramdulari Kuer and Others Vs. Upendra Nath Basu, wherein it has been held:

To my mind the fact that Rai Bindeswari had taken a kobala before the compromise petition was filed will not affect the rights of the parties and it must be held that the purchase of the plaintiff was during the active prosecution of a contentious suit. That the doctrine of lis pendens will apply to a purchase during the pendency of a suit which terminates in a consent decree is settled by authorities.

46. Hon'ble S.C. Agrawal, J. (as his Lordship then was) followed the Full Bench decision in Annamalai Chettiar (supra) and another decision of Calcutta High Court in Hiranya Bhusan Mukherjee and Others Vs. Gouri Dutt Maharaj and Others, in Mohammad Aleem Vs. Maqsood Alam and Others, and said:

The law is well settled that the doctrine of lis pendens is also applicable in cases where the pending litigation is ultimately compromised by the parties and a compromise decree is passed in terms of the compromise.

47. However, there is an exception. Where it is alleged by subsequent transferee that compromise is collusive and for defeating the rights of subsequent transferee the matter will then be examined in the light of such ground.

48. In the present case there is nothing on record to show that plaintiffs sought to raise such plea of collusion or fraud etc. In the circumstances the first part of question formulated above would have to be returned in affirmative holding that sale deed in favour of plaintiffs-appellants executed during pendency of Suit No. 115 of 1969 is void on the principle of lis pendens.

49. Now coming to the second aspect, whether the appellants, the subsequent transferee of disputed property which was subject matter of Suit No. 115 of 1969

ought to be substituted or impleaded therein. The answer I find in the Apex Court's decision in Sarvinder Singh Vs. Dalip Singh and Others, . The Court held that the alienation pendente lite is inherited by doctrine of lis pendens, by virtue of Section 52. Alienee cannot be considered to be either a necessary or proper party to the suit. It has been held that neither the plaintiff is bound to implead such alienee nor the alienee has an absolute right to be joined as a party. In Gulabchand v. Dhondi, 1875 (11) BHC 64 and Dammar Singh v. Nazir-ud-din, (1889) All WN All 91 it was held that plaintiffs are not bound to make subsequent alienee a party in the suit. Similarly in Lakshan Chunder Dey Vs. Sm. Nikunjamoni Dassi and Others, and AIR 1947 175 (Lahore) it was held that alienee has no absolute right to be joined as a party. In Subba Reddi Vs. Veeraraghava Reddi, it was however held that the Court has a discretion in the matter which must be judicially exercised.

50. To mitigate the hardship to subsequent alienee, in Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, the Court said that the transferee would be entitled to prefer an appeal against the decree or order passed therein if his assigner could have filed such an appeal in view of Section 146.

51. In the case in hand the question of appellants' impleadment has already attained finality, so far as this Court is concerned, in view of the judgment in Second Appeal No. 1325 of 1998, decided on 24.11.1999.

52. Sri. Singh placed reliance on Smt. Sarla Devi Vs. District Judge, Mainpuri and Others, and said that rejection of his application for impleadment under Order XXII, Rule 10 would make no difference since it does not decide any title and such an order is always subject to the suit.

53. I find neither any parallel of such proposition with the issue in question in the present case nor otherwise any applicability of above authority to the present case. Therein an application for substitution filed by Smt. Sarla Devi on the basis of a Will dated 20.01.1981 was rejected by court below while that of real brother of deceased claiming the sole heir and legal representative was allowed. This Court after referring to Order XXII, Rule 5 said that inquiry of nature under Order XXII, Rule 5 is a summary nature inquiry and it does not decide any title. It does not create any bar of res judicata. In my view the aforesaid decision has no application in the present case.

54. Another decision cited is that of Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, . I do not find the above decision also of any help to appellants in the present case inasmuch as there the issue up for consideration before Apex Court was about the effect of mutation entries in revenue record. The Court said that a mutation cannot be construed as conveying title in favour of person whose name is mutated. Mutation entries will neither convey any extinguish title in the property. In para 27 of the judgment the Court said:

mutation entries do not convey or extinguish any title and those entries are

relevant only for the purpose of collection of land revenue.

55. However, the Court relying on its earlier decision in Gurbaksh Singh Vs. Nikka Singh, said that anybody affected by mutation entries should have challenged the same as provided under law. In absence of any such challenge the entries cannot be ignored. In other words, the entries in mutation must be taken as correct unless the contrary is established. In the present case the above decision has no application to the issue in question and, therefore would not help the appellants in any manner.

56. To the same effect is another decision in Smt. Sawarni Vs. Smt. Inder Kaur and Others, and the same also, therefore, has no application for the reason as already stated with reference to Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, .

57. Sri. Singh has also relied on a decision in Government of Orissa Vs. Ashok Transport Agency and Others, wherein referring Order XXII, Rule 10 the Court said that it is for the assignee or transferee to come on record if it so chooses and to defend the suit. It also said that it is equally open to assignee to trust its assignor to defend the suit property but with the consequence that any decree against the assignor will be binding on it and would be enforceable against it. This issue has already attained finality after dismissal of appellants" Second Appeal No. 1325 of 1998 in the earlier suit proceedings and, therefore, with great respect, in my view, even this authority shall not help appellants in the present case.

58. Lastly Sri Singh placed reliance on Apex Court's decision in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, to contend that his application seeking impleadment in the earlier suit was illegally rejected and refers to the observations made by Apex Court in paras 16, 17 and 18 of the judgment.

59. I am afraid. Here the argument being advanced by appellants is not in an appropriate proceedings, inasmuch as this Court cannot sit in appeal over a decision by co-ordinate Bench passed in another Second Appeal No. 1325 of 1998. The judgment has attained finality. The appellants before this Court having chosen not to assail aforesaid decision of this Court has surrendered to the same and now in the present appeal which has arisen from another suit, cannot wriggle out of the legal consequences flowing from the above judgment dated 24.11.1999 passed in Second Appeal No. 1325 of 1998, whereby the application seeking impleadment in earlier suit stood finally rejected and that has attained finality. So far as this Court is concerned, I have to proceed by treating that issue regarding impleadment of appellants in earlier suit as already had attained finality and cannot be reconsidered here at for any purposes whatsoever. It is in these facts and circumstances, I find myself unable to give any credence to appellants on the basis of Apex Court's decision in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, .

60. The same reasoning would apply to another decision cited by Sri. Singh in Suresh Kumar Bansal Vs. Krishna Bansal and Another, .

61. In that view of the matter the question of substitution of plaintiffs-appellants cannot be considered afresh and that too in the present matter. The second part of question formulated above is, therefore, answered in negative, i.e., against appellants.

62. Accordingly, I answer the first part of the question in affirmative holding that sale-deed in favour of plaintiffs-appellants during pendency of suit is void on the principle of lis pendens and return the second part of the question, namely, whether they are entitled to be substituted, in negative. In substance, both the questions are answered against plaintiffs-appellants. In the result, the appeal fails and is accordingly dismissed with costs throughout.