



LIS PENDENS AND THE BONA FIDE PURCHASER: RECONCILING SECTION 52 OF THE TRANSFER OF PROPERTY ACT 1882 WITH TRANSACTIONAL CERTAINTY

Aditya Nigam¹, Harsh Chawla²

¹ National Law Institute University, Bhopal

² National Law Institute University, Bhopal

ABSTRACT :

Section 52 of the Transfer of Property Act 1882 makes a transfer of immovable property by a party to pending litigation subject to the outcome of that litigation, whether or not the transferee acted in good faith or knew of the proceedings. The Supreme Court's recent decisions, from *Chander Bhan* and *Shingara Singh* (2024) to *Alka Shrirang Chavan* (2026), confirm that the rule rests on public policy and admits no good-faith exception. This article asks whether that strictness can be reconciled with the certainty on which a functioning market in immovable property depends. It advances three arguments. First, a transfer *pendente lite* is valid but defeasible, and the vocabulary of illegality used in some decisions obscures the purchaser's real position. Secondly, Section 41 of the Act and Section 52 are not rival rules but different allocations of risk: the first protects reliance on an appearance of ownership which the true owner created, the second protects the finality of a claim already placed before a court. Thirdly, the uncertainty that Section 52 produces is mainly a problem of discoverability and duration and not of substantive rule. The article traces that problem through the Law Commission's 157th Report, the Bombay model of registered notice of pendency, and *Celir LLP v Somati Prasad Bafna*, which qualifies the protection that registration was meant to supply. It concludes that the doctrine should be retained without a good-faith exception, and proposes a framework consisting of uniform and court-assisted notice of pendency, a burden-bearing protection for purchasers who have searched and found nothing, and greater transferor accountability.

Keywords: Lis Pendens; Section 52; Transfer of Property Act 1882; Bona Fide Purchaser; Pendente Lite Transfer; Transactional Certainty; Notice of Pendency; Section 41

I. INTRODUCTION

A plot of land in a growing Indian city may change hands several times within a few years. A developer assembles it, sells it in parts, and borrows against what remains, and each buyer and lender in the chain relies on the same two things: the registered documents and a search of the record. Registration gives notice of the instruments it records, and possession gives notice of the possessor's title.¹ Neither reliably discloses that a civil suit concerning the land is pending in a court that may be hundreds of kilometres away.

The law nonetheless attaches grave consequences to such a suit. Section 52 of the Transfer of Property Act 1882 (TPA) provides that, while a non-collusive suit or proceeding is pending in which a right to immovable property is directly and specifically in question, the property may not be transferred or otherwise dealt with by any party 'so as to affect the rights of any other party thereto under any decree or order which may be made therein', save under the authority of the court.² The effect on a purchaser is that the purchaser takes subject to the result, even if the purchaser did not know of the suit.³ Property transactions depend on certainty, predictability and reliable verification of title, whereas litigation depends on the subject matter remaining available to satisfy the decree. Section 52 resolves the conflict in favour of the second, and does so without asking whether the purchaser was honest, paid value or made inquiries.

The Supreme Court has recently restated the rule with considerable firmness. In *Chander Bhan* it rejected a plea of bona fide purchase under Section 41 TPA made against a claim based on a suit already instituted, and held that the principle of *lis pendens* applied even though the Act was said not to apply in the territory concerned.⁴ In *Shingara Singh* it held that a second purchaser could not rely on lack of notice of an earlier agreement once the sale had

¹ Transfer of Property Act 1882 (India) (TPA) s 3 (definition of 'notice', Explanations I and II).

² Transfer of Property Act 1882, s 52.

³ *Celir LLP v Somati Prasad Bafna* 2024 INSC 978, paras 158–159, quoted in *Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale* 2026 INSC 52 (SC, 12 January 2026) para 41.2.

⁴ *Chander Bhan (D) through LR Sher Singh v Mukhtiar Singh* 2024 INSC 377 (SC, 3 May 2024).

been hit by the doctrine.⁵ In *Celir LLP v Somati Prasad Bafna* it held that a transferee from a party to the litigation is bound ‘even if he did not have notice’ of it, and that this holds in Maharashtra even where no notice of pendency had been registered.⁶ *Alka Shrirang Chavan v Hemchandra Rajaram Bhonsale*, decided in January 2026, applied the same approach at the stage of execution to purchasers who had bought from persons who had themselves bought *pendente lite*.⁷

Yet the Law Commission of India observed in 1998 that a provision which ‘does not even protect the purchaser of the property acting under good faith’ called for amendment, and recommended that registration of notice of pendency be introduced.⁸ The Supreme Court repeated the call in 2010.⁹ Scholarship has since described the failure to legislate as a continuing conundrum.¹⁰ The rule has therefore been applied firmly, and criticised, for a long time, and Parliament has not acted.

This article asks whether the doctrine of *lis pendens* in Section 52 adequately balances the protection of pending litigation with the interests of bona fide subsequent purchasers and with transactional certainty in contemporary property transactions. Its central argument has three parts. The doctrine is justified, and a good-faith exception would defeat its purpose. The hardship the doctrine causes is real, but it arises principally from the absence of any dependable means of discovering pending litigation and from the indefinite duration of pendency, so the defect lies in the information environment and not in the rule. And the reforms proposed to date, taken in the form of the Bombay model, are necessary but insufficient after *Celir LLP*, and need redesign.

The analysis is doctrinal. It rests on the text of the TPA and related statutes, on a synthesis of Supreme Court decisions, on the Law Commission’s reasoning, and on the scholarship that has engaged with the problem. The most sustained existing treatment of the reform question is by Desarda and Pagariya, who argue that the rule spares no bona fide purchaser, that no mechanism exists for checking whether property is in dispute, and that Parliament should adopt the Bombay amendment with a reasonable registration period; they attribute legislative inertia to the real-estate and political nexus.¹¹ That work assembles the recommendations of the Law Commission and the Court and makes the case for reform, but it was written before the 2024 to 2026 decisions, it does not examine how Section 52 relates to Section 41 TPA and Section 19(b) of the Specific Relief Act 1963, and it does not ask whether a notice-based exception is compatible with the purpose of the doctrine. The contribution of this article is narrower than a claim of novelty: it examines the strict operation of the doctrine, the position of the bona fide purchaser, and the discoverability of pending litigation as a single problem of risk allocation, and it tests the Bombay model against the Court’s latest reasoning.

Part II examines the foundations and structure of Section 52. Part III analyses the legal effect of a transfer *pendente lite* and the place of good faith and notice. Part IV compares Sections 41 and 52 as competing models of purchaser protection. Part V conceptualises transactional certainty and examines registration of pending litigation, the Law Commission’s Report and contemporary transactions. Part VI proposes a framework, and Part VII concludes.

II. THE DOCTRINAL FOUNDATIONS OF LIS PENDENS

A. Historical Rationale and Public Policy

The maxim *pendente lite nihil innovetur* has a settled English pedigree. In *Bellamy v Sabine*, Turner LJ rested the doctrine on necessity: if alienation during a suit could defeat the plaintiff, litigation could never be brought to a successful end, since the plaintiff would have to start afresh against each transferee.¹² The Privy Council applied the principle in India in *Gouri Dutt Maharaj v Sheikh Sukur Mohammed*, in a setting that included the continuance of the proceeding through execution.¹³ The Supreme Court later set out the doctrine as part of a body of law that defines and limits the maxim.¹⁴

Two rationales have been offered for the rule, and they carry different consequences. The first is necessity, which looks to the integrity of the judicial process. The second is notice, which treats the pendency of a suit as a public fact of which all are taken to be aware. The Law Commission described the doctrine as having moved from constructive notice towards expediency.¹⁵ The Supreme Court’s recent decisions adopt the first. In *Shingara Singh* the Court repeated the view, traced to earlier authority, that because the principle in Section 52 is one of public policy ‘no question of good faith or bona fide arises’.¹⁶

The distinction matters because it determines how the rule can be defended against the purchaser. A rule justified by constructive notice is vulnerable to

⁵ *Shingara Singh v Daljit Singh* 2024 INSC 770 (SC, 14 October 2024).

⁶ *Celir LLP* (n 3) paras 158–159 and 171–173, quoted in *Alka* (n 3) para 45.

⁷ *Alka* (n 3) paras 65–71.

⁸ Law Commission of India, *Section 52 of the Transfer of Property Act, 1882 and its Amendment* (Law Com No 157, 1998) ch V.

⁹ *T G Ashok Kumar v Govindammal* (2010) 14 SCC 370.

¹⁰ Rahul Desarda and Sonali Pagariya, ‘Doctrine of Lis Pendens and its Continuing Conundrum in India’ (2023) 11(5) Russian Law Journal 1279.

¹¹ Desarda and Pagariya (n 10).

¹² *Bellamy v Sabine* (1857) 1 De G & J 566, 44 ER 842.

¹³ *Gouri Dutt Maharaj v Sheikh Sukur Mohammed* AIR 1948 PC 147, discussed in *Thomson Press (India) Ltd v Nanak Builders & Investors (P) Ltd* (2013) 5 SCC 397.

¹⁴ *Alka* (n 3) para 41, quoting *Celir LLP* (n 3) paras 155–157.

¹⁵ Law Com No 157 (n 8) ch III.

¹⁶ *Shingara Singh* (n 5), citing *Guruswamy Nadar v P Lakshmi Ammal* (2008) 5 SCC 796.

the objection that the notice is a fiction when the world has no practical means of learning of the suit. A rule justified by necessity is not. But a rule justified by necessity makes the fairness of its operation depend on how well the legal system informs purchasers, and the doctrine's critics have always pressed on that point.

The doctrine also has an independent equitable footing. In *Chander Bhan* the Court considered an argument that Section 52 did not apply in the territory concerned because of Section 1 of the TPA, and held that the principles of *lis pendens* would apply there in any case as principles of justice, equity and good conscience.¹⁷ Reform of the statutory text alone would therefore leave the equitable doctrine untouched in those territories.

B. The Statutory Architecture of Section 52

The Court in *Celir LLP* distilled the conditions of Section 52 into a pending suit or proceeding in a competent court, which is not collusive, in which a right to immovable property is directly and specifically in question, and a transfer or dealing with that property by a party, which affects the rights of another party under the eventual decree, with the sole exception of a transfer authorised by the court.¹⁸ The significance of each condition lies in what it says about the risk the purchaser runs.

Pendency begins with the presentation of the plaint and continues until the proceeding has ended in a final decree or order and complete satisfaction or discharge has been obtained or has become unobtainable by limitation.¹⁹ The doctrine takes effect on institution, irrespective of whether the institution is defective or whether notice has been issued to the other side, as the Court held in *Siddamsetty Infra Projects v Katta Sujatha Reddy*.²⁰ In *Chander Bhan* the doctrine was treated as operating from the filing of a suit for permanent injunction, before the interim order was made.²¹ The moment from which a purchaser is exposed is therefore the moment of filing, a fact known to the plaintiff and the court office and to no one else.

The end of pendency is equally significant. Because the Explanation continues pendency until complete satisfaction of the decree, execution proceedings form part of the *lis*. In *Alka* the suit was instituted in 1986 and the decree-holder was still seeking possession in 2026.²² The period during which a purchaser from a party is exposed is thus not bounded by the trial.

The words 'transferred or otherwise dealt with' are wide, and on their natural reading they extend to mortgages and leases as well as sales. The width matters for lenders. The requirement that the proceeding be non-collusive, and the exception for transfers made with the authority of the court, are the doctrine's two internal safeguards. The first prevents manufactured litigation. The second allows a court, on terms, to permit a transaction which does not threaten the decree, and it is the main point at which hardship to a purchaser can be avoided before it arises.

Two features of the structure deserve emphasis. The rule restricts a transfer only so far as it would affect the rights of another party under the decree, and it does not freeze the property for all purposes. And it operates against *parties*: a purchaser from a stranger to the suit lies outside it. The doctrine thus has a defined object, namely the preservation of the capacity of the court to give effective relief, and the question for the rest of this article is whether the means chosen are proportionate to that object.

III. THE PENDENTE LITE TRANSFEREE AND THE BONA FIDE PURCHASER

A. The Legal Effect of a Pendente Lite Transfer

Discussion of Section 52 is bedevilled by loose vocabulary, and the legal position of the purchaser cannot be assessed without correcting it. Two questions must be separated: whether the transfer is *valid*, and whether it *binds* the outcome of the litigation.

On validity, the Supreme Court has consistently held that a transfer *pendente lite* is not void. *Thomson Press (India) Ltd v Nanak Builders & Investors (P) Ltd* held that the transfer is not void *ab initio* and that the transferee takes the property subject to the rights of the plaintiff in the pending suit.²³ The Law Commission stated the same point, that the doctrine does not annul the transfer.²⁴ *Alka* put it directly: the transfer is 'neither illegal nor void *ab initio*', but 'remains subservient to the decree that may be passed'.²⁵ This is consistent with the long-standing understanding associated with *Rajender Singh v Santa Singh*.²⁶

On binding effect, the transferee is treated as standing in the position of the transferor. The transferee may be added as a party but acquires no better defence than the transferor had,²⁷ and cannot resist execution by asserting an independent title. In *Silverline Forum Pvt Ltd v Rajiv Trust* the Court held

¹⁷ *Chander Bhan* (n 4).

¹⁸ *Celir LLP* (n 3) para 158, quoted in *Alka* (n 3) para 41.2.

¹⁹ Transfer of Property Act 1882, s 52 Explanation.

²⁰ *Siddamsetty Infra Projects Pvt Ltd v Katta Sujatha Reddy* 2024 INSC 861, noted in *Alka* (n 3) para 42.

²¹ *Chander Bhan* (n 4).

²² *Alka* (n 3) paras 5, 11 and 74.

²³ *Thomson Press* (n 13).

²⁴ Law Com No 157 (n 8) para 3.8.

²⁵ *Alka* (n 3) para 66.

²⁶ *Rajender Singh v Santa Singh* (1973) 2 SCC 705.

²⁷ *Thomson Press* (n 13); Code of Civil Procedure 1908 (India) (CPC) Order I r 10(2) and Order XXII r 10.

that where a transferee *pendente lite* obstructs execution, the inquiry is confined to whether the objector is such a transferee, and the objector's ignorance of the litigation at the time of purchase does not enter the inquiry.²⁸ *Usha Sinha v Dina Ram* applied the same reasoning and held that such a transferee has no independent right to resist execution.²⁹ Order XXI Rule 102 of the Code of Civil Procedure 1908 gives statutory form to this position, subject to the Maharashtra amendments discussed in *Alka*.³⁰

The coherent description is therefore that a transfer *pendente lite* is valid between transferor and transferee, conveys whatever interest the transferor has when the litigation ends, and is liable to be overridden to the extent that the decree requires. It is not void, because the transferee keeps the property if the transferor succeeds. It is not voidable, because no one holds a power to avoid it and no judicial act is required to set it aside. The most accurate description is that it is valid but defeasible and subordinate to the decree.

The Court has not always used this vocabulary. *Chander Bhan* described the impugned transactions as illegal by reason of the doctrine, as quoted in *Shingara Singh*.³¹ That language is best read as shorthand for ineffectiveness against the plaintiff, and the clarification in *Alka* should govern. The point is not merely semantic. If the transfer is void, the purchaser has paid for nothing. If it is valid but defeasible, the purchaser holds a title that is good against everyone except the successful litigant, retains whatever remedies the contract and the transferor's covenants give, and has an interest which justifies being heard in the proceedings. A doctrine that treats the transfer as valid but defeasible is also far easier to defend than one that treats it as a nullity, because it leaves intact the purchaser's position in the event, which is often the likely one, that the transferor's title is upheld.

B. Good Faith, Notice and the Limits of Purchaser Protection

Indian property law has no general principle that an honest purchaser for value cannot lose. It has particular provisions which protect such purchasers in defined conditions. Section 41 TPA protects a transferee from an ostensible owner who, after taking reasonable care to ascertain the transferor's power to transfer, acts in good faith.³² Section 19(b) of the Specific Relief Act 1963 excludes from specific performance a transferee for value who has paid in good faith and without notice of the original contract, and *Ram Niwas v Bano*, as set out in *K S Manjunath v Moorasavirappa*, identified purchase for value, payment in good faith and absence of notice as the elements of that exception.³³ 'Notice' under Section 3 TPA includes actual knowledge and constructive knowledge arising from wilful abstention from inquiry or gross negligence.³⁴ The phrase 'bona fide purchaser' therefore does not state a single defence. It names a status whose consequences depend on the provision invoked.

The question is why that status does not answer Section 52. The answer lies in what each doctrine protects against. Good faith protects a purchaser against a *prior* right which the purchaser could not reasonably have discovered. Section 52 does not operate against a prior right. It subordinates a *later-acquired* title to a claim that has already been laid before a court. The litigant has done everything the law asks of a person who claims a right in land: the claim has been publicly asserted in a forum designed to adjudicate it. To require the litigant also to police the market, or to bear the loss when a transferor sells to someone unaware of the suit, would transfer the cost of the transferor's conduct to the innocent party who has gone to court.

Two further considerations support the Court's refusal to recognise a good-faith exception. The first is evidential. A defence of good faith or lack of notice turns on the purchaser's state of mind, which is peculiarly within the purchaser's knowledge and is easily asserted. In *Celir LLP* the Court stressed that if non-registration of a notice excused the transferee, parties could exploit procedural gaps, and persons with actual knowledge could 'deviously claim absolute rights', including by executing back-dated agreements in collusion with a party to the lis.³⁵ An exception of this kind would invite satellite litigation about knowledge in every case, and would allow a transferor and a willing purchaser to defeat a decree by arranging for the purchaser to be able to say that he did not know. The second is structural. If good faith were a defence, the plaintiff would have to chase successive transferees, each with an individual plea, which is the very result that the maxim exists to prevent.

The Court has accordingly rejected the defence in every recent decision. *Danesh Singh v Har Pyari* (2025) repeated that lack of knowledge of the proceedings is no defence,³⁶ and *Sanjay Verma v Manik Roy* and *Guruswamy Nadar v P Lakshmi Ammal*, discussed in *Celir LLP*, supply the foundation for treating the rule as one of equity, good conscience and public policy.³⁷

Registration of the purchaser's own conveyance does not alter the position. A registered deed is notice of the instrument it records, but says nothing about litigation affecting the transferor's title. A purchaser who registers a deed obtained *pendente lite* acquires a valid but defeasible title and nothing more. The only registration that bears on Section 52 is registration of a notice of pendency, which is a creature of state law and is considered in Part V.

²⁸ *Silverline Forum Pvt Ltd v Rajiv Trust* (1998) 3 SCC 723, para 12, reproduced in *Alka* (n 3) para 59.

²⁹ *Usha Sinha v Dina Ram* (2008) 7 SCC 144, paras 25–26, reproduced in *Alka* (n 3) para 61.

³⁰ CPC Order XXI r 102; *Alka* (n 3) paras 54–56.

³¹ *Chander Bhan* (n 4), quoted in *Shingara Singh* (n 5).

³² Transfer of Property Act 1882, s 41.

³³ Specific Relief Act 1963 (India) (SRA) s 19(b); *Ram Niwas v Bano* (2000) 6 SCC 685, set out in *K S Manjunath v Moorasavirappa* 2025 INSC 1298, para 68, and quoted in *Alka* (n 3) para 47.

³⁴ Transfer of Property Act 1882, s 3 (definition of 'notice'), as quoted in *K S Manjunath* (n 33).

³⁵ *Celir LLP* (n 3) paras 171–173, quoted in *Alka* (n 3) para 45.

³⁶ *Danesh Singh v Har Pyari* 2025 INSC 1434, para 52, quoted in *Alka* (n 3) para 43.1.

³⁷ *Sanjay Verma v Manik Roy* (2006) 13 SCC 608; *Guruswamy Nadar* (n 16); both discussed in *Celir LLP* (n 3) and noted in *Alka* (n 3) para 41.3.

C. The Pendente Lite Purchaser in the Proceedings

Within the limits just described, the law gives the purchaser certain procedural entitlements. The purchaser may apply to be added as a party where the interest is substantial, and *Thomson Press* treats this as the means by which the transferee's interest may be brought before the court without enlarging the transferee's rights beyond the transferor's.³⁸ This is the principal mechanism developed by the courts to mitigate hardship without weakening the doctrine.

The limits of the mechanism were evident in *Alka*. The appellants had bought in 1995 and 1996 from persons who had themselves bought from the judgment-debtor in 1987. They could not resist execution of the decree, and the Court directed that they hand over possession by a fixed date and barred further applications.³⁹ A purchaser at the end of such a chain acquires nothing in the way of protection from the fact that the chain contains a clean-looking registered deed. The taint attaches to the property from the date of the suit and passes through each transfer.

The purchaser's remedies lie against the transferor. A seller is bound by Section 55(1)(a) TPA to disclose material defects in the seller's title which the seller knows of and the buyer cannot with ordinary care discover.⁴⁰ A seller who conceals a pending suit is in breach of that duty and may face liability on the covenants for title and for cheating. These remedies are real but often of little value, since a seller who disposes of property in order to defeat a decree may be insolvent or untraceable. The Section 52 regime therefore leaves the purchaser with a complete rule against the plaintiff and a doubtful remedy against the person at fault.

IV. SECTION 41 AND SECTION 52: COMPETING MODELS OF PURCHASER PROTECTION

A. Ostensible Ownership and Good Faith

It is worth asking why Indian law protects a transferee on the basis of good faith and reasonable care under Section 41 but may bind a purchaser under Section 52 without regard to either. Section 41 provides that where, with the consent express or implied of the persons interested in immovable property, a person is the ostensible owner and transfers it for consideration, the transfer is not voidable on the ground that the transferor was not authorised to make it, provided that the transferee, after taking reasonable care to ascertain that the transferor had power to transfer, has acted in good faith.⁴¹

The justification is reliance on an appearance created by the true owner. The owner who allows another to appear as owner has made the false appearance possible and is in the best position to prevent the resulting loss, and the purchaser who has taken reasonable care to verify the appearance has done all that can be asked. The provision therefore requires three things of the transferee, namely value, good faith and reasonable care, and it places the burden of proving them on the party who invokes it, as the structure of the proviso suggests. The loss falls on the party who contributed to the misleading appearance.

B. Lis Pendens and the Binding Effect of Litigation

Section 52 begins from the opposite point. The party against whom the purchaser's title is defeated has not acquiesced in anything. That party has invoked the machinery of the court, and so has done the opposite of creating a misleading appearance. The premise of Section 41, that the loser contributed to the purchaser's misapprehension, is absent. This explains the result in *Chander Bhan*, where the Court held that once the transactions were affected by *lis pendens*, the defence that the respondents were bona fide purchasers for consideration entitled to the protection of Section 41 had to be rejected, and in *Shingara Singh*, where the Court applied the same reasoning to a second purchaser.⁴²

The Court has treated the relation between the provisions in terms of sequence. Section 41 concerns a transaction with an ostensible owner when no claim is pending. Once a suit is instituted, the matter moves to Section 52, and the protection of Section 41 does not follow. The same sequential logic governs Section 19(b) of the Specific Relief Act. The Court in *Alka* explained that Section 19(b) operates at a stage prior to the institution of a suit, and that once a suit for specific performance has been instituted and a transfer follows, the purchaser's claim under Section 19(b) must yield to Section 52, since the contrary would produce an incongruous and anomalous situation.⁴³ Section 41 cannot therefore be used to circumvent Section 52 in respect of the property and the claim in suit. It remains available against claims lying outside the *lis*, such as an independent claim by a third party.

C. Complementary Doctrines or Different Allocations of Risk?

The two provisions are best understood not as rivals but as different answers to the question of who should bear the risk of an undiscoverable defect. Three variables explain the difference: who created the appearance on which the purchaser relied, who could most cheaply have avoided the loss, and whether the legal system gave the purchaser a means of discovering the truth.

³⁸ *Thomson Press* (n 13).

³⁹ *Alka* (n 3) paras 5–7 and 73–74.

⁴⁰ Transfer of Property Act 1882, s 55(1)(a).

⁴¹ Transfer of Property Act 1882, s 41.

⁴² *Chander Bhan* (n 4), quoted in *Shingara Singh* (n 5); *Shingara Singh* (n 5).

⁴³ *Alka* (n 3) paras 46–50; SRA s 19(b).

Under Section 41, each variable points towards protecting the purchaser. The owner created the appearance, the owner could have avoided the loss by not allowing it, and the purchaser's only protection against a hidden defect is reasonable inquiry, which the section requires. Under Section 52 the position is different. The plaintiff did not create the appearance, and has done what the law requires. The transferor created the risk and could have avoided it, but the transferor is not the person against whom the purchaser's title is tested. The third variable is the one on which the argument turns. The Section 52 allocation is defensible to the extent that a purchaser could have discovered the suit by reasonable inquiry. If the system supplies no means of discovery, the rule begins to resemble liability without fault, and what is left as justification is necessity alone.

This is the real tension between the provisions. Section 41 grants protection where the purchaser did what could be done, and Section 52 denies it even where that is so, because the competing interest is the finality of adjudication and not the conduct of an individual. The difference is a legitimate difference of policy, and it does not make the two inconsistent. But the Section 52 policy is least defensible where the purchaser could not have known, and the way to reduce that cost without surrendering the policy is to increase what the purchaser can know. The remainder of the article develops that thought.

V. TRANSACTIONAL CERTAINTY AND THE MODERN PROPERTY MARKET

A. What Makes a Transaction Uncertain When *Lis Pendens* Applies

Transactional certainty is used here to mean the condition in which a participant in an immovable-property transaction can, at reasonable cost, determine what interests affect the property and can rely on that determination. It has four attributes: *certainty of title*, in that what is acquired is stable once acquired; *predictability of legal consequences*, in that the rules that will govern a dispute can be foreseen; *discoverability*, in that the facts which bear on title can be found by reasonable inquiry; and *clarity of risk allocation*, in that the party who will bear a residual risk is identifiable in advance. Certainty is relative. Every system leaves some residual risk, and the question is whether the risk lies with the party best placed to avoid or insure against it.

Certainty also has two sides. The plaintiff, too, requires certainty, namely that a decree obtained after years of litigation will be effective. A rule that favoured purchasers by making decrees ineffective would diminish certainty of that kind. For this reason, the argument that strict *lis pendens* undermines certainty cannot be accepted without qualification.

Section 52 nonetheless produces uncertainty of three specific kinds. The first is *latency*. The existence of the suit is not recorded where purchasers look. Court records are organised around cases and parties, whereas purchasers search by property. The second is *indeterminacy of duration*. Because pendency lasts until complete satisfaction of the decree, a purchaser cannot estimate the period of exposure, and *Alka* shows that it can run to four decades. The third is *contagion through the chain of title*. A transfer *pendente lite* taints every later transfer, so that a buyer who inspects an apparently clean chain of recent registered deeds can be bound by a suit begun long before the first of them. Lenders are exposed in the same way as buyers, since a mortgage is a dealing with the property and the mortgagee takes subject to the result.

The risk therefore falls on the purchaser or lender, and the reason is an asymmetry of information. The transferor knows of the suit and has every incentive to conceal it. The plaintiff knows but is under no duty to publicise it. The purchaser has no efficient means of finding out. The Law Commission recognised the point in observing that a defendant to a suit may sell the disputed property to a third party without disclosing the pendency.⁴⁴ The question, then, is whether this uncertainty can be reduced without weakening the doctrine. The answer is that it can, because the doctrine determines who loses when a transfer and a decree conflict, whereas the uncertainty concerns how early the loser can know of the conflict.

B. Due Diligence and Notice

The Court's decisions assume that purchasers can protect themselves by due diligence. *Celir LLP* warned that treating non-registration as a defence would lead third parties to abdicate their duty to conduct thorough due diligence.⁴⁵ The assumption is only as strong as the means of diligence available. In an ordinary purchase the buyer examines the root of title, encumbrances, possession and mutation entries. Those inquiries are designed to find prior instruments and prior rights, not pending suits. A purchaser who finds nothing has no assurance that no suit is pending.

The remaining means are informal: inquiry of the seller, of neighbours and of the local courts, and searches in the courts' records. Their results depend on the diligence and the resources of the searcher and are not reliably comparable from one transaction to the next. A rule which requires a purchaser to inquire where the system does not provide a source of answers imposes a duty of diligence which cannot be reliably discharged. The difficulty therefore lies in the absence of a dependable source and not in the existence of the duty.

C. Registration of Pending Litigation

The principal legislative response is the Bombay model. The Transfer of Property and Indian Registration (Bombay Amendment) Act 1939 (Bombay Act XIV of 1939) made the operation of the restraint conditional on registration of a notice of pendency, with corresponding amendments to the Registration Act 1908, so that a purchaser who searched the registration records would find the notice, and the notice would operate as notice to the

⁴⁴ Law Com No 157 (n 8) para 3.1, cited in Desarda and Pagariya (n 10).

⁴⁵ *Celir LLP* (n 3) paras 171–173, quoted in *Alka* (n 3) para 45.

purchaser.⁴⁶ The notice was to give particulars sufficient to identify the property and the proceeding. The text in force in Maharashtra was set out in *Alka*.⁴⁷ The rationale is to convert the constructive notice of the doctrine from a fiction into a fact, at the place where purchasers already search, and to place the small burden of registration on the party who benefits.

The Law Commission's 157th Report, submitted in April 1998 under the chairmanship of Justice B P Jeevan Reddy, considered the problem directly.⁴⁸ Its reasoning followed a clear path. It found that a provision which did not even protect the purchaser acting in good faith was productive of injustice, that defendants to suits often sold the disputed property without disclosing the pendency, and that purchasers had no means to find out. It noted that the Bombay amendment had addressed the problem in one region, and also noted that it had itself declined in its 70th Report to recommend a similar amendment, on the grounds that doing so might require amendment of the Registration Act and that the procedure might not suit all territories to which the TPA extends.⁴⁹ By 1998 it had changed its view, and recommended the introduction of registration of notice of pendency into Section 52, with consequential changes to the Registration Act.⁵⁰

The Commission added two safeguards that the Bombay text lacked. A purchaser with actual notice of the pendency would not be protected even where no notice had been registered, since the object of registration is to inform purchasers and a purchaser who already knows has no need of the register. And no party could transfer or deal with the property during the period allowed for registration so as to affect the other party.⁵¹ The secondary literature reports that the Commission suggested a registration period of three months, in view of the size and variety of the country.⁵² These features show that the Commission did not regard knowledge as irrelevant. It sought to confine the protection of the register to purchasers who lacked knowledge and who bought from a party that had not taken advantage of the interval.

The recommendations were not enacted at the national level. The Supreme Court observed in *T G Ashok Kumar v Govindammal* that the absence of any means of ascertaining whether property was in litigation caused hardship to bona fide purchasers, and suggested that Parliament amend Section 52 on the Bombay and Gujarat model.⁵³ Desarda and Pagariya, writing in 2023, treat the amendment as still outstanding.⁵⁴ The Commission's concerns are therefore as relevant now as in 1998, and the rate of resale in the contemporary market arguably magnifies them.

Celir LLP qualified even the Bombay model. The question was whether, in Maharashtra, the absence of a registered notice makes the doctrine inapplicable. The Court held that it does not. It reasoned that the additional requirement is meant to protect third parties who, even after reasonable due diligence, purchase believing the property to be free of encumbrance, but that subsequent purchasers cannot 'as a matter of absolute right' claim title merely because no notice was registered, since otherwise parties could exploit procedural gaps and those with actual knowledge could defeat the plaintiff.⁵⁵

Three consequences follow. First, the Court's reasons are directed at purchasers with actual knowledge and at collusion, which are the cases the Commission's actual-notice proviso would also have excluded, so the two approaches are not necessarily opposed. Secondly, the Court's formulation leaves open the position of a purchaser who made genuine inquiry, had no knowledge, did not collude, and bought when no notice was registered. The language suggests a case-by-case assessment, not a rule that such a purchaser always loses, but the position is not settled. Thirdly, the effect on certainty is considerable. If the absence of a registered notice is not a clear defence, then a clean register does not give the purchaser the assurance on which the Bombay model was designed to rest. A reform that offers protection in principle but leaves its availability to judicial assessment in every case does not supply certainty, only reduces the cost of one kind of error.

Alka shows the Bombay system operating as intended. The plaintiff instituted the suit on 28 April 1986 and registered a notice of *lis pendens* on 2 May 1986, five days later, and the transfers followed in 1987.⁵⁶ The purchasers' claim to have been unaware carried little weight against a notice that was on the register. Where the plaintiff registers promptly, the equities in favour of a purchaser are slight, and the rule requires of purchasers only what a search would have shown.

The advantages and disadvantages of registration can be stated against this background. The advantages are that it creates a public record where purchasers already look, converts constructive notice into actual notice, allocates a small burden to the party who benefits, and supplies evidence against back-dated collusive transactions. The disadvantages are that the burden falls on plaintiffs who may be poor, unrepresented or unaware, that a registration requirement which is a condition of the doctrine's operation could defeat a deserving litigant through omission, that an interval between filing and registration offers the transferor an opportunity to sell, and that a registered notice may impair the defendant's ability to deal with the property even where the claim is weak. None of these is a reason to reject the mechanism. Each is a design problem, to be met by court assistance in

⁴⁶ Transfer of Property and Indian Registration (Bombay Amendment) Act 1939 (Bombay Act XIV of 1939), described in Law Com No 157 (n 8) ch III.

⁴⁷ *Alka* (n 3) para 44.

⁴⁸ Law Com No 157 (n 8) chs III and V.

⁴⁹ Law Com No 157 (n 8) ch III, referring to Law Commission of India, 70th Report, para 47.11.

⁵⁰ Law Com No 157 (n 8) ch V.

⁵¹ Law Com No 157 (n 8) ch V.

⁵² Desarda and Pagariya (n 10), citing Law Com No 157 (n 8) para 5.1.

⁵³ *T G Ashok Kumar* (n 9), discussed in Desarda and Pagariya (n 10).

⁵⁴ Desarda and Pagariya (n 10).

⁵⁵ *Celir LLP* (n 3) paras 171–173, quoted in *Alka* (n 3) para 45.

⁵⁶ *Alka* (n 3) paras 5–7.

registration, by the no-transfer window the Commission recommended, and by a means of challenging unjustified notices.

D. Multiple Transfers, Lenders, Developers and Digital Records

Four features of contemporary transactions bear directly on the problem. The first is rapid and repeated resale, because each transfer in a chain adds to the number of persons bound by a result they did not foresee, as *Alka* shows. The second is development and financing. A developer who contracts for a project on land that is in litigation takes subject to the result, and so do the developer's buyers and lenders, and the width of the expression 'otherwise dealt with' makes the lender's security vulnerable. The Real Estate (Regulation and Development) Act 2016 requires a promoter to make declarations about title and encumbrances when registering a project, which addresses the problem at the level of the project but does not supply a litigation search for other transactions.⁵⁷ The third is the primacy of the register. In *Suraj Lamp & Industries Pvt Ltd v State of Haryana* the Supreme Court held that sale agreements with general powers of attorney and wills are not valid modes of transferring immovable property.⁵⁸ The decision increases reliance on registered conveyances, and with it the force of the question whether the register can disclose litigation. An agreement to sell does not create an interest in the property,⁵⁹ and Desarda and Pagariya propose that registration of such agreements be made mandatory.⁶⁰

The fourth is digital records. Land-record digitisation and electronic case management make it feasible in principle for litigation to be linked to the property it concerns. That is the connection with Section 52: a notice of pendency is useful only to the extent that it can be found by searching the property, and court records are organised by case and party. A property identifier in the plaint, which Order VII Rule 3 of the Code of Civil Procedure already requires in suits concerning immovable property,⁶¹ could be the link. Technology serves the argument only to the extent that it supplies the discoverability whose absence is the core of the problem.

Comparative experience supports the point briefly. In England and Wales, a pending land action was registrable under the Land Charges Act 1972, so that litigation was converted into a register entry on which purchasers could rely.⁶² In California, a party asserting a real property claim may record a notice of pendency, which gives constructive notice to purchasers and lenders, and the same legislation provides for expungement of an unjustified notice.⁶³ Two points emerge. A register-based notice is a common solution to the problem. And a system that attaches consequences to registration also needs a means of challenging improper notices, a feature absent from the Indian proposals.

VI. TOWARDS A BALANCED FRAMEWORK FOR LIS PENDENS

The preceding analysis suggests that the competing interests can be reconciled without abandoning the doctrine, provided reform is directed at information and procedure, not at the substantive rule. The framework below follows from the findings of the preceding Parts.

A. Preserving the Integrity of Litigation

The doctrine should be retained and no general good-faith or no-notice exception should be introduced. The reasons are those given by the Court: the rule rests on necessity, a subjective exception invites collusion and satellite litigation, and the plaintiff cannot be made to guard against transfers during the suit.⁶⁴ Any protection for purchasers should therefore be tied to objective and verifiable conduct, such as a search of a reliable register, and not to the purchaser's state of mind.

B. Greater Transparency Regarding Pending Litigation

A nationally uniform provision for registration of notice of pendency should be enacted, following the Law Commission's recommendation, with refinements. The Commission's actual-notice proviso and its rule against transfers in the registration window should be retained. The provision should state that a registered notice is conclusive notice to all later transferees. And it should resolve by statute the question that *Celir LLP* leaves open, namely the position of a purchaser who bought when no notice was registered.

A proposal in this respect is offered, as a calibration of the Commission's recommendation and of the Court's concern and not as the Commission's own text. A transferee who proves purchase for value, good faith, absence of actual notice, absence of collusion with the transferor, and reasonable inquiry including a search of the notice register, should not be bound, the burden of proof lying on the transferee. This rule gives certainty to the diligent purchaser, remains consistent with *Celir LLP* because it excludes those with knowledge and those in collusion, and cannot be exploited by a plaintiff's omission, since a plaintiff who registers promptly closes the door entirely.

⁵⁷ Real Estate (Regulation and Development) Act 2016 (India) s 4(2)(i).

⁵⁸ *Suraj Lamp & Industries Pvt Ltd v State of Haryana* (2012) 1 SCC 656.

⁵⁹ Transfer of Property Act 1882, s 54.

⁶⁰ Desarda and Pagariya (n 10).

⁶¹ CPC (n 30) Order VII r 3.

⁶² Land Charges Act 1972 s 5.

⁶³ Cal Civ Proc Code §§ 405.20, 405.30 (California).

⁶⁴ *Celir LLP* (n 3) paras 171–173, quoted in *Alka* (n 3) para 45.

C. Improved Discoverability

Placing the entire burden of registration on plaintiffs risks defeating deserving claims, since plaintiffs may be poor, unrepresented or unaware. The registration mechanism should accordingly be court-assisted. A court which admits a suit concerning identified immovable property could transmit the particulars to the competent registering authority, using the property description required in the plaint. The record should be searchable by property identifier and should be integrated, where land records permit, with the digital land record. Procedures for expunging unjustified notices should be provided, in the manner of the Californian legislation. The feasibility of integration depends on the state of land-record digitisation in each State, which should be examined before any national scheme is prescribed.

D. Clearer Treatment of Pendente Lite Purchasers

The law should state expressly that a transfer *pendente lite* is valid but subject to the decree, thereby ending the loose language of illegality that the recent decisions have used. It should confirm the purchaser's right to be heard in the proceedings and the court's power to authorise a transfer on terms under Section 52, and encourage applications for such authority in commercial transactions, so that the safety valve in the section is used before the loss occurs, not after.

E. Appropriate Allocation of Transactional Risk

Three measures follow from the analysis of risk. The transferor, who is the party best placed to avoid the loss, should owe an express statutory duty to disclose pending litigation in any instrument of transfer, with a corresponding civil remedy for the transferee who loses title. The duration of pendency should be addressed, since the indefinite tail of execution proceedings extends the purchaser's exposure indefinitely, and procedural measures to complete execution promptly would reduce the uncertainty without touching the doctrine. And State amendments should be harmonised, since the equitable doctrine applies in territories where the TPA does not, as *Chander Bhan* shows, so that a uniform scheme must address those territories as well.

VII. CONCLUSION

The doctrine of *lis pendens* is necessary because litigation about land cannot end if the land may be alienated freely while it proceeds. The Supreme Court's recent decisions, which treat the rule as one of public policy, are right to refuse a good-faith or no-notice exception, since such an exception would turn every case into an inquiry into the purchaser's state of mind and would reward collusion between a transferor and a purchaser willing to profess ignorance. A transfer *pendente lite* is valid but defeasible, binding on the transferee in the result of the suit, and the language of illegality or voidness that sometimes appears in the decisions should be set aside.

Section 41 and Section 52 are not inconsistent. Section 41 protects reliance on an appearance which the true owner created, and Section 52 protects the finality of a claim which a litigant has already put before a court, so that the owner's contribution on which the first depends is missing from the second. The difficulty lies at the margin where the second rule operates against a purchaser who could not have discovered the claim.

That difficulty is, for the most part, not a defect of Section 52. The uncertainty it produces comes from the latency of pending suits, the indeterminate duration of pendency, and the spread of the taint through the chain of title and to lenders. These are failures of information and procedure, and they have been identified in the Law Commission's 157th Report, in the Supreme Court's observations in *T G Ashok Kumar*, and in the scholarship, for more than a quarter of a century without legislative response. The Bombay model is a necessary starting point, but *Celir LLP* shows that registration alone does not yield certainty unless the law also states what follows from non-registration.

The reforms which are justified are therefore those which increase what a purchaser can discover, and which allocate the residual risk to the transferor, without altering what happens when a transfer and a decree conflict: a uniform and court-assisted system of registered notice, searchable by property, with a burden-bearing protection for the purchaser who has searched and found nothing; a statutory duty on the transferor to disclose; and attention to the length of pendency. Transactional certainty and the integrity of litigation are not opposed in principle. The rule which makes the purchaser bear the risk of a pending suit is defensible only so long as the purchaser has a fair chance of finding out, and the task for reform is to supply that chance without surrendering the rule.