land, but if that relationship subsists on that date any subsequent event that puts that relationship to an end will have no effect.

(5) For the reasons recorded above, we allow these petitions, quash the order of the learned Financial Commissioner and remit the cases to him with a direction that he should dispose them of himself, or direct the subordinate authorities to dispose of the cases under section 18 as well as under section 14-A in accordance with the observations made above. There will be no order as to costs.

N.K.S.

APPELLATE CIVIL

Before D. K. Mahajan and Gopal Singh, JJ.

KISHAN SINGH.—*Appellant.*

versus.

MOHINDER SINGH ETC.—*Respondent.*

R. F. A. No. 177 of 1962.

February 23, 1971.

Transfer of Property Act (IV of 1882)—Section 52—Specific Relief Act (XLVII of 1963) Section 19(b)—Principle of lis pendens—Nature of—Stated—Plea of bona fide purchaser for consideration without notice—Whether must give way in favour of prohibition for transfers pendente lite.

Held, that according to the principle of *lis pendens* as incorporated in section 52 of the Transfer of Property Act 1882, no party can during the pendency of a suit transfer or other wise deal with any immovable property, which is the subject matter of the suit so as to affect the rights of any other party thereto under any decree, which may be passed except under the authority of the Court and on such terms as it may impose. This prohibition against transfer by a party to litigation of imoveable property which is the subject matter of a pending suit to a stranger to the litigation is founded upon wholesome principle of public policy to avoid multiplicity of suits and not to render nugatory the decision, which may eventually be given between the contesting parties. The nature of prohibition incorporated in that Section is imperative in its scope and character. It is not open to a transferee of such property sought to be transferred to him in course of pendency of a suit to contend that he was a *bona fide* purchaser for consideration and without notice about the earlier transaction of transfer of the property which is the subject matter of the suit. The plea of a person being a *bona fide* transferee must yield in favour of the sweeping injunction

enjoined by the legislature by virtue of section 52 of the Act against transfers made in course of the pendency of a suit. Section 19(b) of the Specific Relief Act 1963, under which the stranger can claim to be a *bona fide* purchaser for consideration must give way in favour of the prohibition for transfers *pendentelite*. (Para 15).

Regular First Appeal from the decree of the Court of Shri Om Parkash, Sub-Judge Ist Class, Ludhiana, dated the 31st July, 1962, granting the plaintiff a decree for the specific performance of the agreement dated 21st October, 1960 (Exhibit P. 4) against the defendants and directing the defendant No. 1 to get the sale deed (Exhibit P. 1) registered in favour of the plaintiff on receiving the balance sale price, within a month and further directing him to evecute and get registered the sale deed with respect to 926/6275th part of khasra No. 2817/1292 in favour of the plaintiff within the period specified above on receiving the balance sale price of this land. The defendants should deliver all the title deeds with respect to the property in suit to the plaintiff on the registration of the sale deeds and further ordering that defendant No. 1 would pay the costs of the plaintiff while defendant No. 2 left to bear his own costs.

R. N. MITTAL, ADVOCATE, SURESH AMBA, ADVOCATE, S. GUJRAL, ADVOCATE, MISS BHUPINDER GUJRAL, ADVOCATE, for the appellant.

M. L. JHANJI, ADVOCATE OF LUDHIANA, A. L. BAHRI, ADVOCATE, for respondent No. 1.

S. P. GOYAL, ADVOCATE FOR MR. N. N. GOSWAMY, ADVOCATE, for respondent No. 2.

JUDGMENT

The judgment of this Court was delivered by :—

GOPAL SINGH, J.—(1) This is appeal by Kishan Singh, defendant No. 2 against Mohinder Singh, plaintiff and Jawand Singh, defendant No. 1, respectively, impleaded as respondents Nos. 1 and 2 directed against the judgment of Shri Om Parkash Saini, Sub-Judge Ist Class, Ludhiana, dated July 31, 1962, decreeing the suit of the plaintiff for possession by specific performance of agreement dated October 21, 1960, Exhibit P. 4 entered into between the plaintiff and defendant No. 1 for sale of vacant sites of land measuring 212½ square yards and 86 square yards comprised in khasra No. 2817/1292, situate in Taraf Saidan within the municipal limits of Ludhiana.

(2) Facts leading to the appeal are as under :—

On May 25, 1959, one Ganesh Dass executed an agreement to sell in favour of defendant No. 1 in respect of 86 square

yards of land comprised in khasra No. 2817/1292 situate in Taraf Saidan in the town of Ludhiana. On October 21, 1960, defendant No. 1 entered into an agreement undertaking to sell 212½ square yards of land forming part of that very khasra number. Defendant No. 1 also agreed by that agreement to sell 86 square yards of land agreed to have been sold by Ganesh Dass in favour of defendant No. 1. Both these pieces of land were to be sold after their mutations had been sanctioned in favour of defendant No. 1. According to the agreement, the plaintiff paid Rs. 1,500 as advance towards the price in respect of the sale of 212½ square yards and Rs. 500 as advance towards the price of 86 square yards. The remaining amount was to be paid by the plaintiff to defendant No. 1 at the time of registration of the sale deed. Mutation in respect of area of 212½ square yards having been sanctioned, the defendant executed on March 17, 1961, sale deed in favour of the plaintiff for sale of that area. It is stated on behalf of the plaintiff that he spent Rs. 600 for purchase of stamp paper, upon which sale deed was drawn up. The sale deed could not be registered on that date.

(3) On April 20, 1961, defendant No. 1 entered into another agreement to sell the land in suit in favour of defendant No. 2. A notice was served on June 5, 1961, Exhibit P. 6 on behalf of the plaintiff upon defendant No. 1 asking him to get the sale deed registered or else he would file a suit for possession by specific performance of the area of land as agreed to by defendant No. 1 to be sold to the plaintiff. The plaintiff instituted suit on July 10, 1961, seeking decree for possession in respect of both the areas of land by specific performance of agreement dated October 21, 1960, or else for decree for damages to the extent of Rs. 4,600. During the pendency of the suit, defendant No. 1 executed sale deed on August 18, 1961, in favour of defendant No. 2 and got the deed registered on the next date in respect of 274 square yards of land comprised in khasra No. 2817/1292; the subject-matter of the suit. In course of statement dated July 26, 1962, defendant No. 1 admitted that he sold the said area of land to defendant No. 2 on August 18, 1961, by a registered sale deed. Upon this, defendent No. 2 was directed to be impleaded as a party and consequently the plaint was amended. In the suit, the plaintiff alleged that he was always ready and willing to perform his part of the contract and it was defendant No. 1, who had committed breach of the agreement to sell even after having executed the sa-

deed, that defendant No. 1, failed to appear on the date, when the deed was to be presented for registration and that the sale by defendant No. 1 in favour of defendant No. 2 having taken place during the pendency of the suit filed by the plaintiff is hit by the principle of *lis pendens* and consequently is void.

(4) Defendant No. 1 in his written statement admitted the fact of his having entered into an agreement with the plaintiff for sale of the land at Rs. 18.50 per square yard but pleaded that the breach by avoidance or refusal to appear for registration of sale deed was committed by the plaintiff and not by him and that the plaintiff did not possess sufficient money for paying the balance of the sale price and getting the deed registered. He added that the stamp paper had been purchased by him and not by the plaintiff, that the plaintiff did not turn up at the time the deed was presented for registration and consequently the amount received by defendant No. 1 as advance stood forfeited and the suit deserved to be dismissed.

(5) In his written statement, defendant No. 2 pleaded that the land in suit had been purchased by him from defendant No. 1 in pursuance of agreement dated April 20, 1961, and that the sale deed had actually been executed and registered in his favour by defendant No. 1 and defendant No. 2 being bona fide purchaser for consideration without notice of the previous agreement between the plaintiff and defendant No. 1 he was protected under the law.

(6) The above controversy between the parties gave rise to the following issues :—

(1) Whether the plaintiff was always ready and willing to perform his part of the contract and the default was committed by defendant No. 1 ?

(2) Whether defendant No. 2 is a bona fide purchaser for consideration without notice of the agreement of sale in favour of the plaintiff ? If so, its effect ?

(3) What is the effect of the sale in favour of defendant No. 2 having taken place during the pendency of this suit ?

(7) Both the sides strenuously contested issue No. 1 by urging that the other party had failed to carry out the terms of the agreement dated October 21, 1960. As per agreement deed dated October

21, 1960, defendant No. 1 agreed to sell to the plaintiff land measuring 212½ square yards and also 86 square yards to be sold by him by Ganesh Dass comprised in khasra No. 2817/1292. The plaintiff paid to the defendant a sum of Rs. 2,000 as earnest money towards the sale price of the said land. Subsequently, this very land was, however, sold by defendant No. 1 in favour of defendant No. 2 and the deed of sale was executed on August 18 and registered on August 19, 1961. It is stated by the plaintiff that he was ready and willing to get the executed sale deed registered but defendant No. 1 by agreeing to sell the land to defendant No. 2 committed breach. A suit was filed by the plaintiff for specific performance of the agreement or else for recovery of damages for breach of the contract. The suit was instituted on July 11, 1961. It was during the pendency of this suit that defendant No. 1 sold the land in suit to defendant No. 2 on August 18, 1961. It is pleaded on behalf of defendant No. 1 that the plaintiff failed to perform his part of the contract and he was justified to go in for subsequent transaction of sale in favour of defendant No. 2 as per sale deed Exhibit D. 1 executed in pursuance of deed of agreement, Exhibit D. 2 entered into on April 20, 1961.

(8) It has been urged on behalf of defendant No. 1 that as the plaintiff was not possessed of sufficient money to be paid to defendant No. 1 at the time of registration of sale deed towards the balance of the sale price; it was the plaintiff; who could not get the sale deed registered in his favour. To controvert this plea, it is stated by the plaintiff that he had sold his flour mill on January 30, 1961, for Rs. 5,000 in order to pay the balance of the sale price to defendant No. 1 and that he was in possession of a sum of Rs. 4,500. In support of this plea, he has produced agreement to sell and receipt dated January 30, 1961, showing that the plaintiff had sold his flour mill to Sham Dass & others for Rs. 5,000. Hukam Singh, petition-writer, who scribed these documents has appeared as P.W. 4 and has supported the facts deposed to by the plaintiff. He has stated that the balance of the sale price of Rs. 4,500 was paid to the plaintiff in his presence. Dharam Singh P.W. 3 is one of the vendees, in whose favour the plaintiff had sold his flour mill. It is stated by him that they had purchased the flour mill of the plaintiff on January 30, 1961 and paid him Rs. 4,500 on that date while a sum of Rs. 500 had already been paid to him as earnest money. These facts amply go to prove that the plaintiff was possessed of sufficient means to purchase the land agreed to be sold to him by

defendant No. 1 on March 17, 1961, when, as is alleged on behalf of both the parties, the deed was executed.

(9) It has been contended by defendant No. 1, that it was he, who had spent a sum of Rs. 600 on account of purchase of stamp paper by the plaintiff. As per terms of the agreement, Exhibit P. 4, the stamp paper for the purpose of execution of sale deed had to be purchased by the plaintiff although it was to be done in the name of the defendant. It is stated that at first, stamp paper was purchased on March 9, 1961 and the deed was scribed on it. But since it could not be registered, the stamp paper had again to be purchased a second time on March 17, 1961. It cannot be believed as stated by defendant No. 1 that on both these occasions, it was the defendant, who had paid the amount for the purchase of the stamp paper. As has already been held, the plaintiff had with him sum of Rs. 4,500 consequent upon the sale of his flour mill and it was the obligation of the plaintiff to purchase the stamp paper. Since the stamp paper was purchased in the name of the defendant, he wants to take advantage of it. Consequent upon the failure of defendant No. 1 to get registered the sale deed in favour of the plaintiff, the plaintiff served notice on the defendant. Its copy is Exhibit P. 6. Its postal receipt is Exhibit P. 7. No reply to it was, however, sent by the defendant to the plaintiff. In that notice it is specifically mentioned that sum of Rs. 600 had been spent by the plaintiff for purchase of the stamp paper. Thus, the stand of the defendant that he had spent the sum of Rs. 600 for the purchase of the stamp paper required for the execution of the sale deed is obviously untenable. Had the sum of Rs. 600 been spent by defendant No. 1, out of his own pocket, there must have been made reference to that effect in the body of the sale deed, Exhibit P. 1. In that document, there is only reference to the sum of Rs. 2,440, which is equal to the balance in respect of the area of 212½ square yards, which remained to be paid at the time of registration after allowing deduction of the earnest money received on the date the agreement to sell was executed. If the stand taken by the defendant had been correct, he would not have felt hesitant to present the sale deed under Section 36 of the Registration Act to the Sub-Registrar for issue of notice to the plaintiff. The plaintiff had paid Rs. 1,500 by way of advance to purchase the land measuring 212½ square yards and Rs. 500 as such towards the purchase of 86 square yards. The price, which remained to be paid towards the former was

Rs. 2,440 while towards the latter was Rs. 1,100. The plaintiff had thus already paid substantial portion of the price. There is no reason why he should avoid or evade to have the document registered in his favour.

(10) Defendant No. 1 has led the evidence of Amar, Nath, D.W. 5, Surinder Raj, D.W. 6 and Gurdev Singh, D.W. 7, besides the defendant himself going into the witness box as D.W. 8. It is admitted both by Amar Nath and Surinder Raj, D.Ws. that they reached the Courts at the time when talk regarding the execution of the sale deed was on between the plaintiff and defendant No. 1. It is stated by Amar Nath that in his presence, the defendant demanded from the plaintiff the amount for purchase of stamp paper and that the plaintiff had asked him to purchase the same and that the amount would be given to him at the time of registration. It is stated by Surinder Raj; D.W., that the plaintiff had told defendant No. 1, that as the latter had not given him the remaining land he was not ready to purchase less land. Both these witnesses appear to be chance witnesses. Their testimony does not inspire confidence. They rather appear to be got up witnesses. They are neither witnesses to the agreement deed Exhibit P. 4 nor sale deed, Exhibit P. 1. Gurdev Singh; D.W., was then the Head Registration Clerk. It is admitted by him that both the plaintiff and the defendant were present on March 17, 1961 and presented the sale deed for registration. He added that as the Honorary Sub-Registrar was on leave on that date, he advised both the parties to present the sale deed before the Tehsildar for the purpose. He has further stated that he went to the office of the Tahsildar but there only defendant No. 1 was present whereas the plaintiff did not turn up. He has not disclosed the purpose for which he visited the office of the Tehsildar immediately after both the plaintiff and the defendant were asked to present the deed for registration before the Tehsildar. This happened on March 17, 1961, whereas he made statement on July 26, 1962. He made the above statement merely out of memory. He did not keep any note of that fact. When both the plaintiff and the defendant, as admitted by Gurdev Singh, were present in the office of the Sub-Registrar for the registration of the sale deed, there is no reason why the plaintiff would not have turned up in the office of the Tehsildar. It was he, who had already paid a sum of Rs. 2,000 as earnest money and had further spent a sum of Rs. 600 on account of stamp paper. The evidence of this witness does not appear to be true. No reliance can be placed upon his testimony.

(11) The conduct of defendant No. 1 in entering into agreement with defendant No. 2 to sell the same property in respect of which he had not only already entered into agreement to sell with the plaintiff but also had actually executed sale deed in his favour stands condemned all the more particularly when he did so during the pendency of the suit and he knew that he had not only executed the agreement to sell and sale deed in favour of the plaintiff but also that suit filed against him for specific performance on the basis of those documents executed by him had actually been pending. As already alluded to, the suit for specific performance was instituted on July 11, 1961. The transaction of sale in favour of defendant No. 2 had been effected on August 18, 1961. The fact of the service of notice Exhibit P. 6 served by the plaintiff on the defendant further lends assurance to the view that the plaintiff was ready and willing to get registered the sale deed executed in his favour or else was anxious to enforce the specific performance of the agreement. On the other hand, the conduct of the defendant in selling the property in favour of defendant No. 2 during the pendency of the suit is reprehensible and devoid of any explanation. It deserves to be detested. It is contended on behalf of the plaintiff that defendant No. 1 had entered into agreement with the plaintiff to sell the land in dispute at the rate of Rs. 18.50 per square yard and that the subsequent sale by him of the same land at a reduced price of Rs. 18.25 per square yard casts reflection upon the genuineness of the subsequent transaction. From the evidence led on behalf of the plaintiff, it appears that the defendant did so under some motive and for some collateral end. The finding arrived at by the trial Court on the basis of the evidence led by the parties and on the attendant circumstances of the case that the plaintiff was ready and willing to perform his part of the contract and that default was committed by defendant No. 1 is well-founded. Nothing has been made out to persuade us to come to a different finding of fact on issue No. 1.

(12) The counsel for defendant No. 2 argued under issue No. 2 that his client is a bona fide purchaser without notice of the earlier agreement of sale in favour of the plaintiff. In his statement made by defendant No. 1 as D.W. 8, he has clearly stated that on August 18, 1961, when sale deed was executed and later registered, he told defendant No. 2 that the plaintiff had filed a suit against him for possession of the land in dispute by specific performance of agreement dated October 21, 1960. In course of cross-examination by defendant No. 2, defendant No. 1 stated that he had told defendant

No. 2 that the bargain for sale of the property in dispute, which he had entered into with the plaintiff, had been cancelled but that the suit had been instituted against him by the plaintiff. He repudiated the suggestion made by the counsel for defendant No. 2 that it was wrong that he had told defendant No. 2 about the filing of the suit. Thus, the testimony given by defendant No. 1 admits of no doubt that he had forewarned defendant No. 2 that a suit had been filed by the plaintiff in respect of the transaction of sale entered into by him with the plaintiff and that that suit was pending. There is no reason why defendant No. 1 should be held to have not told defendant No. 2 about the pendency of the suit. There is no reason to doubt the correctness of the information imparted by him to defendant No. 2 at the time the second transaction of sale was entered into by him with defendant No. 2. The following passage from the sale deed dated August 18, 1961, Exhibit D. 1 executed by defendant No. 1 in favour of defendant No. 2 reinforces the factum of defendant No. 1 having so informed defendant No. 2 :—

> "If due to any legal or factual defect or some defect in the ownership the entire sold property or any part thereof goes out of the possession of the vendee or the vendee suffers any loss, my person and property of every description shall be liable for the repayment of the consideration money or any sort of damages or costs."

(13) Defendant No. 2 having been made aware of the cloud cast upon the title of ownership in the property of defendant No. 1 took precaution of having the above clause in the above terms inserted so as to protect his interest and to have him indemnified in case the then pending suit of the plaintiff succeeded against defendant No. 1. In the face of the above evidence, the stand of defendant No. 2 that he had no notice about the previous transaction of sale entered into between the plaintiff and defendant No. 1 and about the pendency of the suit filed by the former against the latter is difficult to accept. Thus, issue No. 2 is determined against defendant No. 2 and it is held that defendant No. 2 had not only notice of the previous agreement of sale but also of the suit pertaining thereto, which had been filed against his transferror by the plaintiff in respect of that very property.

(14) It was lastly argued by the counsel for defendant No. 2 under issue No. 3 that agreement dated April 20, 1961, having been entered into by defendant No. 2 with defendant No. 1 prior to the

institution of the suit and the sale deed although executed and registered on August 19, 1961, during the pendency of the suit related back to the date of agreement of sale and consequently the transfer of the property, which was the subject-matter of the suit then pending did not fall within the scope of section 52 of the Transfer of Property Act. He urged that if a transferee is a bona fide purchaser for consideration without notice of the earlier agreement of sale, such a transfer would not be hit by Section 52 of the Act. Both these arguments of the learned counsel sought to be covered under issue No. 3 have no force. Section 52 runs as under :—

> "During the pendency, in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding, which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order, which may be made therein, except under the authority of the Court and on such terms as it may impose.
>
> *Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

(15) The principle of *lis pendens* is incorporated in section 52 of the Transfer of Property Act. No party can during the pendency of a suit transfer or otherwise deal with any immovable property, which is the subject-matter of the suit so as to affect the rights of any other party thereto under any decree, which may be passed except under the authority of the Court and on such terms as it may impose. This prohibition against transfer by a party to litigation of immovable property, which is the subject-matter of a pending suit to a stranger to the litigation is founded upon wholesome principle of public policy to avoid multiplicity of suits and not to render nugatory

the decision which may eventually be given between the contesting parties. The nature of prohibition incorporated in that Section is imperative in its scope and character. It is not open to a transferee of such property sought to be transferred to him in course of pendency of a suit to contend that he was a bona fide purchaser for consideration and without notice about the earlier transaction of transfer of the property which is the subject-matter of the suit. The plea of a person being a bona fide transferee must yield in favour of the sweeping injunction enjoined by the legislature by virtue of section 52 of the Transfer of Property Act against transfers made in course of the pendency of a suit. Section 19(b) of the Specific Relief Act, under which defendant No. 2 claims to be a bona fide purchaser for consideration must give way in favour of the prohibition for transfers *pendente lite*, Defendant No. 1 is not entitled to seek shelter behind section 19(b) of the Specific Relief Act because that Section, as alluded to above, must surrender in favour of section 52 of the Transfer of Property Act. Thus, the transaction of sale entered into by defendant No. 1 in favour of defendant No. 2 during the pendency of suit filed by the plaintiff against defendant No. 1 is directly hit by section 52 of the Transfer of Property Act and consequently that sale by defendant No. 1 in favour of defendant No. 2 must be held to be void. It can in no way adversely affect the transaction of sale entered into between the plaintiff and defendant No. 1. The sale by defendant No. 1 in favour of defendant No. 2 as against the plaintiff is ineffective and is not protected by the provisions of section 19(b) of the Specific Relief Act. Defendant No. 2 has, as held under issue No. 2, been found not to be a bona fide purchaser without notice of the previous transection. He is even not entitled to claim any protection of that section.

(16) Admittedly, the agreement to sell was entered into between defendant No. 1 and defendant No. 2 after the agreement to sell was entered into between the plaintiff and defendant No. 1 and sale deed was executed by defendant No. 1 in favour of the plaintiff, while the agreement to sell between defendant No. 1 and defendant No. 2 was prior to the institution of the suit, although admittedly the sale deed was executed on August 18 and registered on August 19, 1961, when the suit was pending. According to the language of section 52 of the Transfer of Property Act, what is prohibited during the pendency of the suit is the transfer of immovable property, which is the subject-matter of the suit. The transfer of the property of defendant No. 1 in favour of defendant No. 2 took place by sale deed, which was executed on August 18 and registered

on August, 19, 1961, that is, during the pendency of the suit. The transfer of the property did not take place on April 20, 1961, when mere agreement to sell was entered into between defendant No. 1 and defendant No. 2. The transfer of the property by way of sale was effected on August 18, 1961. It cannot relate back to the date of agreement to sell. In order to take a case out of the clutch of Section 52 of the Transfer of Property Act, the date of the transfer of the property, which is the subject-matter of a suit must fall outside the period of time during which the suit remained pending. In other words, the transfer must be anterior to the date of institution of the suit. In the precent case, the actual transfer by sale of the property, which was the subject matter of the suit, took place during the pendency of the suit and not prior to its institution. Thus, the argument of the learned counsel for defendant No. 1 that the principle of *lis pendens* cannot apply to the transfer made by defendant No. 1 in favour of defendant No. 2 has no force.

(17) In the result, the appeal fails and is disallowed. There will be no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

GILLU,—*Petitioner.*

versus

DAMODAR DASS, ETC.,—*Respondents.*

Civil Revision No. 84 of 1971.

March 5, 1971.

Limitattion Act (XXXVI of 1963)—Article 47—Consideration for sale of property failing—Suit for the refund of such consideration—Whether governed by Article 47.

Held, that where a purchaser of property on the basis of a sale-deed is in possession of the property, and the consideration of the sale fails, a suit for the refund of that consideration will be governed by Article 47 of the Limitation Act, 1963, and the limitation for such a suit is three years from