

# Pending litigation not always a cloud over property title

Section 52 of the Transfer of Property Act, 1882, provides for an exception clause stating that if the court permits, the owner of the property may transfer it on the terms laid down by the court

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Generally, if a suit or proceeding relating to immovable property is pending in a court, Section 52 of Transfer of Property Act, 1882 (TPA) acts as an encumbrance when it comes to transfer of property. This section provides that during the pendency of a suit before a court involving immovable property, the property cannot be transferred. It also cannot be dealt with by any party to the suit or proceedings and affect the rights of any other party 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. Section 52 of TPA operates as

a bar on the owner's right to freely transfer the property in dispute during the pendency of litigation.

It has been often observed that innocent parties to a legal case, whose property comes under legal peril, face such hindrance. Such persons cannot freely transfer the property in dispute during the pending litigation as such person/owner/seller is likely to realise much less than the market value of the property, even if buyers are available in market owing to the pendency of the suit. Further, the objective of Section 52 would get defeated where dishonest litigators merely to pressurise the other party file cases with respect to immovable property of the other, and thus enjoy the bar under Section 52.

It is due to these circumstances that an exception to this bar is also laid down in Section 52 of TPA. The exception states that with the permission of the court the owner of the prop-

erty may transfer the property on such terms and conditions as the court may deem fit and proper depending on facts of the case. The judgment of the Hon'ble Supreme Court in the case of Vinod Seth Vs Devinder Bajaj has reinstated this position of law.

In this case, the Hon'ble Supreme Court exempted the property of the defendant/respondent from operation of the bar under Section 52 of TPA during the pendency of civil suit. The suit was originally filed by the builder before Delhi High Court, seeking specific performance of an oral agreement to reconstruct premises/property of the owner. The court found that prima-facie the builder's chances to succeed in the case appeared to be remote and suit was based on specific performance of an oral agreement which was difficult for the court to supervise. Prior to the matter reaching the Supreme Court, the Hon'ble High Court

also observed that the owners were likely to suffer considerably merely owing to the pendency of the suit. In this case while little is at stake for the builder while pursuing the present suit, the owners as aforesaid would suffer, even if they ultimately succeed.

Courts cannot be silent speculators to the parties being put on such unequal footing and therefore the Hon'ble High Court directed the builder to give an undertaking for paying compensation in the event of failure of the suit, as the pendency of the suit interfered with the owners right to enjoy or deal with the property. The plaintiff/builder challenged the said order of the Hon'ble High Court before the division bench, and the same was dismissed. Thereafter, the builder approached the Supreme Court. The Hon'ble Supreme Court appreciated the novel and innovative direction given by the High Court, and exempted the suit property from operation of



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the bar under Section 52 of TPA by directing the owner to provide reasonable security and thereby granting the owner the liberty to deal with his property in any manner, despite the pendency of the suit.

The said judgment is a precedent for cases where the immovable property has been put under cloud of pending litigation and

chances of the plaintiff succeeding are minute.

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