

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD ALI MAZHAR
JUSTICE SHAHID BILAL HASSAN

C.A. No.51-L of 2025

[Against the judgement and decree dated 14.05.2025 passed by the Lahore High Court, Lahore, in C.R. No. 250995/2018]

Mst. Shahnaz Kausar

...Appellant(s)

Versus

Muhammad Rafique and others

...Respondent(s)

For the Appellant(s) : Mian Abdul Aziz, ASC

For the Respondent(s) : Mr. Nazim Ali, ASC.

Date of Hearing : 18-09-2026

J U D G M E N T

SHAHID BILAL HASSAN, J- The present dispute arises out of an agreement to sell dated 11.04.2007, whereby respondent No.1 agreed to purchase 25 kanals 8 marlas of land from respondents Nos.2 and 3, sisters, along with their brother Khalid Mehmood, for a total consideration of Rs.25,40,000/-, against which Rs.21,00,000/- was paid as earnest money, leaving a balance of Rs.4,40,000/-. Khalid Mehmood subsequently died issueless, whereupon respondent No.1 instituted a suit for possession through specific performance against the vendors and the other persons claiming an interest in the property.

The appellant was subsequently impleaded as defendant No.5 under Order I Rule 10, Code of Civil Procedure, 1908. She contested

the suit and asserted that she was a bona fide purchaser for value without notice, having purchased a patch of 3-kanal from Mst. Bushra Bibi, widow of Khalid Mehmood, whose share in the estate had devolved upon her. The appellant relied upon Mutation No.594 dated 27.07.2009 and maintained that she had remained in possession of the land purchased by her since the date of mutation.

A further controversy arose regarding an agreement to sell allegedly executed by Khalid Mehmood during his lifetime. The appellant's case was that the said agreement was a forged and fabricated document, prepared after his (Khalid Mehmood's) death to deprive his widow of her share. The parties led evidence in support of their respective contentions. Respondent No.1 examined himself and the marginal witnesses of the agreement and produced revenue and other documentary evidence, whereas the appellant appeared as her own witness and produced independent witnesses, the sale mutation, *Khasra Girdawari* and an order of the Additional Commissioner Revenue.

The learned trial Court, vide judgment and decree dated 12.02.2013, partially decreed the suit in favour of respondent No.1, while excluding the share purchased by the appellant and declaring her to be a bona fide purchaser. Respondent No.1 challenged the said judgment in appeal, which was dismissed on 13.09.2018. He, thereafter, invoked the revisional jurisdiction of the Lahore High Court through Civil Revision No.250995 of 2018. The High Court, vide judgment dated 14.05.2025, accepted the revision and decreed

the suit of respondent No.1 to the extent prayed for. Aggrieved thereby, the appellant has preferred the present Civil Appeal.

2. Learned counsel for the appellant contended that the learned High Court fell in error in interfering with the concurrent findings recorded by the Courts below. He submitted that the appellant was a bona fide purchaser of the disputed share and that her title was duly reflected through Mutation No.594. It was argued that the mutation constituted sufficient proof of the appellant's ownership and that the mere fact that it was tendered through learned counsel could not deprive it of its evidentiary value. Learned counsel further contended that the doctrine of lis pendens was not attracted to the transaction in question and, in any event, could not be invoked so as to defeat the appellant's independent rights as a bona fide purchaser for value. On these premises, learned counsel sought acceptance of the appeal and restoration of the judgment and decree passed by the learned trial Court.

3. Conversely, learned counsel appearing for the respondents supported the impugned judgment and submitted that the appellant had failed to establish any lawful title to the disputed property. He contended that Mutation No.594 was never duly produced or proved by the appellant in accordance with law and was merely tendered by her learned counsel, and therefore could not be relied upon as substantive evidence. Learned counsel further submitted that the original suit was instituted on 30.06.2008, whereafter the learned Trial Court passed an order of status quo on 01.07.2008; consequently, the property could not lawfully have been alienated

thereafter so as to prejudice the rights of the parties in the pending litigation. He argued that the appellant's alleged purchase, having been made during the pendency of the litigation and in the subsistence of the order of status quo, was consequently subject to the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. According to learned counsel, a transferee pendente lite, even if claiming to be a bona fide purchaser without notice, takes the property subject to the ultimate result of the litigation and cannot acquire rights superior to those of her transferor. He accordingly prayed for dismissal of the appeal.

4. From the submissions advanced by learned counsel for the parties and the record before us, the appeal gives rise to two short questions requiring determination. First, whether Mutation No.594 of 2009, on the basis of which the appellant claims ownership of the disputed share, could be relied upon in evidence when the same was not produced by the appellant herself in her statement but was tendered through her learned counsel. Second, whether the transfer in favour of the appellant is hit by the doctrine of *lis pendens* embodied in Section 52 of the Transfer of Property Act, 1882, having regard to the pendency of the suit in which rights in the subject property were directly and specifically in question.

5. We shall first consider the appellant's claim founded upon Mutation No.594. The record shows that the said mutation, upon which the appellant seeks to establish her title, was not produced by her in her own evidence; rather, it was tendered by her learned counsel. This manner of production is not sufficient to bring the

document into evidence. The principle is well settled that a document relied upon by a party must be produced through the party itself or a competent witness, so that its contents may be subjected to the scrutiny of the opposite party through cross-examination. In Rustam and others v. Jehangir (deceased) through LRs. **(2023 SCMR 730)**, this Court, relying upon Mst. Hameeda Begum and others v. Mst. Irshad Begum and others **(2007 SCMR 996)**, Federation of Pakistan through Secretary, Ministry of Defence v. Jaffar Khan and others **(PLD 2010 SC 604)** and Province of the Punjab through Collector, Sheikhpura v. Syed Ghazanfar Ali Shah and others **(2017 SCMR 172)**, held that documents must be produced in evidence by the party itself and that a fair opportunity must be afforded to the opposite party to cross-examine the person producing or proving the document. A document merely tendered by learned counsel, therefore, cannot be taken into consideration as substantive evidence.

6. Applying the above principle to the present case, Mutation No.594 could not validly be relied upon in favour of the appellant. The appellant, having chosen not to produce the document herself or otherwise bring it on record through competent evidence, cannot seek to derive a right of ownership from a document which was never duly proved in accordance with law. The defect is not merely one of form; it goes to the very evidentiary foundation of the appellant's claim. Consequently, the mutation cannot furnish a legally admissible basis for displacing the rights asserted by respondent No.1 under the earlier agreement to sell.

7. There is, however, another and independent reason why the appellant's claim cannot succeed. The transfer in her favour was made during the pendency of litigation concerning the very property in dispute and is consequently subject to the doctrine of *lis pendens*. The recent exposition of this doctrine in Muhammad Sadiq (deceased) through LRs v. Additional District Judge, Toba Tek Singh and others **(2025 SCMR 2095)** brings together the earlier jurisprudence of this Court on the subject. Section 52 of the Transfer of Property Act, 1882 does not render every *pendente lite* transfer void; rather, its effect is that such transfer cannot prejudice the rights of the parties to the pending litigation, and the transferee takes the property subject to the ultimate result of the lis.

8. The foundation of this rule was explained by this Court in Muhammad Nawaz Khan v. Muhammad Khan and others **(2002 SCMR 2003)**. The fact that a transferee may have acquired the property in good faith does not, by itself, enable him to defeat the rights of the parties which are being adjudicated in the pending proceedings. The transfer remains subject to the decree which may ultimately be passed. Thus, even where a transferee retains title as a bona fide purchaser, such title cannot operate to prejudice the rights declared in the pending litigation.

9. The principle was stated in comprehensive terms in Muhammad Ashraf Butt and others v. Muhammad Asif Bhatti and others **(PLD 2011 SC 905)**. The rule of *lis pendens* proceeds on the basis that the rights of the party who ultimately succeeds in the litigation cannot be defeated by an intermediate alienation of the

subject property. A transferee *pendente lite* accordingly steps into the shoes of his transferor and acquires the property subject to the final outcome of the litigation. Importantly, the rule does not rest upon actual or constructive notice to the transferee; its foundation is the necessity of preserving the efficacy of judicial adjudication and preventing the subject matter of litigation from being alienated in a manner that may defeat the ultimate decree.

10. The same principle was subsequently reaffirmed in Tabassum Shaheen v. Uzma Rahat **(2012 SCMR 983)**, where the protection claimed by a bona fide purchaser without notice was held not to take the transferee outside the operation of *lis pendens*. Likewise, in Aasia Jabeen v. Liaqat Ali **(2016 SCMR 1773)**, this Court held that a person who purchases the property during the pendency of proceedings before the Court does so at his own risk and cost. The absence of notice, therefore, does not furnish an independent defence against the operation of Section 52 *ibid*.

11. The rationale underlying the rule is equally apparent from Messrs Aman Enterprises v. Messrs Rahim Industries Ltd. and another **(PLD 1993 SC 292)**, which forms part of the jurisprudential foundation of the rule. The doctrine exists to preserve the subject matter of litigation and to ensure that parties cannot, by alienating the disputed property during the proceedings, render the eventual adjudication ineffective. It is, thus, a rule, founded upon the necessity of finality, in judicial proceedings rather than upon the subjective state of knowledge of the transferee.

12. This principle applies with full force to the present case. The appellant's alleged acquisition concerns a share in the very property which was already the subject matter of the suit instituted by respondent No.1. She, therefore, acquired no right capable of defeating the rights which respondent No.1 ultimately established in those proceedings. Her assertion that she was a bona fide purchaser without notice cannot, by itself, rescue the transaction from the operation of Section 52 *ibid*. The transferee's rights remain subservient to the decree passed in the pending litigation.

13. We are conscious that in Farzand Ali and another v. Khuda Bakhsh and others (PLD 2015 Supreme Court 187), this Court explained that the doctrine of *lis pendens* operates with reference to the ultimate result of the litigation: where the party seeking to invoke the doctrine itself fails in the substantive claim, the doctrine cannot be used to sustain that failed claim. The position here is materially different. Respondent No.1 has succeeded in the litigation concerning the property, and the learned High Court has ultimately decreed his suit. The very eventuality contemplated by the doctrine has, therefore, occurred.

14. Additionally, the appellant cannot claim an independent right merely because she was subsequently impleaded as a defendant in the suit. In Mukhtar Baig and others v. Sardar Baig and others (2000 SCMR 45), this Court held that a purchaser during the pendency of litigation cannot defend his title independently of the person from whom he derived it; the findings recorded against the transferor bind the subsequent transferee to the same extent. A transferee *pendente*

lite consequently takes the property with all the legal consequences attaching to the transferor's position in the pending litigation. The statutory scheme also admits of no different conclusion. Section 52 preserves the rights of the parties to the litigation notwithstanding an intermediate transfer. The appellant's purchase could not, therefore, operate to carve out her alleged share from the subject matter of the suit or to confer upon her a better position than that of her predecessor in interest. Her subsequent impleadment enabled her to contest the claim, but did not retrospectively validate the transfer or immunize her from the consequences of *lis pendens*.

15. The recent decision in Jamil Ahmed and others v. Mst. Zarina Bibi and others (PLD 2026 Supreme Court 380) is consistent with this position. There, this Court reiterated that an alienation of the property during the pendency of the civil suit, without the authority of the Court, attracts Section 52. While a transferee *pendente lite* may ordinarily be permitted to participate in the proceedings so as to protect whatever interest he claims, such participation does not free the transaction from the consequences of the doctrine.

16. Viewed from either angle, therefore, the appellant's challenge cannot succeed. Mutation No.594, not having been duly produced and proved by the appellant, cannot be relied upon to establish her title. Even otherwise, the transfer in her favour, having taken place *pendente lite*, remains subject to the final adjudication of the rights of the parties in the suit. The plea of bona fide purchase, with or without notice, does not displace the operation of Section 52 of the Transfer of Property Act, 1882.

17. For the foregoing reasons, we find no jurisdictional or legal error in the judgment of the learned Lahore High Court warranting interference by this Court. The appellant has failed to establish any independent right capable of defeating the decree in favour of respondent No.1. Consequently, the present appeal is dismissed, with no order as to costs.

JUDGE

JUDGE

Islamabad, the
18th of September, 2026
Approved for Reporting
M.A. Hassan