

Supreme Court: Bona Fide Purchase Cannot Defeat Lis Pendens; an Unproved Mutation Cannot Establish Title

The Supreme Court held that a mutation merely tendered by counsel was not substantive evidence and that a purchaser during pending property litigation remains bound by the eventual decree despite good faith or lack of notice.

Supreme Court civil-law and evidence analysis
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Case: Civil Appeal No. 51-L of 2025

Court and date: Supreme Court of Pakistan | 18 September 2026

Bench: Justice Muhammad Ali Mazhar and Justice Shahid Bilal Hassan

Result: Appeal dismissed; Lahore High Court decree maintained

The ruling in one sentence

The Supreme Court of Pakistan held that a mutation not produced through the party or a competent witness cannot establish title, and that a purchaser who acquires disputed property during pending litigation takes it subject to the final decree even if claiming to be a bona fide purchaser without notice.

The reported judgment is *Mst. Shahnaz Kausar v Muhammad Rafique and others*, Civil Appeal No. 51-L of 2025. Justice Shahid Bilal Hassan authored the judgment for a bench comprising Justice Muhammad Ali Mazhar and Justice Shahid Bilal Hassan. The appeal was decided on 18 September 2026.

The agreement to sell and later purchase

Muhammad Rafique agreed on 11 April 2007 to purchase 25 kanals and 8 marlas from two sisters and their brother Khalid Mehmood for Rs2,540,000. He paid Rs2,100,000 as earnest money, leaving Rs440,000 outstanding.

After Khalid Mehmood died without issue, Muhammad Rafique filed a suit for possession through specific performance against the vendors and other claimants. The suit was instituted on 30 June 2008, and the trial court ordered status quo on 1 July 2008.

Shahnaz Kausar was later added as defendant No. 5. She claimed that Khalid Mehmood's widow, Bushra Bibi, had sold her three kanals through Mutation No. 594 dated 27 July 2009 and that she had remained in possession since then.

The trial court partially decreed the specific-performance suit but excluded Shahnaz Kausar's alleged share after treating her as a bona fide purchaser. The first appeal failed. The Lahore High Court then accepted the buyer's civil revision and decreed the suit to the full extent claimed.

The two questions before the Supreme Court

The Supreme Court identified two separate grounds of decision.

First, could Mutation No. 594 establish the appellant's ownership when she did not produce it in her own evidence and it was merely tendered through counsel?

Second, could her claim as a bona fide purchaser without notice escape Section 52 of the Transfer of

Property Act, 1882 when the transaction occurred during litigation concerning the same property?

The Court answered both questions against the appellant.

Why merely tendering the mutation was insufficient

The appellant relied on Mutation No. 594 as the foundation of her title. But she did not produce the document while giving evidence, nor was it proved through another competent witness. Her advocate merely tendered it.

The Supreme Court reiterated that a document relied upon by a party must ordinarily be produced through that party or a competent witness. The opposing side must receive a fair opportunity to test its execution, contents and authenticity through cross-examination.

A document placed on the file by counsel does not automatically become substantive evidence. The defect was not a harmless technicality because the mutation was the asserted legal foundation of the appellant's ownership.

The Court therefore held that the unproved mutation could not displace the respondent's rights under the earlier agreement to sell.

What Section 52 does to a pendente lite transfer

Section 52 does not make every transfer during litigation void. Its effect is that the transfer cannot prejudice the rights ultimately declared in the pending case.

A transferee pendente lite steps into the shoes of the transferor. The transferee receives only the interest that survives the final adjudication and cannot obtain a position superior to the person from whom the property was acquired.

This rule protects the court's ability to decide the dispute effectively. Without it, a litigant could repeatedly transfer the subject property and make the eventual decree useless.

Good faith and absence of notice are not defences

The doctrine of lis pendens is not based on the transferee's actual or constructive knowledge. It is based on the objective fact that litigation over rights in the property is pending.

For that reason, an assertion that the purchaser paid value, acted honestly or lacked notice does not displace Section 52. A buyer who purchases during litigation does so subject to the risk of the pending result.

The Supreme Court relied on its established jurisprudence, including Muhammad Nawaz Khan, Muhammad Ashraf Butt, Tabassum Shaheen and Asia Jabeen. It also referred to Muhammad Sadiq, reported as 2025 SCMR 2095, and Jamil Ahmed, reported as PLD 2026 Supreme Court 380.

Impleadment did not create an independent title

Shahnaz Kausar's addition as a defendant allowed her to participate and protect whatever interest she claimed. It did not validate the transfer retrospectively or release it from lis pendens.

A subsequent purchaser cannot defend a title independently of the transferor where the asserted interest derives from that transferor. Findings binding the transferor also bind the purchaser to the extent of the transferred interest.

Participation is therefore procedural protection, not immunity from the final decree.

The important limit from Farzand Ali

The Court noted that lis pendens operates according to the ultimate result. If the party invoking the doctrine fails in the main property claim, Section 52 cannot be used to revive that failed claim.

That qualification did not help the appellant because Muhammad Rafique succeeded in the litigation and obtained a decree. The precise event protected by Section 52 had occurred: the final adjudication established rights that the intermediate transfer could not defeat.

The final order

The Supreme Court found no jurisdictional or legal error in the Lahore High Court judgment. It dismissed Shahnaz Kausar's appeal and made no order as to costs.

Her claim failed on two independent grounds. Mutation No. 594 had not been proved through legally competent evidence, and the alleged purchase during litigation remained subordinate to the decree under Section 52.

Practical guidance for property litigation

A party relying on a mutation should not assume that producing a copy through counsel proves the transaction or title. The relevant party, revenue official or other competent witness should prove the document through admissible evidence, with an opportunity for cross-examination.

A prospective purchaser should search not only the revenue record but also pending civil litigation, status-quo or injunction orders and claims involving the transferor. The absence of an entry in the purchaser's personal knowledge does not neutralize *lis pendens*.

A transferee added to a pending suit should contest the case promptly but must understand that the acquired interest cannot exceed the transferor's ultimate rights.

What the judgment does not hold

The judgment does not declare every mutation legally worthless. A mutation may be relevant when duly produced and proved, but a revenue entry does not become substantive proof merely because counsel tenders it.

It does not say every *pendente lite* transfer is void from inception. The transfer remains subject to the rights declared in the pending proceedings.

It does not abolish the protection of a *bona fide* purchaser in situations outside Section 52. It holds that good faith and lack of notice do not defeat the statutory consequences of litigation already pending over the same property.

It also does not mean that the party invoking *lis pendens* wins without proving the main case. The doctrine follows the final result and protects the rights actually established by the decree.

The controlling civil-law principle

The case joins evidence law and property law. A purchaser must first prove the transaction through admissible evidence; even then, a purchase during pending litigation cannot outrun the decree eventually passed against the transferor's interest.

This commentary is independent legal analysis for research and general information. The complete judgment, pleadings, evidence, revenue record, transfer documents and later judicial treatment should be checked before reliance in proceedings.