

## Workshop Paper – Subject : Easement and Licence.

### EASEMENT

#### Introduction :-

Whenever immovable property is involved, there are certain rights connected to the enjoyment of such immovable property, without which rights, such property may not be conveniently and fully held and enjoyed. Such rights are called easement.

The term Easement is defined in Section 4 of The Indian Easement Act, 1882 which reads as under----

An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own,

Dominant and servient heritages and owners.--The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation. -In the first and second clauses of this section the, expression “land” includes also things permanently attached to the earth; the expression “beneficial enjoyment’ includes also possible convenience, remote advantage, and even an amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, or any part of the soil of the servant heritage, or anything growing or subsisting thereon.

Easement is a term connected to Property. Under the

property laws, Easement plays most important role which enables a person owning property to enjoy his property rights without any hurdle. Easement as defined under First Chapter and Section 4 of the Act, is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of the land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own.

### **Kinds of Easements :--**

Section 5 of The Indian Easement Act, defines different kinds of easements like Continuous and discontinuous, apparent and non-apparent easements.

A continuous easement is one whose enjoyment is or may be continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign, which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

### **Illustrations**

- (a) A right annexed to B's house to receive light by the window without obstruction by his neighbour A. This is a continuous easement.
- (b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

- (c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matter. These are apparent easements.
- (d) A right annexed to A's house to prevent B from building oil his own land. This is a non-apparent easement.

**Essential of an Easement :-**

- A] There must be an owner or occupier of certain land.
- B] There must be a right vested in such owner or occupier (as such owner or occupier) to do and continue to do something, or to prevent and continue to prevent something done in, or upon, or in respect of, some other land.
- C] The right must be for the beneficial enjoyment of his land. Thus, if the right is not in any way connected with the enjoyment of the dominant tenement (property) it cannot be an easement.
- D] The other land in or upon which the right to be exercised, must not be owned or occupied by him, but by some other person.

**Characteristics of an easement :-**

- A] There must be a dominant and servient tenement.
- B] The right of easement must be possessed for the beneficial requirement of the dominant tenements.
- C] Dominant and servient owners must be different persons.
- D] The right should entitle the dominant owner to do and to

continue to do something or to prevent and continue to prevent something being done, in or upon or in respect of the servient tenement.

E] That something must be of a certain or well defined character and must be capable of forming the subject-matter of a grant.

**Conditions for the acquisition of an easement :-**

A] Peaceably :- The word 'peaceably' was held to mean that the plaintiff who claims to be the dominant owner has neither been obliged to resort to physical force himself at any time to exercise his right within 20 years; nor had he been prevented by the use of physical force by the defendant in his enjoyment of such right.

B] Openly :- Except in the case of light and air, the enjoyment must be open and manifest and not clandestine. The reason of the requirement that the user must be open lies in the fact that acquiescence lies at the root of all prescription, and where the enjoyment is not open it cannot be said that it is within the knowledge of the owner of the servient tenement.

C] As an easement :- If a person claims a site as owner, he cannot claim a right of way over the same as an easement. The words denote that the acts relied upon as evidence of the existence of a right must be done by one person upon the land of the other.

D] As of right :- It means that the enjoyment must be as of a right for twenty years (if against the government thirty years) or more without any leave or licence.

E] Without interruption :- Means without any obstruction on the part of the person against whom the easement is claimed. Mere non-user of the easement for a time is not an interruption within the meaning of the section.

F] Enjoyment must be for twenty years :- The enjoyment must be continued down to within two years of the date of suit in which the right is contested i.e. where a person is in the continuous enjoyment of an easement for more than 20 years and an obstruction is thereafter made, he must bring his suit to establish his right within a period of limitation of two years from the date of such obstruction, otherwise his right will be defeated.

#### **Who will acquire the Easement :-**

The following are the categories of the persons who acquire the easement.

A] Occupier :- Where a person is in possession of property on behalf of owner, he can claim an easement.

B] Tenant :- Tenants in dominant tenement enjoying an easement as of right, acquire it from the landlord. When the plaintiff and defendant are tenants of a common landlord, the plaintiff can not acquire any right of easement over the defendants' tenancy land either under section 13 or section 15; for the beneficial enjoyment of his land. There is however, no bar to his acquiring the right as a customary easement or on the basis of implied grant from the landlord but not on the basis of prescription. Tenant can acquire an easement over the adjoining land belonging to his landlord for the beneficial enjoyment of other immovable property not his own but belonging to someone else which also he happens to occupy for the

time being as a tenant. Tenant can claim right of easement over his landlord's property based in immemorial user but not on prescription.

C] Co-owner :- Easmentary right can not be claimed by co-owner in respect of a land held by him in co-ownership with other. The other co-owner's consent is not necessary for the acquisition of any easement by any co-owner. But as his right of transfer of his interest is only a limited right he can not impose any easement on the joint property or any part thereof without the consent of his other co-owner.

D] Lessee :- No lessee can acquire an easement over the immovable property leased to him for the beneficial enjoyment of another property of which he happens to be the owner.

E] Trespasser :- Although the phrase, "any person in possession" would apparently include a trespasser also, but it can not be said that, he acts, "on behalf of" the real owner". Therefore, a trespasser can not acquire the easement.

F] Transferee of land :- The right of easement of an immovable property is required for the beneficial enjoyment of such property. This right is accord to the civilized society. The enjoyment of right of easement depends on the co-ordination of the rights existing on the servient and dominant heritage.

#### **How an Easement is acquire :-**

A] By grant (section 8) :- Vide section 8, an easement may be imposed by anyone in the circumstances and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed. A grant of an easement may be made orally

without any writing because the creation of easement by the servient owner over the land in his ownership or occupation does not amount to a transfer of ownership. The grant of easement may be express or implied from the circumstances and conduct of the parties to the easement. It may be presumed from the long user or may be inferred from some usage prevailing in the locality.

B] By necessity, when there is a severance of two tenements (section 13) :- An easement of necessity means a necessity which is absolutely necessary for the enjoyment of a tenement into several independent units. Mere convenience is not the test for an easement of necessity. Easement of necessity arises only where, by a transfer, bequest or partition, a single tenement is divided into two or more tenements and any of those is to be situated that it cannot be enjoyed at all without certain privilege upon another such tenements. The creation of an easement of necessity is an outcome of the prior relationship between the tenements.

C] By quasi necessity, when there is a severance of two tenements (section 13) :- The term quasi easement has been applied to those easements which are not easement of absolute necessity but which come into existence for the first time by presumed grant on severance of two or more tenement formerly united into the sole ownership of one person. Quasi easement must be (a) apparent (b) continuous and (c) necessary for enjoying the dominant heritage as it was enjoyed before severance. The quasi easement claimed must be in existence at the time when the severances took place. So that there may be possibility of an implied grant or an implied

reservation. If they were not present at the time of severance but came into existence afterwards such right cannot be claimed as quasi easement under section 13.

D] By prescription (section 15) :- Prescription means acquisition of a right or title by user of possession during the period and in the manner prescribed by law. A man who can not show any other title may acquire property or certain rights by showing that he has been in possession of the property or enjoying rights for a very long time. The reason why the law encourages this mode of acquiring right is that, if a man after long, continue and uninterpreted user was required in every case to prove the origin of his title especially in the old times, when writing was not in vogue it would result in great hardship and injustice to him.

(A) Easementary right of way and other varieties of easement rights can be acquired if (a) they have been enjoyed, (b) as an easement (c) for twenty years, (d) without interruption by a person claiming title to them, (e) openly, (f) peaceably and (g) as of right.

(B) Easementary rights of light, air and support can be acquired if they have been peaceably enjoyed, without interruption, as an easement, for twenty years. The rights of light, air and support need not be enjoyed either 'openly' or 'as of right' or 'by a person claiming title thereto'. Such easements can be acquired by peaceable enjoyment without its enjoyment being as of right. It is only in case of other easements, it is necessary to enjoy them as of right in order to acquire an absolute right in respect of them.

All the above seven ingredients of an easementary right must

be proved to have been present during the whole of the prescriptive period of 20 years. In case of easement against Government the statutory period is 30 years.

**In the case of Uttamrao Tulshiramji Madghe vs. Shrawan Natthuji Bagul, 2014(3) Mh.L.J. 751.** Sec. 13 of Easement Act provides for easement of necessity and quasi-easement, while Sec. 15 of Act provides for easement by prescription which are independent provisions. If the parties are legally entitled to exercise easementary right under both the provisions, it is open for them to do so.

**In the case of Pundlik Narayan Pednekar vs. Augusto Fernandes, 2013 (1) Mh.L.J. 259.**(a) Easements Act Sec. 15 – Easement by prescription – plaintiff's claim to the suit access is only by way of easement of prescription -Question of possibility of the plaintiff's being able to go the public road by an alternate access, does not arise and would have arisen only if they wanted to maintain their claim to the suit access by way of easement of necessity, etc.

(b) Section 15 – Easement by prescription – Even if it is taken for granted that the plaintiffs have been using the access from the property of the defendants to go to the said Panchayat road, the said user can only be from the time of coming into existence of the said road which was somewhere in the year 1984-85 – Suit filed by the plaintiff on 27.9.1988 –Thus, the alleged continuous, peaceful and open use was only for few years since prior to the filing of the suit which is less than even 10 years – Therefore, the plaintiff is not entitled to claim the suit access as an easement by prescription.

E] By lost grant, presumed from immemorial user :- A right of

easement is also created by grant. A grant of such right is presumed from long use or possession although the actual transaction of making such a grant cannot be discovered. If a party has been using a particular land for a particular purpose from time immemorial, it can be said that he has earned that right on the basis of doctrine of lost grant. There is no period fixed for the immemorial.

F] By customs (section 18) :- A customary easement is not an easement in the true sense of that expression. It is not annexed to the ownership of a dominant tenement, and it is not exercisable for the more beneficial enjoyment of the dominant tenement; it is recognized and enforced as a part of the common law of the locality where it obtains. A customary easement arises in favour of an indeterminate class of persons such as residents of a locality or members of a certain community, and though not necessarily annexed to the ownership of land, it is enforceable as a right to do and continue to do something upon land or as a right prevent and continue to prevent something done upon land. Sanction for its enforceability being in custom, the right must satisfy all the tests which a local custom for recognition by courts must satisfy.

G] By transfer :- Section 19 lays down that a transfer or devolution of a property which may be due to act of parties or by operation of law, will convey the person in whose favour the transfer or devolution takes place all those easements which are annexed or are appurtenant to the heritage transferred, unless a contrary intention appears. If nothing is mentioned in the instrument of transfer, all easement enjoyed before the transfer will pass to the

transferee and in this respect, this section enjoins upon the transferor to have the transfer-deed drafted very carefully to avoid future litigation.

H] By law/statute/legislature :- certain laws/statute/legislature has granted the easement. For e.g. Land Acquisitions (Mines) Act.

I] By the operation of the doctrine of acquiescence :- Where the servient owner by active encouragement or passive acquiescence or other such conduct, has inducted a belief in the dominant owner upon which the dominant owner has acted, he would acquire an easement over the servient property.

#### **RIGHT TO ALTER MODE OF ENJOYMENT AND NECESSARY RIGHTS.**

Chapter III of the Easement Act, contemplates the provisions regarding the incidents of easements. As per section 21 of the Act, an easement must not be used for any purpose not connected with the enjoyment of the dominant heritage. Illustration : A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

As per section 22 of the Act, the dominant owner must exercise his right in the mode which is least onerous to the servient owner; and, when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

This section is divided into 2 parts. The first part prescribes the first mode in which the dominant owner must exercise his right and the second part puts limitation on the right of the dominant owner to exercise his right of easement on servient heritage. This section shows that the right of easement is not absolute.

### **RIGHT TO ALTER MODE OF ENJOYMENT (SECTION-23)**

Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

**Exception** – The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

The dominant owner has been given full discretion in the enjoyment of an easement. However, he cannot violate the provisions of section 22 of the Easement Act. In a way, section 22 constitute an exception of section 23. Similarly, restriction is imposed upon the dominant owner that he cannot impose any additional burden on the servient heritage while enjoying his right of easement in any way he likes. Thus, sufficient checks and balances have been provided on the right of the dominant owner to exercise his right of the easement. **As held by Hon'ble Apex Court in Anguri, Smt. V. Jiwan Dass, reported in AIR 1988 SC 202.** If, by alteration of mode and place enjoying easement, there occurs increase in burden of easement on servient owner, section 23 does not protect such

situation. In other words, section 23 would not come to help the plaintiff if the additional burden on the property of the plaintiffs has been imposed by the action of the defendants.

### **ACCESSORY OR NATURAL RIGHTS**

As per section 24 of the Easement Act, rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights. The edifies of this principle must be understood to allow everything necessary to give effect to right. These are the rights to do acts necessary to secure the full enjoyment of the principle easement. A golden mean has been achieved by this section in between the rights of the dominant owner and that of the servient owner in regard to easement. This section has given the vast powers to the dominant owner to do all acts necessary for the full enjoyment of easement. Full enjoyment implies beneficial enjoyment. This power, of course, can be exercised only against the servient owner and not against the world at large. An interest of the servient owner is also required to be protected. An obligation is cast upon the dominant owner to repair the damage, if any, caused by the act of the servient heritage.

### **DUTIES AND LIABILITIES OF DOMINANT OWNER AND SERVIENT OWNER**

As per section 25 of the Act, the expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

As per section 26 of the Act, where an easement is enjoyed by means of an artificial work, the dominant owner is liable

to make compensation for any damage to the servient heritage arising from the want of repair of such work.

As per section 27 of the Act, the servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

As per section 29 of the Act, the dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

**Disturbance to the right of enjoyment of easement and remedies thereon** :- Sec. 32. - The owner or occupier of the dominant heritage is to enjoy the easement without disturbance by any other person.

Disturbance means obstruction, interruption or disruptions. Disturbance in relation to easement law means that any such act that lessens the practical utility of the enjoyment of the easement. Interference with the right of easement may be graded into three degrees. 1) Interference which does not result into substantial damage and which gives no cause of action. 2) Interference which may cause damage but where injunction can not give relief but only damages would be sufficient. 3) Interference where injunction is the proper remedy.

**Remedies on disturbance of Easementary Rights:-**

Under sec. 33 to 36 of the Easement Act, various remedies

provided to dominant owner to protect his right of easement.

1. Suit for compensation - Sec. 33 of the Act prescribe that the owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto: provided that the disturbance has actually caused substantial damage to the plaintiff.

**Meaning of substantial damage :-**

1) Under the explanation of Sec.33, meaning of the substantive damage is prescribed. In the Explanation I of Sec.33 it is clarified that the doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage.

2) Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit,

3) Where the easement disturbed is a right to the free passage of light to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Sec.34 - When cause of action arises for removal of support. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to

recover compensation unless and until substantial damage is actually sustained.

2. Suit for declaration and Injunction to restrain disturbance.

**The Hon'ble Supreme Court in Ram Kanya Bai & Anr vs Jagdish & Ors Civil Appeal No. 4922 OF 2011, 4 July, 2011.**

When a person (dominant owner) has an easementary right, and the servient owner disturbs, obstructs or interferes with his easementary right, or denies his easementary right, the remedy of the dominant owner is to approach the civil court for the relief of declaration and/or injunction. Similarly, when a person who does not have an easementary right, tries to assert or exercise any easementary right over another's land, the owner of such land can resist such assertion or obstruct the exercise of the easementary right and also approach the civil court to declare that the defendant has no easementary right of the nature claimed, over his land and/or that the defendant should be prevented from asserting such right or interfering with his possession and enjoyment.

Sec. 35 – Injunction to restrain disturbance :-

Subject to the provisions the Specific Relief Act, 1877, Sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement.

(a) If the easement is actually disturbed then compensation for such disturbance might be recovered under this Chapter.

(b) If the disturbance is only threatened or intended. When the act threatened or intended must necessarily, if performed, disturbs the easement.

3. The dominant owner can also file a suit for mandatory injunction to get executed his right of easement.

### **EXTENT, INCREASE AND EXTINCTION OF EASEMENT**

#### **Extent of Easement - Section 28 -**

With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect :

##### **Easement of necessity**

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

##### **Other easements**

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired.

##### **Right of way**

(a) A right of way of any one kind does not include a right of way of any other kind:

##### **Right to light or air acquired by grant**

(b) The extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made :

##### **Prescriptive right to light or air**

(c) The extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that

quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

**Prescriptive right to pollute air or water**

(d) The extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose; and

**Other prescriptive rights**

(e) The extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

**In the case of Chintamani Hargovan vs. Ratanji Bhimbhai, AIR 1920 Bom. 223.** Sec. 28 of Easement Act, the extent of any easement ( other than an easement of necessity) and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose of which the right was imposed or acquired. In the absence of evidence as to such intention and purpose, a right of way of any one kind does not include a right of way of any other kind.

**Increase of Easement -Section 29 :-**

The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvions, the easement is proportionately increased, and, if the

dominant heritage is diminished by diluision, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

**Question of fact -**

The question whether an addition to the dominant heritage has increased substantially, the burden of the easement on the servient heritage is a question of fact.

**Substantially -**

The Section says that the dominant owner, cannot, by merely altering or adding to the dominant heritage, substantially increase an easement. The emphasis is on the word substantially.

**Contract -**

The extent of an easementary right can be increased or decreased only by the contract to that effect.

**Excess user -**

The servient owner can prevent the excess user of an easement by the dominant owner provided he can do so without obstruction to its rightful use. (1) Thus, there is a distinction between the rightful use and excessive and unreasonable use of the easement. Prescriptive right to discharge water used for washing rooms on another's land would not include right to discharge all kinds of water mingled with filth from the latrines etc. (2) Person storing water for benefit of his land cannot enlarge store by flooding land on higher level belonging to another. (3) An easement holder cannot increase the burden on the servient tenement, if he does, he would lose the easement right as he has rendered himself incapable

of enjoying it in the original form.

**Burden of proof -**

The burden of proof upon the person who claims the right of easement is that by the change of the nature of building, additional burden is not imposed upon the servient tenement.

**Extinction of Easement :-**

**Section 37** – When from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

**Section 38** – An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

**Section 39** – An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

**Section 40** – An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

**Section 41** – An easement of necessity is extinguished when the necessity comes to an end.

**Section 42** – An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

**Section 43** – Where, by any permanent change in

the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished unless,

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity.

**Section 44** – An easement is extinguished where the servient heritage is by superior force permanently so altered that the dominant owner can no longer enjoy such easement:

**Section 45** – An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

**Section 46** – An easement is extinguished when the same person becomes entitled to the absolute ownership ;of the whole of the dominant and servient heritages.

**Section 47** – A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

**Section 48** – When an easement is extinguished, the rights ( if any ) accessory thereto are also extinguished.

### **Revival of Easements.**

The general rule is stated that an easement once extinguished cannot be revived, and that if it is to exist again it must

be created *de novo*.

Sec. 51 Revival of easements :-An easement extinguished under Sec.45 revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvions; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is re-built upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is re-built upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under Sec.46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under Sec.47.

## **LICENCE**

### **What is a licence :-**

1] A licence is a personal right granted to a person to do something upon immovable property of the guarantor and does not amount to the creation of an interest in the property itself. It is purely a permissive right and is personal to the guarantee. It creates no duties and obligations upon the person making the grant and is therefore, revocable except in certain circumstances expressly

provided for in the Act itself. The licence has no other effect than to confer a liberty upon the licensee to go upon the land which would otherwise be unlawful.

2] Section 52 of the Indian Easement Act defines licence as follows : “Where one person grant to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.”

#### Characteristics of Licence

- 1) No transfer of interest :- A licence is a permission to do some act which, without such permission, would be unlawful.
- 2) No interest in accretions :- A licensee has no interest in the property and therefore, he acquires no right by accretion.
- 3) Neither transferable nor heritable :- A licence is neither transferable; nor heritable.
- 4) A licence is a matter purely personal between grantor and grantee.
- 5) Section 52 of Easement Act does not require any consideration, material or non-material, to be an element of the definition of licence, nor does it require that the right under the licence must arise by way of contract or as a result of mutual promises.
- 6) The person who grants the licence must be the owner of the property. The other person who gets the permission must be a stranger or have no right in the property.

- 7) licence creates no duties and obligations upon the person making the grant and is therefore revocable except in certain circumstances expressly provided in the Act itself.
- 8) A licence is usually revocable by grantor, except in the two cases mentioned in the section 60 of Easement Act.
- 9) A subsequent transfer of the property terminates a licence.
- 10) A licensee cannot sue trespassers and strangers in his own name.
- 11) A licence is terminated by death of either party.

3] Vide section 53 of the Act a licence may be granted by anyone in the circumstances and to the extent in and to which he may transfer his interest in the property affected by the licence. Such grant may be express or implied. A licence can not be transferred by the licensee or exercise by his servant or agents. The only exception made in the case of licence to attend a place of a public entertainment. In this case the licence may be transferred unless a different intention appears. The licensor is under a duty to disclose any defect in the property likely to be dangerous to the licensee of which the licensor is but the licensee is not aware. If the licensor fails in his duty and does not disclose any hidden risk in use of the subject of the licence and if any loss is caused due to such non disclosure. The licensor is liable for damages.

Gratuitous licensee :-

- 4] The word "Gratuitous" means without consideration or freely.

1. Gratuitous licensee shall not transfer license to any other person.
2. Gratuitous licensee shall not file suit against trespasser or stranger.

**In case of Vishivanath V. Jandabhai reported in 1990(2) Bom.C.R. 406**, it was held that a gratuitous licensee cannot claim any legal right in the property.

5] Rights of “licensee ”

1. Decision passed by court against licensor is binding on the licensee.
2. When licence is revoked, then licensee is entitled to reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.
3. When gratuitous licensee executes work of permanent character during licence and with the consent of licensor, then gratuitous licensee is entitled to get compensation of expenses incurred by him after revocation of licence.

6] Duties of Gratuitous licensee :

1. It is the duty of gratuitous licensee that he shall not cause injury or damage to the property.
2. It is his duty that he shall not make any permanent change in the property of licensor which is in his possession.
3. It is his duty to abide each and every terms and condition of licence.

4. If licensor is not aware about any injury or damage caused to the property of licensor by third person, then it is the duty of licensee to inform it to licensor.
5. It is his duty to disclose any defect in the property of licence to licensor if he finds it.
6. After completion of period of license, gratuitous licensee has to vacate premises/ property or to give possession of property to licensor.
7. It is his duty to take care of property or premises of licence during the period of licence.

7] Revocation of Licence :-

A conjoint regarding of Ss.59 and 60 of the Act would establish that though ordinarily all licences are revocable when the grantor transfers the property, yet, in two exceptional cases provided for under S.60, the transfer would not by itself put an end to the licence. Provisions of S.60 qualifies and restricts the scope of general provisions with reference to the revocability of licence under S.59 of the Act. If the licence is for some reasons irrevocable by the grantor himself S. 59 does not authorize the transferee to revoke it. The transferee of the property from a licensor has no higher rights than those of the transferor and consequently the transferee is not entitled to revoke the licence when the licensee had built upon the land.

8] Leave and License agreement comes to an end on the ceasing of the interest of the licensor in the property particularly if the agreement merely creates licence. A licence is neither annexed to the property in respect of which it is enjoyed, nor is it a transferable

or heritable right, but is a right purely personal between grantor and licensee. Therefore, where a licensee dies, the licence expires and the legal representatives of the licensee hold as mere trespassers.

9] License when revocable :- A licence may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.

10] A bare licence can always be revoked by grantor. A licence, unlike a contract, creates no mutual obligation and rights between parties and it may be revoked under this section except when it is one which falls within the exception mentioned therein. The power of revoking a bare licence given by the section to the licensor is not affected by the fact that the licence has been given for a valuable consideration. The fact that a licence has been acquired for an agreed term would not affect the right of the licensor to revoke it at any time where it is only a bare licence. The licensor has the power to revoke a licence at any time and his right to do so is not dependent upon his giving a reasonable notice or sufficient time to the licensee as a condition precedent. The right of a licensee to get a reasonable notice before revocation and the right of the licensor to revoke a licence are not inter-related in the sense that the licensor could be restrained from exercising his right without issuing such a notice as a condition precedent.

**In the case of Bhaurao vs. Geetabai 2013(4) Mh.L.J. 196.**

Easements act Section 60(b) – Irrevocable licence - Proof of – merely because there is a work of permanent character executed by incurring expenses, would not by itself be enough to establish that the licence was irrevocable.

**In the case of Himmatrao Marutorao Dhobale vs. Arun Gulrao Jichkar, 2015 (2) Mh.L.J. 560.** Easements Act Section 60(b) and Evidence Act Section 115 – Appellant proved that respondent is licensee on suit plot – Respondent constructed house on the suit plot and occupied and resided in it -- Respondent cannot be denied benefit of provisions of section 60(b) merely because respondent had denied that he is a licensee.

S.62 deals with the licence which deemed to be revoked :-

- A) When from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the licence;
- B) When the licensee releases it, expressly or impliedly to the grantor or his representative;
- C) Where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled.
- D) Where the property affected by the licence is destroyed or by superior force so permanently altered that the licence can no longer exercise his right;
- E) Where the licensee becomes entitled to the absolute ownership of the property affected by the licence.
- F) Where the licence is granted for a specified purpose and the

purpose is attained or abandoned or becomes impracticable;

G) Where the licence is granted to the licensee as holding a particular office, employment or character, and such office employment or character ceases to exist;

H) Where the license totally ceases to be used as such for an unbroken period of twenty years and such cessation is not in pursuance of a contract between the grantor and the licensee;

I) In the case of an accessory licence, when the interest or right to which it is accessory ceases to exist.

Submitted with respect.

Yours Faithfully,

(K. P. Nandedkar)  
District Judge-3 and Addl.  
Sessions Judge, Jalgaon.

(Sau. Priti Kumar Ghule)  
Adhoc- District Judge-2 and Addl.  
Sessions Judge, Jalgaon.

(Sau. S. R. Shinde)  
Chief Judicial Magistrate,  
Jalgaon.

(Kedar S. Kulkarni)  
Jt. Civil Judge Sr. Dn.,  
Jalgaon.

### Questions

**Que. 1]** If the parties are legally entitled to exercise easementary right under section 13 and 15 of Easement Act , Whether both the provisions, are open for them ?

**Que 2]** Whether the jurisdiction of the civil court to entertain a suit for declaration or injunction, claiming a customary easement of right of way or right to take water, through the land of a servient owner, is barred by section 257 of the Code, on the ground that it is a matter which the Revenue Officer (Tahsildar) is empowered to decide under section 131 of the Code?

**Que. 3]** Whether a license unlike leases can be revoked without prior notice ?

**Que. 4]** Can easementary right be extinguished, if the dominant and servient heritage are vested in the same person temporarily?

**Que 5]** Whether the suit for injunction to prevent an obstruction to an easement by prescription is maintainable without

the prayer for declaration of the right ?

**Que 6]** Whether tenant can claim easementary right on the owner's property ?

**Que 7]** Whether easementary right can be transferred apart from the dominant heritage ?

**Que 8]** When it can be said that a right of way has been acquired by prescription?

**Que 9]** Can a licensee claim possession after his eviction by gurantor without his fault before he enjoyed his right for which licensee can given to him for a consideration?

**Que. 10]** Is it necessary that the words “easement of necessity” must appear in the pleadings ?

**Que 11]** Whether a transferee of the property is bound by the licence ?

**Que. 12]** Whether licence can be revoked u/s.60 of the Easement Act. When licensee erecter permanent structure ?

**Que : 13]** Can right of easement be proved by mere mention by transferor in the sale deed ?

**Que : 14]** Whether rule of extinction (Section 41 of Easement Act) is applicable to easement acquired by grant ? What is the distinction between easement acquired by grant ?

**Que : 15]** Is easement a natural right ?