

## **Ram Sarup Gupta (Dead) By Lrs vs Bishun Narain Inter College & Ors on 8 April, 1987**

**Equivalent citations: 1987 AIR 1242, 1987 SCR (2) 805, AIR 1987 SUPREME COURT 1242, (1987) 2 JT 76 (SC), 1987 3 JT 76, 1987 MPRCJ 220, 1987 UJ(SC) 2 162, (1987) 100 MAD LW 1102, (1987) 2 CIVLJ 334, (1987) 2 SCJ 279, 1987 (2) SCC 555**

**Author: K.N. Singh**

**Bench: K.N. Singh, Sabyasachi Mukharji**

PETITIONER:

RAM SARUP GUPTA (DEAD) BY LRS.

Vs.

RESPONDENT:

BISHUN NARAIN INTER COLLEGE & ORS.

DATE OF JUDGMENT 08/04/1987

BENCH:

SINGH, K.N. (J)

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SINGH, K.N. (J)

MUKHARJI, SABYASACHI (J)

CITATION:

1987 AIR 1242                      1987 SCR (2) 805

1987 SCC (2) 555                JT 1987 (2) 76

1987 SCALE (1) 700

CITATOR INFO :

R                      1988 SC1845 (22)

ACT:

Indian Easement Act, 1882:

Section 52, 60, 62, 63 and 64 License grant of--Express or implied--Also oral--To be inferred/ascertained from conduct of parties and circumstances leading to grant of license--When license becomes irrevocable--Person allowing another to build on his land without reserving any right to revoke--Whether entitled to revoke.

Practice and procedure:

Pleading--Form of--Undue emphasis not to be placed--Substance of pleading alone to be considered.

HEADNOTE:

The property in dispute was under the occupation of a school managed by a Registered Education Society. The Society was managing the respondent college also. The school was not recognised and had no endowment and building of its own. In order to secure recognition for the school, the President of Society, who owned the property in dispute, informed the Inspector of Schools by a letter dated November 26, 1941, that he had given away the premises occupied by the school free of rent, which may be considered as his permanent contribution to the cause of the school. Pursuant to this, the school was recognised. To meet the need for additional accommodation the management made permanent constructions on the open land attached to the building without any objection by the donor or any of his family members.

The donor had taken a considerable amount of loan and mortgaged the property in dispute, alongwith a number of properties on March 27, 1957. In order to pay off the loan the property in dispute was got discharged and the donor alongwith his three minor sons executed a sale deed transferring the property in dispute to the plaintiff-appellant.

The plaintiff-appellant served a notice on the school and its managing committee terminating their license and directing them to restore the possession of property to him and upon their failure to do so,

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filed a suit for possession. The defendants pleaded that the property in dispute had been donated to the school permanently and the school had made permanent constructions by incurring expenses and, therefore, their license was irrevocable.

The trial court dismissed the suit after recording findings to the effect that the property in dispute belonged to the joint family of which the donor was Karta, that though the property was donated to the school no rifle passed to it or to any of the defendants as the property being immovable could not be transferred except under a registered deed, and that in the absence of the transfer deed, then donor continued to be the owner and could transfer title in the property to the plaintiff, that under the U.P. Act. III of 1947 no allotment could validly be issued in favour of the school as there was no vacancy or likelihood of vacancy, that though the property had been given away to the school by the donor as permanent contribution, but in the absence of the registered deed, the transactions amounted to a license only, and since the defendants had made permanent constructions on the premises in suit, license was irrevocable under Section 60(b) of the Indian Easements Act 1882 and as the donor himself had no power in a law to revoke the license, the plaintiff being transferee from him could not acquire any better right and, therefore, he was not entitled to revoke the license or to obtain

possession of the property. In the appeal before the High Court there was difference of opinion between the two Judges who constituted the Division Bench and the matter was referred to a third Judge. By majority, the High Court affirmed the findings of the trial court and held that the license granted to the school was irrevocable and the appellant was not entitled to any relief.

In the appeal to this Court, it was submitted that the trial court as well as the High Court both erred in holding that the license was irrevocable under Section 60(b) of the Indian Easement Act, that the defendants had failed to raise necessary pleadings on the question, no issue was framed and no evidence was produced by them, that in the absence of requisite pleadings and issues, it was not open to the trial court and the High Court to make out a new case for the defendants holding the license irrevocable, and that the defendants had failed to produce any evidence to prove the terms and conditions of the license and that the donor being Karta of the Joint family could not alienate the property permanently to the detriment of the minor co-sharers. It was contended on behalf of the defendants-respondents that both the courts had recorded findings of fact on appreciation of evidence on record, that the license granted by the donor/grantor was irrevocable and that

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acting upon the license, the school had made construction for the purposes of running the school and the license was irrevocable and that necessary pleadings had been raised and there was sufficient evidence in support of the pleadings.

Dismissing the appeal, this Court,

HELD: 1. Where license is granted for the purpose of running the school without reserving any right to revoke license and if the licensee erected works of permanent nature, the grantor of license is not entitled to recover land, as the execution of work was for the purpose of school and it fails within the expression "acting upon the licence". [821E-F]

2. If a person allows another to build on his land in furtherance of the purpose for which he is granted license, subject to any agreement to the contrary, he cannot turn round, later on, to revoke the license. This principle is codified in Section 60(b) of the Indian Easements Act, 1882. [823E-F]

In the instant case, all the three conditions, viz. (1) the licensee executed work of a permanent character, (ii) he did so acting upon the license, and (iii) he incurred expenses in doing so, as required by Section 60(b) of the Act have been made out. [821A-B]

3.1 License, as defined in s. 52 of the Easements Act means grant of permission, by a person to the other, 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. Such a right does not amount to an

easement or any interest in the property. The rights so conferred is license. The grant of license may be expressed or implied which can be inferred from the conduct of the grantor. [817C-D]

3.2 Section 60 of the Act enumerates the conditions under which a license is irrevocable; firstly the license is irrevocable if it is coupled with the transfer of property and such right is enforced, and secondly, if the licensee acting upon the license executes work of permanent character and incurs expenses in execution. But Sec. 60 is not exhaustive. According to Section 62, a license is revocable at the will of the grantor and the revocation may be expressed or implied. Where license is granted for a specific purpose, and the purpose is attained, or abandoned, or if it becomes impracticable, the license shall be deemed to be revoked. [817G-H; E-F]

3.3 The parties may agree expressly or impliedly that a license

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which is prima facie revocable not falling within either of the two categories of license as contemplated by s. 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise, and its terms or conditions may be express or implied. A license may be oral also, in that case, terms, conditions and the nature of the license, can be gathered from the purpose for which the license is granted implied with the conduct of the parties and the circumstances which may have led to the grant of license. [818D-E]

3.4 License had been granted to the school for the purpose of running the school and imparting education to the students, the license was not merely in respect of building alone but it was also in respect of open land attached to the building. Additional accommodation was required and the school carried out works on the open land which was appurtenant to the main building, with the knowledge of the licensor, as has been found by the trial court and the High Court. In view of the licensor's donation of the property to the school, and his subsequent conduct, the licensee could reasonably entertain a belief that the licensor had permitted the construction on the land and in pursuance thereof, the licensee made constructions and incurred expenses. The result is that the respondents "acting upon the license" had executed works by incurring expenses which rendered the license irrevocable. [819C-E]

3.5 If the licensee did not permit the school to execute any permanent constructions, the grantor would have certainly raised objections. His conduct of acquiescence to the raising of constructions, is eloquent enough to show that the license was irrevocable. [819H; 820A]

3.6 The pleadings, evidence and circumstances available on record, have fully established that the donor had granted license to the school in respect of building and the land attached to it for the purpose of imparting education and

the school, in furtherance of that purpose constructed additional building and it further incurred expenses in carrying out modifications and extensive repairs in the existing building during the period the donor continued to be the President of the Managing Committee of the school and he never raised any objection to it and there is nothing on record to show that licensee had retained right to revoke the license. [823D-E]

3.7 The conduct of the parties has been such that equity will presume the existence of a condition of the license by plain implication to show that license was perpetual and irrevocable. That being so, the grantor could not revoke the license or evict the school and the appel-  
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lant being transferee from him could not and did not acquire any better right. The appellant. therefore, has no right to revoke the license or to evict the school, so long as the school continues to carry on the purposes for which the license was granted. [823F-G]

4.1 In the absence of pleadings, evidence, if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the pleadings, to determine the question. It is not desirable to place undue emphasis on form; instead, the substance of the pleadings should be considered. [814C-F]

4.2 Whenever the question about lack of pleadings is raised, the enquiry should not be so much about the form of the pleadings; instead, the court must find out whether in substance the parties knew the case and the issues. Once it is found that inspite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, it would not be open to a party to raise the question of absence of pleadings in appeal. [814F-H]

In the instant case, the plaintiff knew the case he had to meet. and for that purpose he produced the donor in evidence in support of his plea and that the license was a simple license and it was not irrevocable as pleaded by the defendants. [816C-D]

Bhagwati Prasad v. Shri Chandramaul, [1966] 2 SCR 286; Gujarat Ginning and Manufacturing Co. Ltd. Ahmedabad v. Moti Lal Hirabhai Spinning and Manufacturing Co. Ltd., Ahmedabad