

### Precedents on easement

Easement by prescription and customary easement –difference explained-both cannot be claimed together. Easement of necessity arises out of grant. 1986(1) Civil L J 202.

Upper proprietor has natural right to drain excess water on lands on lower level-he cannot change the usual channel to greater detriment of lower land 1971Mh.L.J.note67.

Claim of ownership of land –failure to prove ownership –plaintiff cannot turn round and plead easementary right on the land .AIR 1971S.C.1878.

Claimant must prove that he was exercising right on a property treating it as someone else's property-lessee failing to prove that he acquired certain land by accession –proof that his use was permissive –he cannot claim acquisition of right as an easement. AIR 1971 SC 1878 .

Requirements –consciousness of exercising claim over the property of other is necessary – plaintiff failing to prove ownership in previous suit –he cannot claim in subsequent suit right as an easement 1979 Mh.L.J.117.

Alleged interference with tenants. user of private road by landlord –tenant cannot have prescriptive right of easement against his landlord as there can be no such right –it is a mere license which cannot be enforced 1989 MhLJ .51.

Nature of possession of licensee-it is not judicial 1971 MhLJ 57.

Lease and license – distinction –unlike license, lease creates interest in property leased – recitals in deed may indicate intention but are not decisive.1971 MhLJ 604 S.C.

License –distinction between license and license –cum- grant-transaction has to partake nature of commercial transaction for valuable consideration –gratuitous license to occupy premises, not coupled with any grant, can be revoked at any time at the whim and the fancy of the grantor without assigning any reasons.1990 Mh.L.J. 1145.

Exercise of discretion –plaintiff filing suit as mutawalli against licensee for possession of wakf property –applicant claiming to be co-mutawalli applying to be added –court rejecting application cannot be said to have exercised discretion wrongly, applicant not being necessary party.1977 MHLJ Note 11.

Irrevocability of license –Apart from S.60, license can be irrevocable if there is agreement to that effect 1960 NLJ 50=AIR 1959 Bom 533.

Revocation by forfeiture –licensee denying title of licensor –there is no forfeiture automatically.1972 MHLJ Note 36

License to carry business –suit for eviction –benefit of irrevocability clause in s. 60 of the Easement Act cannot be pleaded merely because licensee has carried out work of permanent Nature.1989 MHLJ 197.

S.52- Gratuitous licensee is also a licensee within the meaning of S. 52. AIR 1982 SC 597.

Right to light and air - Partition-effect-Transferee entitled to easement necessary for enjoyment of transferred property unless partition deed contain specific agreement to curtail such right.Garuda v. Grandhi AIR 1969 Andhra Pradesh 131.

Easement section 35-"Party wall"-Co-owner opened windows and ventilator in common wall- Other co-owner has right to move under section 35 for mandatory injunction is. Ashareddy v. Lingareddy 2001(2) MhLJ 145

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