Case Note: The question before the court was whether lessee can acquire easement of way or flow of water over the land of the lessor, i.e. land which has not been leased to him. The court held that this cannot be the case, as the lessee derives his right of occupation of property through the lessor and hence cannot have easement over other the land of the lessor.

1980Supp(1)SCC777

IN THE SUPREME COURT OF INDIA

Decided On: 13.03.1978

Madan Gopal Bhatnagar
v.
Smt. Jogya Devi and Ors.

Hon'ble Judges:
Jaswant Singh and V.R. Krishna Iyer, JJ.

JUDGMENT

Jaswant Singh, J.

1. This appeal by special leave which is directed against the judgment and older dated November 17, 1976 of the High Court of judicature at Allahabad in S.A. No. 886 of 1975 raises a very Interesting question of law via. whether a lessee of land taken by him for building a house can for his own benefit acquire an easement of way or of flow of water over other land of his lessor. Though this question seems to have arisen a number of times in different High Court of India, it is a question of first impression so far as this Court is concerned as it was left open in Chapsibhai Dhamjibhai Damed Purusbottam (1971) Supp. S.C.R. 335.

2. For a proper determination of this question, it is necessary to refer a few provisions of the Indian Easements Act, 1882 (Act V of 1882)(hereinafter called 'the Act').

3. Section 4 of the Act defines "Easement" as 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.

4. Section 12 of the Act specifies the persons who can acquire easements and provides that an easement can be acquired by the owner of an immoveable property or, on his behalf, by any person in occupation of the same.

5. Section 15 of the Act deals with the method of acquiring easements.

6. The words "owner...or on his behalf by any person in occupation of the same" occurring in the aforementioned Section 12 of the Act are very significant. They no doubt indicate that it is the owner of an immoveable property or a person in occupation of such property who can acquire an easement but it is to be noted that the person in possession of immoveable property like a lessee or a montgagee who is not an owner thereof cannot. acquire easement for his own benefit as in that event he would be violating the provisions of Section 12 which clearly interdicts the acquisition of an east men thy a lessee or a montgagee for his own benefit. As in the instant case, the appellant was no an owner but only a lessee of the immoveable property at that time he is altered to have commenced using the adjacent land belonging to his landlord as a passage or as a means for a discharging waste water, he can not tack the period during which he was using the by or discharging the water on the other land of his land of his landlord during the period of the lease to the period smarting from the point when he commenced doing so as an owner. He could, of course, have started prescribing for such easement from February 18, 1970 when he purchased the right of reversion from his lessor be cannot tack on the period of his prior enjoyment as lessee to the period of enjoyment since 1970 when he put chased the right of rversion and became the absolute owner. This conclusion receives support from a number of decisions of the Indian High Court. In Udit Singh and Ors. v. Kashi Ram (I.L.R. 14 (1892) All. 185), a Full Bench of five Judges of Allahabad High Court held that a tenant cannot as against his landlord acquire by prescription an casement of way in favour of the land occupied by him as a tenant over the of the land belonging to his landlord. The following observations made by Edge. G.J. in that decision are worth quoting :

I should point out that the tenant does not allege that his holding had at the time it was let to him the right of way in question as appurtenant to it, nor does be allege that the landlords granted any such right of way as appurtenant to the hoiding, nor again does he allege that the way claimed was what is known in law as a way of necessity he merely alleges that he as the tenant in the occupation of his hoiding had by user obtained a light of way against his landlords, over their adjoining land. In my opinion it is contrary to common sense that any such right as is here alleged could possibly have been acquired. Such light could only have been acquired, if at all, in respect of the holding occupied by the plaintiff. That holding is the landlords' holding, and they, the lardlords, are in possession of it through their tenant the plaintiff. The plainiff is not an owner claiming a right in respect of dominant tenement ever another, servient, tenament; he is not claiming this right far or on behalf of his landlords; but he is claiming it adversely to them, although for and on behalf of their own property. The law, as conceive it to be, was very concisely put and fllustrated by Lord Cairns in his judgment in Gayford v. Moffatt (L.R. 47 Cn A 133) Tim was a case in which a tenant was claiming a right of easementm over his landlord's property as a right acquired by the tenants not granted by the landlord Lord

Cairns said But it is not necessary to examine the user, for this reason, that if there is a person to whom the owner of two closes has demised one of them, and if in order to gut at that one there is a necessity to cross the other close which was not demised, and if, in the course of years, from the circumstance that the landlord had no particular occasion to the close for any other purposes, of that be was not strict in obliging his tenant to adhere strictly to the way, he had allowed the tenant for his convenience occasionally to make deposits of this kind on other parts of the close, still it is utterly Impossible that by such a course of proceeding the truant as against his landlord could acquire any enactment whatever.

7. In Jevnath Ali v. Allabudin (1 Cal. W.N. 151) it held that a tenant is always a tenant and never an owner of the land he always derives his rights from the lessen; and as the latter cannot have the right of enjoyment of an easement as against himself, so neither can his tenant against him. To the similar effect is the decision of the Madras High Court in Basawangudi Narayan Kamthy v. Lmgappa Shettn (38 Mad L.J. 28) where it was painted out that an easement by prescrption, as seated in Section 12 of the Act, could only be acquired by persons who have been owners of immovable property and not mere lessees; and that if a lessee by his what acquires any easement over another's land, he acquires it for the benefit of the tenements he is holding; and as that holding belongs to his landlord, the benefit will go to the latter.

8. In Abdul Bashd and Ors. v. B. Baham Saran (A.I.R 1988 All 293), relying on the observations of Lord Cairns in Gayford v. Mofiott (1869) 4 Ch. A. 133, to the effect that it would be inequitable for a lessee to prescribe against the landlord as regards the acquisition of a right of way or any other caserne it, u was held by a Full Bench of the Allahabad High Court that a lessee of the land which he has taken for building purposes is not in the position of an owner of immoveable property under Section 12 of the Act for the purpose of a right of way and hence such person cannot acquire the right of way by easement over other land owner by his lessor.

9. In Doma v. Ragho (I.L.R 1917 Nag. 254). it was held that no easement by prescription can be acquired by a tenant against his landlord

10. Again in Girdhar Singh v. Gokul (1975 Raj. L.W. 299), it was held that a tenant cannot acquire a prescriptive right of easement in land or well belonging to the landlord.

11. In view of the foregoing, we have no hesitation in holding that the High Court was right in disallowing the claims of the appellant and restoring the decision of the trial court in reversal of the decision of he lower appellate court. We must, however, make it plain that we say nothing in respect of a tenant's right of acquisition of easement of light and air or support for the building erected by him on the leasehold, as we his not concerned with the same in the present case. We would also like to add that it quite often happens that in many States, land reforms measure confer the substantial part of the ownership on tenants leaving only the husk of landlordism in the landlord himself. In such a situation the question may well arise whether the principle of acquisition of easements by the tenant who is the substantial owner, is permissible or not over landlord's other lands. This

question need not engage us here because the appellant is cot any such tenant. In the result, the appeal fails and is hereby dismissed but without any order as to costs.