

**(1988) 03 MAD CK 0068**  
**In the Madras High Court**

K. Subramaniam and Another

APPELLANT

Vs

M. Sankaran Pillai and Another

RESPONDENT

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**Date of Decision :** 21-03-1988

**Acts Referred:**

**Citation :** (1988) 1 LW 352 : (1988) 1 MLJ 134

**Hon'ble Judges :** V. Ratnam, J

**Bench :** Division Bench

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## **Judgement**

V. Ratnam, J.—The plaintiffs in O.S. 783 of 1977, District Munsif Court, Madurai town, are the appellants in this second appeal. They laid that suit praying for the delivery of vacant possession of the suit lane to the 2nd appellant without any hindrance and for a mandatory injunction directing the respondents to remove the staircase, door ways, tap, etc, put up by the respondents in the suit lane.

2. Briefly stated, the case of the appellants is as under: The suit lane originally belonged to the first appellant. To the north of the suit lane, the first appellant owned a house, that house was sold to the respondents under Ex. B1, dated 12.2.1972. On that day, the first appellant granted a licence by an unregistered document in favour of the respondents to use the suit lane to secure access to the toilet in the house sold to the respondents. The licence, according to the first appellant, was granted for the specific purpose of securing access to the toilet and the respondents, as licencees, were not authorised to put up any superstructure or construction in the suit lane. The house owned by the first appellant on the south, inclusive of the suit lane, was sold by him to the second appellant under Ex. A2, dated 12.6.1977. The respondents, according to the appellants, taking advantage of their absence away at Sholavandhan, put up a staircase, and other structures in the suit lane and on coming to know of the same, on 30.7.1977 a notice was issued to which the respondents sent a false reply. Yet, another notice was issued on 6.8.1977 stating that the licence is revocable at will and calling upon the respondents to remove the stair case and other structures put up in the lane. To this, a reply was sent by the respondents

stating that the first appellant had orally agreed to convey the suit lane and calling upon the first appellant to execute a sale deed in respect of the suit lane, failing which a suit for specific performance would be filed. Since the respondents did not remove the stair case and other structures in the lane even thereafter, the appellants instituted the suit praying for the reliefs set out earlier.

3. In the written statement filed by the respondents, they contended that the second appellant, who had purchased the suit lane, was aware of the licence granted to the respondents already by the appellants and that a right of absolute enjoyment of the suit lane had been granted by means of the licence in their favour. They reiterated the agreement entered into between the first appellant and themselves for the sale of the suit lane and further pleaded that the stair case, door way, etc., and the other constructions had all been put up by the respondents to the knowledge of the first appellant. The respondents thus denied the entitlement of the appellants to the reliefs of recovery of possession as well as mandatory injunction.

4. It is necessary at this stage to refer to the institution of O.S. No. 193 of 1978, District Munsif Court, Madurai town, by the respondents against the appellants herein. In that suit, the respondents prayed for the relief of specific performance of an agreement for the sale of the suit lane by the first appellant in their favour. In the written statement filed by the appellants in that suit, they denied the agreement for sale and it was also contended that realising that the respondents cannot have any valid defence in O.S. No. 783 of 1977, they had instituted the suit praying for the relief of specific performance putting forth a false case of oral agreement.

5. The suits O.S. No. 783 of 1977 and O.S. No. 193 of 1978 were, by consent of parties, tried jointly by and the evidence recorded in O.S. 783 of 1977 was agreed to be treated as evidence in the other suit. Before the trial Court, on behalf of the appellants Exs. A1 to A4 were marked and the first appellant was examined as P.W. 1, while, on behalf of the respondents, Exs. B-1 and B-2, were filed and the first respondent gave evidence as D.W. 1. On a consideration of the terms of the licence as well as the other documentary and oral evidence, the learned District Munsif, by a common judgment, found that the licence granted by the first appellant in favour of the respondents stood revoked, that the second appellant is the owner of the suit property having purchased the same from the first appellant, that the licence did not authorise the respondents to put up any staircase or other fixtures in the suit lane and that the oral agreement for the sale of the suit lane by the first appellant in favour of the respondents has not been established. On the aforesaid findings, a decree as prayed for in O.S. 783 of 1977 was granted in favour of the appellants, while O.S. 193 of 1978 instituted by the respondents herein was dismissed. Aggrieved by this, the respondents herein preferred A.S. 118 and 119 of 1979 to the Sub Court, Madurai. By a common judgment, the learned Subordinate Judge while upholding the conclusion of the trial court, that the oral agreement for sale of the suit lane set

up by the respondents herein had not been made out, however, took the view that the licence granted by the first appellant in favour of the respondents herein was irrevocable in view of Section 60 of the Indian Easements Act (hereinafter referred to as the Act) and dismissed A.S. 119 of 1979 but allowed A.S. 118 of 1979. The respondents herein have not preferred any second appeal against A.S. 119 of 1979 and that adjudication has become final and it is therefore unnecessary to further refer to that. The appellants in this second appeal have challenged the correctness of the view taken by the lower appellate Court that the licence granted by the first appellant in favour of the respondents is irrevocable u/s 60 of the Act.

6. Learned Counsel for the appellant first contended that in the written statement filed by the respondents, they had not even raised a plea that the licence is irrevocable and that too in view of Section 60 of the Act and that it was only before the appellate Court that such a plea had been raised for the first time and therefore the lower appellate Court ought not to have permitted a new plea before it. Reliance was also placed in this connection upon the decision of the Supreme Court in *Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company*, to contend that in the absence of the raising of a specific plea with reference to the licence at the trial stage, it could not be raised at the appellate stage. On the other hand, learned Counsel for the respondents submitted that though Section 60 of the Act had not been specifically referred to in the written statement, yet, in para 8 thereof, it had been stated that there is no question of termination of the licence and this would suffice even to support a plea u/s 60 of the Act.

7. It is true that in the written statement filed by the respondents in O.S. 783 of 1977, there is no specific or pointed reference to the irrevocability of the licence granted by the first appellant in favour of the respondent herein in view of Section 60 of the Act. It is also true that no issue as such had been framed relating to this aspect by the trial court. Even so, it is seen that in para 8 of the written statement filed by the respondents in O.S. 783 of 1977, after setting out the content of the rights under the licence granted, the respondents have stated that there is no question of revoking or putting an end to the licence granted. This plea so taken even without a specific reference to Section 60 of the Act, can be construed to be one relating to the irrevocability of the licence. Apart from this, the present case is not one, where there is not even a whisper about the plea of irrevocability. There is a reference in the written statement to the irrevocability of the licence, though not expressed in so many words, particularly with reference to Section 60 of the Act. Under those circumstances, the first contention of the learned Counsel for the appellants cannot be countenanced and the decision of the Supreme Court relied on by the learned Counsel for the appellants cannot be of any assistance to the appellants.

8. Learned Counsel for the appellants next contended drawing attention to the terms of the licence that neither Section 60 (a) or Section 60 (b) of the Act

would apply rendering the licence irrevocable. Elaborating this, the learned Counsel submitted that the licence in this case was granted only for the purpose of giving access to the respondents to reach the toilet from their newly acquired house in the north through the suit lane and such a licence is not coupled with any transfer of property and therefore Sec 60 (a) of the Act would not apply. Referring to Section 60 (a) of the Act, learned Counsel submitted that having regard to the purpose for which the licence was granted, the respondents could not be said to have acted upon the licence; but had acted contrary to it by putting up a stair case, etc, and that the constructions put up also cannot be characterised as a work of a permanent character as to render the licence irrevocable u/s 60 (b) of the Act. Per contra, learned Counsel for the respondents submitted that the licence was granted on the same day when the house on the north was sold by the first appellant to the respondents and the licence so granted would be one, coupled with the transfer of property falling u/s 60 (a) of the Act, rendering the licence irrevocable so long as the transfer remained in force. It was also further contended that on the strength of the licence granted in favour of the respondents, they had been using the lane in question and had executed work of permanent character incurring expenses thereby attracting the applicability of Section 60(b) of the Act also.

9. In order to appreciate the contentions so raised it would be necessary to refer to a few undisputed facts, the terms of the licence as well as the relevant provisions of the Act relating to the irrevocability of a licence. There is no dispute that the house to the north of the lane was sold by the first appellant to the respondents on 12-2-1972, under Ex. B-1. On that very day, under Ex. A-1 a licence was granted by the first appellant in favour of the respondents to use the suit lane for the purpose of enabling the respondents to have access to the toilet in their house, which was purchased on 12-2-1972. The first appellant sold to the second appellant another house in the south along with the suit lane under Ex. A-2 dated 12-6-1977. It is seen from Ex. A-1 (same as Ex. B-2) that the first appellant had granted to the respondents the licence to use the suit lane in the following terms:

Under Section 52 of the Act, a licence is defined as the grant of right by one person to another 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. Section 59 of the Act declares that when the grantor of the licence transfers the property affected thereby, the transferee is not as such bound by the licence, Section 60 of the Act provides that a licence may be revoked by the grantor, except in two, cases provided thereunder, viz., (1) when the licence is completed with a transfer of property and such transfer is in force: (2) when the licensee acting upon the licence has executed works of a permanent character, and incurred expenses in the execution. It is unnecessary for purposes of the present case to notice the other provisions of the Act.

10. Admittedly, at the time when the licence under Ex. A-1 was granted by the first appellant to the respondent, the first appellant was the owner of the suit property as well as the house south of it. In order to enable the respondents to have access to the toilet in the house purchased by them to the north of the suit lane, the first appellant granted a right of passage to them over the suit lane. Therefore, but for the licence so granted by the first appellant, the respondents could not have used the suit lane to secure access to the toilet in the house situated in the north and purchased by them. Taking into account the ownership of the suit lane in the first appellant at the time of the purchase of the house in the north by the respondents under Ex. B1, dated 12.2.1972, if the respondents had otherwise attempted to have access through the suit lane to reach the toilet in the house, that would have been unlawful. It was only the licence granted under Ex. A1 by the first appellant to the respondents, that enabled them to enter upon the suit lane, which admittedly belonged to the first appellant. The right so conferred by the first appellant on the respondents, would neither be an easement nor an interest in the property. Undoubtedly therefore a licence was granted by the first appellant in favour of the respondents under Ex. A1. Earlier it has been noticed how the first appellant subsequently sold the house in the south as well as the suit lane to the second appellant under Ex. A2, dated 12-6-1977. Section 59 of the Act recognises the principle that a licence is not annexed to property and it is also not a transferable or heritable right; but a personal right granted by the owner of the property in favour of the licensee. In other words, the principle is that ordinarily the transferee is not bound by the licence granted by the transferor licensor and on transfer, the licence ceases to be operative. Section 60 provides ordinarily for the revocation of the licence by the grantor with, only two exceptions, set out earlier. A conjoint reading of Sections 59 and 60 would establish that though ordinarily all licences are revocable when the grantor transfers the property, yet, in the two exceptional cases provided for u/s 60 of the Act, the transfer would not by itself put an end to the licence. In other words, Section 60 qualifies and restricts the scope of the general provisions with reference to the revocability of licence u/s 59. Viewed thus, the transfer of the house in the south and the suit lane by the first appellant under Ex. A2 may not by itself bring about a revocation of the licence granted by the first appellant in favour of the respondents under Ex. A1 unless the applicability of Section 60 of the Act is excluded.

11. Whether Section 60 of the Act would apply to render the licence granted under Ex. A1 irrevocable may now be considered. u/s 60(a), if the licence is coupled with transfer of property and such transfer is in force, then, it may not be revoked by the grantor. The terms of the licence in this case, Ex. A1, have already been noticed. On its terms, the licence is not in any manner coupled with transfer of property. Oftentimes, licences are granted for different purposes. In some, they are merely for the purpose of enabling another to enter upon the land of the grantor. In others, the right is given to enter upon the grantor's property and also to have the benefit of the transfer of property of the grantor

thereon. The right to enter upon the land of another to lay or maintain a water course thereon, would be a mere licence to enter. Likewise, the right to enter upon a lane to have access would be in the nature of a bare licence. However, the right to enter upon the garden of the grantor and to remove the fruits, the right to have access to the land of the grantor and to fell and carry the felled trees, the right to enter the coal-bearing land of the grantor and to take back the coal dug up from earth, would be a few of the instances, where the licence granted would not be in the nature of a bare licence, to enter upon the property of the grantor, but also to enable the licensee to secure the transfer of the property of the licensor. Thus, one of the requirements to be fulfilled for claiming the benefits of Section 60(a) of the Act is, that the licence should relate to the property of the licensor and it should also enable the licensee to secure a transfer of the property of the licensor from out of that property to enter upon which the licence was granted. To put it differently, the transfer of property, contemplated u/s 60 (a) must have reference to the Same property, for which the licence is granted and be coupled together, that is, both the properties being properties of the grantor. The reasons for making a provision in Section 60 (a) regarding the irrevocability of licences fulfilling the requirements of Section 60 (a) are not far to seek. If the owner of a property grants a licence to another to enter upon his land and appropriate the produce for a period of years, the licence is granted not only to enable the grantee to enter upon the property, but also to appropriate the produce during that period, and such a licence would be one coupled with a transfer of property as it relates to the property of the grantor as well as the produce thereon. In such a situation, when the grantee is to secure not only a right to enter upon another's property, but also to obtain the benefit of property thereon by such entry, then, Section 60 (a) provides that so long as that arrangement remains in force, the licence shall not be revoked. Whether a licence is irrevocable or not, can also be ascertained with reference to the effect of its cancellation. In the case of a bare licence to enter upon the land of another, the revocation bars the grantee from entering upon the property of the grantor subsequently. However, when the licence is one coupled with transfer of property, it not only bars the entry of the grantee into the land of the grantor, but also deprives the grantee of the right to have the benefit of the other property thereon of the grantor during any particular period. It is only in the latter class of case where the revocation of a licence so affects the rights of the licensee to have the benefit of the other property of the grantor for a defined duration, that Section 60 (a) declares the irrevocability of that licence during the time, for which, it had been granted. Applying the aforesaid principles to the licence granted by the first appellant in favour of the respondents herein under Ex. A1, it is seen that the respondents had not been granted any interest in any property of the first appellant, excepting the use of the lane and the licence is not coupled with any transfer of property as such, and therefore, would not fall u/s 60 (a) of the Act. Looked at from the point of view of the effect of the revocation of the licence, the revocation of Ex. A1 does not in any manner deprive the respondents of any interest or benefit or otherwise affect any transfer of property, for, such

revocation merely puts an end to the access they had been enjoying and does not in any manner affect their right to any other property or even their title to the property purchased by them. The argument of the learned Counsel for the respondents that the licence granted under Ex. A1 is coupled with the transfer of property by the first appellant in favour of the respondents under Ex. B1, dated 12-2-1972 is, therefore, without any substance. In as much as the licence granted in this case was one for merely having access over the suit land was not coupled with transfer of property, it follows that Section 60 (a) would not render Ex. A1, irrevocable.

12. In so far as Section 60 (b) of the Act is concerned, the licence would be rendered irrevocable thereunder, if the licensee acting upon the licence, had executed works of permanent character and incurred expenses in that connection. This is to avoid injustice to a licensee, who had acted upon the terms of the licence granted to him and had put up or constructed structures or works of a permanent character incurring considerable expenses by his being asked by revocation to undo all that had been done pursuant to the licence. Even so, one of the essential conditions is that the licensee must have acted upon that licence and executed works of a permanent character, incurring expenses. The licence in this case was for the purpose of using the suit lane to have access to the toilet. No licence had been granted to put up any structure of any sort. For the purpose of using the lane to secure access to the toilet, a staircase, door way, etc., are wholly unnecessary. The work executed must have some reasonable nexus with the purpose for which the licence was granted, as otherwise, the work executed would not be one by the licensee acting upon the licence. In this case, the respondents have put up a staircase, door way, etc, in the lane in question and having regard to the purpose for which the licence was granted by the first appellant in favour of the respondents, the putting up of staircase, door way, etc., by the respondents would not be on their acting upon the licence, but acting wholly contrary to the terms of the licence granted. Apart from this, the staircase, door ways, etc, cannot also be treated as works of permanent character, for, it is not disputed that the staircase is a wooden one and the other structures are not of a permanent nature. The respondents cannot therefore claim that u/s 60 (b) of the Act, the licence is irrevocable, as they had executed works of a permanent character acting upon the licence. Thus, looked at from any point of view, the respondents are not entitled to claim that the licence granted by the first appellant in their favour under Ex. A1 is irrevocable. The lower appellate Court was therefore in error in holding that the respondents can take advantage of Section 60 of the Act and maintain that the licence under Ex. A1 is irrevocable. Consequently, the second appeal is allowed, the judgment and decree of the lower appellate Court are set aside and those of the trial Court O.S. NO. 783 of 1977 will stand restored with costs throughout. The respondents are given two months time to remove the staircase, door way and tap put up by them in the suit lane in question.