
(1920) 09 MAD CK 0003
In the Madras High Court

Nachiparayan

APPELLANT

Vs

Narayana Goundan and Another

RESPONDENT

Date of Decision : 02-09-1920

Acts Referred:

Easements Act, 1882 — Section 47

Citation : 60 Ind. Cas. 171 : (1920) 12 LW 713 : (1920) 39 MLJ 574

Judgement

1. The contention of the appellant in this case is that he enjoyed a right of way over the first respondent's land peaceably and without interruption for a period of twenty years. But it is found that for four years before the institution of the suit the plaintiff did not enjoy any such right of way being effectively prevented from doing so by the first respondent. Those being the facts, the learned Judge held that the plaintiff's suit failed by virtue of the provision of Section 15 of the Easements Act that "each of the said periods of twenty years shall be taken to be a period ending within the two years before the institution of the suit wherein the claim to which such period relates is contested." The argument on behalf of the appellant is that since the appellant had enjoyed for a period of twenty years the right claimed by him peaceably, openly and without interruption, it made no difference that for four years before the institution of the suit he was prevented from using the pathway inasmuch as he never submitted to it but protested against such obstruction. He relies on explanation (2) to Section 15 which lays down that "nothing is an interruption within the meaning of the section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof." This argument, if given effect to,

would really abrogate the condition laid down in that very section that in order to the right of easement being acquired the enjoyment of such rights

must not only be peaceable, open, and without interruption but such enjoyment must extend to within two years before the institution of the suit.

The language of the section seems to be clear that the enjoyment for a period of 20 years must terminate within two years prior to the institution of

the suit, otherwise his enjoyment of a right contemplated in Section 15 for a period of 20 years however long prior to the institution of the suit

would give a person who so enjoyed it an absolute right of easement although for years prior to the suit he never exercised such right at all. That

would be really violating the policy apparently underlying the law of easements. The English law of easements on which the Indian law of easements

is practically based though with some difference, as has been pointed in some of the cases in this Court, requires that the 20 years enjoyment of the

right must be next previous to the institution of the suit. That is what the English statute requires, and this is explained in *Glover v. Coleman* L.R. 10.

C.P. 108. by Mr. Justice Brett as he then was. The same view of the law is taken for granted in *Flight v. Thomas* 8 Clause and F. page 240. The

Indian legislature in this connection has departed from the English rule to this extent that it lays down that it would be sufficient that if the enjoyment

for a period of 20 years extended within two years before the institution of the suit instead of being immediately previous to the institution of the

suit, and the rulings of the Indian Courts are unanimous on the point. In this Court the law is explained in *Muthu Goundan v. Anantha Goundan*

(1915) 29 M.L.J. 685 In the Allahabad High Court in *Sultan Ahmad v. Valiulla* (1912) 10 A.L.J. 227 and *Mahomed Maruf v. Sultan Ahmad*

(1913) 12 A.L.J. 415 and in the Calcutta High Court in *Junhavi Chowdhurani v. Bindhu Bashini Ghosh-dharini* I.L.R.(1899) . Cal. 593 and in

Juggernath Barji v. Kanai Das Byragi (1901) 6 C.W.N 31 . As pointed out by *Chamier J.* in *Sultan Ahmad v. Valiullah* (1912) 10 A.L.J. 227 the

result of the Easements Act and the similar provisions of the Limitation Act is that a right of easement cannot be said to be perfected until the right

is declared by a decree of Court, that is to say, a person may enjoy a right of way or a right to access of light and air over the servient tenement for

a period of 20 years but if he is interrupted afterwards for one year and that interruption is acquiesced in the benefit of the previous enjoyment will

be destroyed unless he comes within two years of the institution of the suit and gets a decree declaring his right.

2. It was also suggested by the learned Vakild for the appellant that his client had an immemorial right and that in the circumstances a lost grant

ought to have been presumed in his favour. But this question was not properly raised in the trial court.

3. The result is that the second appeal is dismissed with costs.