RAMA UNIVERSITY

www.ramauniversity.ac.in

FACULTY OF JURIDICAL SCIENCES

COURSE: **BALLB &BBALLB**

SEMESTER: VI

SUBJECT: Law of Property

SUBJECT CODE: **B A L** 603

&BBL 603

NAME OF FACULTY:

Mr.J.P.Srivastava

RAMA UNIVERSITY

Lecture-37

3. Creation of Easement by prescription.- In terms of Section 15 of the Easement Act, where the access and use of light or air and for any building have been peaceably enjoyed therewith, and an easement, without interruption, and for twenty years, hence, the right of easement is created by prescription rather use.

Illustrations

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstructions but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title therein, as an easement and as to right without interruption, from 1st January 1862 to 1st January 1882. The plaintiff is entitled to the easement.

(b) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time, the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

In this case, the appellant continuously using a pet in dispute without any objection for more than 20 years. It raises a presumption in favour of the appellant/plaintiff. It was held that the plaintiff acquired elementary right by way of prescription.

But, in *Puri Municipality* v. *Sradhamani Devi,* wherein suits land used for sweepers passage by the municipality to clean public latrine and there is no express behest from the owner of the privy. It was held that the municipality cannot claim an easement by prescription over the suit land.

It is a settled view that the easement by prescription cannot be claimed where the plaintiff had put forward specifically, a claim of title to the property and failed to establish that his care cannot fall back on his claim of acquisition of an easement by prescription.

4. Creation of Easement by necessity.- Section 13 of the Easements Act deals with the easements by necessity and quasi — easements.

Easement of necessity means that easement, without which enjoyment of any segregated property is impossible. Thus, if a property is so adjacent or situated that the owner of that property cannot enjoy that property without enjoying the other property, in case the property is segregated, the owner of the property is allowed to enjoy those easements which are necessary to him. This is called easement of necessity.

An easement of necessity being an easement without which a property cannot be used at all and not being merely necessary to the reasonable enjoyment of the property a plaintiff cannot claim on the ground of necessity a right of way over the land of another where another mode of access to his property exists.

According to Clause (a) of Section13 of the Easement Act, if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transferor bequest, the transferee or the legatee shall be entitled to such easement.

According to Clause © of Section13 of the Easement Act, if an easement in the subject transfer or is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative for the testator shall be entitled to such easement.

According to Clause (e) of the Easement Act, if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement.

In the case of *State* v. *Hiralal,* it was held that "for easement of necessity it is essential that first, it should fall within the definition of "easement" under Section 4 of the Act. Unless it does not come within this definition and does not fulfill the requirements of easements, it would not be proper to consider whether it is an easement of necessity or not and when falls within the

definition of easement only, then it would be good to consider that it is related to what kind of easement and whether it is an easement of necessity or not."

In *Govind Bhatt* v. *Marumala Rama Bhatt,* it was held that "the criteria of easement of necessity are "highly essential" and it can be claimed only when it is highly essential. Although it is a question of fact whether an easement is an easement of necessity or not."

In *Sukhdev* v. *Kedarnath,* it was held by Allahabad High Court that "easement of necessity is such an easement without which property cannot be used at all. Hence, it is an easement which is necessary only for the use of the property."

A TEST OF EASEMENT OF NECESSITY

It was held that mere inconvenience or convenience is not the test of easement of necessity, however, it arises where normally both dominant and servient tenements have been in common ownership. So that the creation of an easement by implication of law may be said to be the outcome of the former jointness of the two tenements. The disposition which causes a cessation of the common ownership that gives rise to the creation of an easement may be of either tenement or simultaneous disposition of both tenements.

It is to be noted that easement of necessity is an easement without which the property cannot be used and it cannot be merely one for the reasonable enjoyment of the property and considering the question of easement of necessity, convenience is not the test but absolute necessity.

In *Mathu* v. *Varied,* it was held that an easement of necessity cannot be there in the absence of severance of tenements.

It is well settled that the easement by necessity cannot be claimed on the availability of alternative ways.

MCQ

1. Creation of Easement by necessity is provided in

(a) 11 **(b) 12**

(c) 13 **(d) 14**

2. Easement of necessity means that easement, without which enjoyment of any segregated property is impossible.

(a) True (b) False

(c) Can not say (d) None of the above

3.In which case held held that "for easement of necessity it is essential that first, it should fall within the definition of "easement" under Section 4 of the Act. Unless it does not come within this definition and does not fulfill the requirements of easements, it would not be proper to consider whether it is an easement of necessity or not and when falls within the definition of easement only, then it would be good to consider that it is related to what kind of easement and whether it is an easement of necessity or not.

(a) *State* v. *Hiralal,*

(b) *Govind Bhatt* v. *Marumala Rama Bhatt,*

(c) *Sukhdev* v. *Kedarnath*

(d) None of the above

4. An easement of necessity being an easement without which a property cannot be used at all and not being merely necessary to the reasonable enjoyment of the property a plaintiff cannot claim on the ground of necessity a right of way over the land of another where another mode of access to his property exists.

(a) True (b) False

(c) Can not say (d) None of the above

5. The easement by necessity cannot be claimed

(a) in the absence of severance of tenements.

(b) on the availability of alternative ways.

(c) Both (a) and (b)

(d) None of the above