



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B. 1st Semester

SUBJECT: Law of Property

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Lecture-39



CUSTOMARY EASEMENT

According to Section 18 of the Easement Act, 1882 an easement may be acquired by virtue of local custom. Such easements are called customary easements.

Essentials.-The following are essentials of a valid custom:-

1. Immemorial Antiquity;
2. Reasonableness;
3. Continuity;
4. Peaceful enjoyment; and
5. Certainty.

Proof of custom.- In the view of the Supreme Court decision in *Munnalal v. Raj Kumar*, it is well settled that where custom is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom is introduced into the law with the necessity of proof of each individual case. Such a custom has been recognised and can certainly be regarded as affording corroboration of the evidence of the witnesses who have deposed to the same in another case.

In *Prabhawati Devi v. Mahendra Nath Singh*, it has been held that there is no hesitation in taking judicial notice to customs and holding that in absence of any evidence to the contrary, that such custom is well established and prevailed in that area.

The burden of proof.- In *Chidambara v. Vedayathevan*, it has been held by the Madras High Court that the burden of proving customary right is upon the defendant who claims the right of way over the land of someone else.

Difference between easement and licence

Difference between easement and licence are as follows :

(i) An easement can be acquired by acceptance or constructive or negative enjoyment or grant or law whereas licence is granted by consent only.

(ii) Easement is related to any immovable property whereas licence is a personal right and it has no relation with property.

(iii) Easement is transferred with transfer of property whereas licence cannot be transferred.

(iv) Easement may be both positive as well as negative right whereas licence is only a positive right.

(v) In the case of easement, transferee is bound to recognise it whereas, in case of licence, a person is not bound to recognise licence to whom property is transferred.

(vi) Easement creates an interest in the immovable property whereas licence does not create any interest in the immovable property.

(vii) In case of easement, dominant owner or person having property can institute a suit in his name whereas in case of licence, licensee cannot institute any suit in his name.

In *Tanauv Gulam v. Collector of Bombay*, it was held that due to enactment of provisions relating to licences in the Indian Easement Act, 1882, it cannot be said that licences are included in the easement.

