

EASEMENTS ACT, 1882

5 of 1882

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An Act to define and amend the law relating to Easements and Licenses. Whereas it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows :-

1. Short title :-

1. This Act may be called the Indian Easements Act, 1882. Local extent, commencement. It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg; It shall come into force on the first day of July, 1882.

2. Savings :-

Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from-

(a) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams' flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;

(b) any customary or other right (not being a license) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. Construction of certain references to Act XV of 1877, and Act IX of 1871 :-

All references in any Act or Regulation to S.26 of the Indian Limitation Act, 1877 , S.27 of the Indian Limitation Act, 1877 or to sections 27 and 28 of Act No. IX of 1871 shall, in the territories to which this Act extends, be read as made to section 15 and Section 16 of this Act.

CHAPTER 1

OF EASEMENTS GENERALLY

4. "Easement" defined :-

An easement is a right which the owner or occupier of certain land possess, 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. Dominant and servient heritages and owners The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

5. Continuous and discontinuous, apparent and non-apparent easements :-

Easements are either continuous or discontinuous, apparent or non-apparent. A continuous easement is one whose enjoyment 'is, or may be, continual without the act of man. A discontinuous easement is one that needs the act of man for its enjoyment. An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him. A non-apparent easement is one that has no such sign.

6. Easement for limited time or on condition :-

An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

7. Easements restrictive of certain rights :-

Easements are restrictions of one or other of the following rights (namely):- Exclusive right to enjoy.

(a) The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Rights to advantages arising from situation.

(b) The right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the rights above referred to.

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household

purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon : provided that he does not thereby cause material injury to other like owners.

CHAPTER 2

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS

8. Who may impose easements :-

An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

9. Servient owners :-

Subject to the provisions of section 8 , a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

10. Lessor and mortgagor :-

Subject to the provisions of section 8 , a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

11. Lessee :-

No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

12. Who may acquire easements :-

An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same. One of two or more co-owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property. No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the

property comprised in his lease.

13. Easements of necessity and quasi easements :-

Where one person transfers or bequeaths immovable property to another,-

(a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall unless a different intention is expressed or necessarily implied, be entitled to such easement. Where a partition is made of the joint property of several persons,-

(e) 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; or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement. The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity. Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

14. Direction of way of necessity :-

When a right to a way of necessity is created under section 13 , the

transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner. When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Acquisition by prescription :-

Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years, and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years, the right to such access and use of light or air, support or other easement shall be absolute. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

16. Exclusion in favour of reversioner of servient heritage :-

Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

17. Rights which cannot be acquired by prescription :-

Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights. None of the following rights can be so acquired:-

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;

(b) a right to the free passage of light or air to an open space of

ground;

(c) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(d) a right to underground water not passing in a defined channel.

18. Customary easements :-

An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

19. Transfer of dominant heritage passes easement :-

Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

CHAPTER 3

THE INCIDENTS OF EASEMENTS

20. Rules controlled by contract or title :-

The rules contained in this Chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed. Incidents of customary easements And when any incident of any customary easement is inconsistent with such rules, nothing in this Chapter shall affect such incident.

21. Bar to use unconnected with enjoyment :-

An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

22. Exercise of easement - Confinement of exercise of easement :-

The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

23. Right to alter mode of enjoyment :-

Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional

burden on the servient heritage. Exception: The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

24. Right to do acts to secure enjoyment :-

The dominant owner is entitled, as against servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage. Accessory right. Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

25. Liability for expenses necessary for preservation of easement :-

The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

26. Liability for damage from want of repair :-

Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

27. Servient owner not bound to do anything :-

The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

28. Extent of easements :-

With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect :- Easement of necessity. An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed. Other easements. The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired. In the absence of evidence as to such intention and purpose- Right of way.

(a) A right of way of any one kind does not include a right of way of any other kind; .. Right to light or air acquired by grant.

(b) The extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made; Prescriptive right to light or air.

(c) The extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used; Prescriptive right to pollute air or water.

(d) The extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose; and Other prescriptive rights.

(e) The extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

29. Increase of easement :-

The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement. Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and, if the dominant heritage is diminished by dilluvion, the easement is proportionately diminished. Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

30. Partition of dominant heritage :-

Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares but not so as to increase substantially the burden on the servient heritage : Provided that such annexation is consistent, with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

31. Obstruction in case of excessive user :-

In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage : provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

CHAPTER 4

THE DISTURBANCE OF EASEMENTS

32. Right to enjoyment without disturbance :-

The owner or occupier of the dominant heritage is entitled to enjoyment the easement without disturbance by any other person.

33. Suit for disturbance of easement :-

The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto : Provided that the disturbance has actually caused substantial damage to the plaintiff.

34. When cause of action arises for removal of support :-

The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

35. Injunction to restrain disturbance :-

Subject to the provisions of the Specific Relief Act, 1877, section 52 , Section 53 , Section 54 , Section 55 , section 56 and Section 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement-

(a) if the easement is actually disturbed,-when compensation for such disturbance might be recovered under this Chapter;

(b) if the disturbance is only threatened or intended,-when the act threatened or intended must necessarily, if performed, disturb the easement.

36. Abatement of obstruction of easement :-

Notwithstanding the provisions of section 24 , the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER 5

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS

37. Extinction by dissolution of right of servient owner :-

When, from a cause which preceded the imposition of an easement,

the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

38. Extinction by release :-

An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner. Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the, dominant heritage. An easement may be released as to part only of the servient heritage.

39. Extinction by revocation :-

An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

40. Extinction on expiration of limited period or happening of dissolving condition :-

An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

41. Extinction on termination of necessity :-

An easement of necessity's extinguished when the necessity comes to an end.

42. Extinction of useless easement :-

An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

43. Extinction by permanent change in dominant heritage :-

Where, by, any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished unless-

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity. Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

44. Extinction on permanent alternative of servient heritage by superior force :-

An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement: Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section 14 apply to such way.

45. Extinction by destruction of either heritage :-

An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

46. Extinction by unity of ownership :-

An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

47. Extinction by non-enjoyment :-

A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years. A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such. Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner: Provided that, if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under Indian Registration Act, 1877 (3 of 1877), a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration. Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section. The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section. An easement is not extinguished

under this section-

(a) where the cessation is in pursuance of a contract between the dominant and servient owners;

(b) where the dominant heritage is held in co-ownership, and one of the coowners enjoys the easement within the said period;

(c) where the easement is a necessary easement. Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

48. Extinction of accessory rights :-

When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

49. Suspension of easement :-

An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

50. Servient owner not entitled to require continuance :-

The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage. Compensation for damage caused by extinguishment or suspension Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

51. Revival of easements :-

An easement extinguished under section 45 revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a

manner as not to impose a greater burden on the servient heritage. An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause. A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47 .

CHAPTER 6 LICENSES

52. "License" defined :-

Where one person grants to another, or to a-definite number of other persons, a right 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, the right is called a license.

53. Who may grant license :-

A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

54. Grant may be express or implied :-

The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

55. Accessory licenses annexed by law :-

All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

56. License when transferable :-

Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

57. Grantors duty to disclose defects :-

The grantor of a license is bound to disclose to the licensee any

defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

58. Grantors duty not to render property unsafe :-

The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

59. Grantors transferee not bound by license :-

When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

60. License when revocable :-

A license may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

61. Revocation express or implied :-

The revocation of a license may be express or implied.

62. License when deemed revoked :-

A license is deemed to be revoked-

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license;

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative;

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license;

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable;

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee;

(i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Licensees rights on revocation :-

Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

64. Licensees rights on eviction :-

Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.