

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Phillips.

1917,
November 29,

SRINIVASA UPADYA (PLAINTIFF), APPELLANT,

v.

RANGANNA BHATTA (DIED) AND THREE OTHERS DEFENDANTS AND
HIS LEGAL REPRESENTATIVE RESPONDENTS.*

Easements Act (V of 1882), sec. 15—Easements—Prescription against Government—Right of way, and to surface water over land belonging to Government—Enjoyment for thirty or forty years against Government—Assignment, by Government to private person—Suit against latter within two years of assignment—Right of easement against assignee, whether acquired by prescription—“Belongs to Government” in section 15 of the Easements Act, meaning of.

Where an easement had been exercised by the plaintiff over land belonging to Government for thirty or forty years before the land was assigned by the Government to the defendant, and the plaintiff sued within two years of the assignment to enforce the right of easement against the defendant,

Held, that the plaintiff had not acquired a right to the easement by prescription against the defendant.

The words “belongs to Government” in the last paragraph of section 15 of the Indian Easements Act (V of 1882), must refer not to the time of suit but to the time during which the easement is enjoyed.

SECOND APPEAL against the decree of A. J. CURGENVEN, the District Judge of South Kanara, in Appeal No. 286 of 1915 preferred against the decree of C. N. KUPPUSWAMI AYYAR, the District Munsif of Udipi, in Original Suit No. 126 of 1914.

The plaintiff sued for a declaration that he was entitled by prescription to a right of way and to a right to surface water over land which had originally belonged to the Government but was assigned by the latter to the defendant two years before the present suit, and also prayed for a perpetual injunction to restrain the defendant. The plaintiff had enjoyed the right for thirty or forty years against the Government before the assignment of the servient tenement to the defendant. Both the lower Courts dismissed the suit on the ground that the plaintiff had not acquired by prescription a right to the easements in question. The plaintiff preferred a Second Appeal.

* Second Appeal No. 1098 of 1916.

K. Yagnanarayana Adiga for *B. Sitharama Rao* for the appellant.

K. Sundara Rao for the respondents.

The judgment of the Court was delivered by

AYLING, J.—The subject of dispute is an easement claimed as prescription. The servient tenement belonged to Government till two years before suit and was then assigned by Government to the defendant. At the time of assignment the easement had been exercised only for thirty or forty years and had therefore not become absolute as against Government. Appellant contends that the transfer of ownership had the effect of rendering it absolute inasmuch as the servient tenement became the property of a private individual against whom the previous thirty or forty years enjoyment would be sufficient under section 15 of the Easements Act.

The point is a novel one and is not covered by authority. But we think appellant's contentions cannot be admitted. We think the words "belongs to Government" in the last paragraph of section 15 must refer, not to the time of suit but to the time during which the easement is enjoyed. An easement can only be acquired by twenty years enjoyment against a private person or by sixty years enjoyment against Government. Here neither condition is satisfied. It may be that where the sixty years' period has nearly expired, during Government ownership of the land, and the land is then transferred by Government to a private party, the acquisition of the easement might be held to be completed when the deficiency was made up by subsequent enjoyment against the transferee but subject to this the person claiming the easement must make good his title by twenty years' enjoyment against the transferee after the transfer.

If we adopted the view contended for by appellant, we should have to hold that the transfer of the servient tenement by a private owner to Government would have the effect of destroying any easement right, which had been legitimately acquired by twenty years enjoyment but which had not been enjoyed for the period of sixty years required as against Government. The appeal is dismissed with costs.

SRINIVASA
UPADYA

v.
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BHATTA.

—
AYLING, J.

K.R.