Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

B. N. W. RAILWAY CO. (DEFENDANT) *v.* MUNESHAR RAM AND OTHERS (PLAINTIFFS)* 1937 *January, 5*

Easements Act (V of 1882), sections 4, 15—Easement acquired by prescription—Absolute right in the land itself and not merely against some individual—Right available against both owner and occupier or no right against either—Land owned by Government and occupied by railway—Less than 60 years' continuous enjoyment—No right acquired against Government or railway—Land Acquisition Act (I of 1894), section 43—Land acquired for railway company—Government property.

A right of easement acquired by prescription is, under section 15 of the Easements Act, an absolute right and is acquired against the servient heritage itself and not merely against one or more of the persons interested in that land. It is an absolute right available against all persons connected with the land, whether as owners or as occupiers. Section 4, paragraph 2, of the Act does not contemplate the acquisition of an easement against an occupier only but not against the owner. So, where land owned by the Government was occupied by a railway company, and there was less than 60 years' continuous enjoyment of a right of easement claimed by the plaintiff against that land, it was *held* that no right of easement had been acquired either against the Government or against the occupier the railway company.

According to section 43 of the Land Acquisition Act, where land is acquired by Government for a railway company for which the Government is bound to provide land, the provisions of part VII of the Act do not apply to such acquisition, and such land becomes the property of Government and not the property of the railway company.

Mr. *B. Malik,* for the appellant.

Messrs. *K. Verma* and *K. L. Misra,* for the respondents.

SULAIMAN, C.J., and BENNET, J.:—This is a second appeal by the defendant B. N. W. Railway Company against the decree passed by the lower appellate court in favour of the plaintiffs. The plaintiffs brought a suit on the allegation that they had built their houses

*Second Appeal No. 1614 of 1934, from a decree of Shiva Harakh Lal, Additional Civil Judge of Azamgarh, dated the 4th of October, 1934, modifying a decree of Niranjan Lal Gupta, First Additional Munsif of Azamgarh, dated the 1st of February, 1934.

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about 30 years ago in a village Musapur close to Azamgarh railway station and that in front of those houses there always existed a piece of vacant land and that the railway company has recently made trenches and ditches marking the boundary of the railway property apparently and that these constructions rendered entry in and exit from the houses of the plaintiffs almost impossible and interfered with their enjoyment of light and air and therefore with their right of easement. The plaintiffs prayed for a perpetual injunction restraining the defendants from making such constructions and for demolition of the constructions made. The defence of the railway company was that the land was the property of Government, acquired under the Land Acquisition Act (Act No. I of 1894) in the year 1896 and that the ownership of the land vested in Government and that the period of acquisition of an easement against Government was 60 years and therefore the easement alleged by the plaintiffs has not been acquired. The trial court held that the period of 60 years user was not alleged by the plaintiffs and therefore the plaintiffs could not have acquired any right of easement. The suit was therefore dismissed. The plaintiffs appealed and the lower appellate court confirmed the finding that the land was property of the Government and that the period for acquiring an easement against Government was 60 years and therefore no easement had been acquired. But the court held from an inspection note of the Munsif that the plaintiffs would be inconvenienced by the constructions and that the constructions were in the nature of nuisances and therefore the court granted a decree and an injunction as asked for in the plaint. The ground urged in second appeal by the railway company is that the plaintiffs have no right to the relief granted because they had no right of easement. Learned counsel for the respondents has contended that the courts below were not correct in

holding that the land was the property of the Government. Under section 43 of the Land Acquisition Act it is provided that the provisions of chapter VII for the acquisition of land for companies do not apply to the case of acquisition of land for a railway under an agreement between the company and the Secretary of State for India by which the Government is bound to provide land. Presumably therefore such land is acquired by Government under the earlier provisions of the Act and becomes the property of Government and not the property of the railway company. This is what has been found by the courts below and there is no reason to interfere with that finding. Learned counsel for the respondents further argued that under section 4 of the Easements Act, second paragraph, an easement could be acquired against the occupier of the land, although it may not be acquired against the owner. The words used are: "the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner". His argument was that by the alleged use of the land for a period of 30 years a right of easement may be acquired against the railway company as occupier, although there would be no right of easement against Government as the owner of the land, as the period of 60 years has not been fulfilled. But we are of opinion that the Easements Act does not contemplate any such acquisition of an easement against an occupier and not against an owner. In our view an easement is acquired in the land and not against one or more of the persons interested in the land. In section 15 of the Easements Act, after enumerating the different kinds of easements including those claimed in the present case, the section proceeds to state that "the right to such access and use of light or air, support or other easement shall be absolute". As the section states that the right acquired by prescription shall be absolute, it is not possible to hold that such a right should exist only against the occupier and not against the owner. If the

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right is absolute, it must be a right in the land itself and an absolute right against all persons connected with the land whether as owners or as occupiers. Accordingly we allow this second appeal and dismiss the suit of the plaintiffs throughout with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

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BIRESHWAR DAS BAPULI AND OTHERS (DEFENDANTS) *v.* UMA KANT PANDAY (PLAINTIFF)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 30—Benefit of scheduled rate of interest—"Debtor"—Includes successor of original debtor or mortgagor—Need not be himself an "agriculturist".

All that is necessary for the application of section 30 of the U. P. Agriculturists' Relief Act, is that there should be a "loan" taken before the Act, i.e. the loan should have been taken by a person who was an "agriculturist". The section does not say that the "debtor" entitled to the benefit of the section must be an "agriculturist" debtor; the word "debtor" in the section, therefore, may cover one who is not an agriculturist.

The word "debtor" in section 30 is used in the wide sense of one who has to pay a debt and is not limited to the person who took the loan nor to a person who is personally liable. He may be a successor of the original mortgagor, though as such he is not personally liable for the debt.

Messrs. *B. Malik* and *N. C. Tewari*, for the appellants.

Drs. *K. N. Katju* and *K. N. Malaviya*, for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a first appeal from order by certain applicants under sections 5 and 30 of the U. P. Agriculturists' Relief Act. A preliminary objection is taken that an appeal does not lie to this Court. In reply a reference was made to the fact that the property in question was valued at Rs.30,000. But it is necessary to examine the language

*First Appeal No. 19 of 1936, from an order of Brij Narain, Second Additional Subordinate Judge of Benares, dated the 21st of December, 1935.