



**MANISHA MAHENDRA GALA & ORS. VS. SHALINI BHAGWAN AVATRAMANI
& ORS.**

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INTRODUCTION

Easementary Right is a right held by one owner upon the land of another owner. In other words, it is a right that arises out of certain aspects of morality, which allows a third person to enjoy certain benefits concerning the property, on which he has neither ownership nor possession.¹ In this case, it discusses whether the person, the appellant as mentioned above, has the easementary right over the land of the respondent. The Galas are the appellants who are claiming the easementary right under prescription, necessity or agreement as the basis to access their land through the 20 ft. wide road, which is situated under the ownership of Ramani. After many appeals, this case has reached the Hon'ble Supreme Court bench in the Civil Appeal No.9642 of 2010. This case was adjudicated by the Divisional Bench comprising Hon'ble Justice Pankaj Mithal and Hon'ble Justice Prashant Kumar Mishra. The judgment of the case was pronounced on 10th April 2024. This case involves Sections 4, 13 and 15 of The Indian Easements Act 1882 and Section 107 of the Code of Civil Procedure 1908. Thus, this case stands as an interpretation of the Easementary Rights in Indian Property Law and also stands as a landmark judgement.

FACTS OF THE CASE

Ramchandra Borkar was the sole owner of the property that is present in Survey No.48 Hissa No.15 and Survey No.57 Hissa No.13, which is situated in the Raigad District, Maharashtra. It is said that Ramchandra Borkar fell into arrears on Government Dues; therefore, his property was fully acquired by the government. A part of the property, specifically, land in Survey No.48 Hissa No.15, was sold in public auction in favour of Woler Francis on 25/04/1969, who was

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¹ Vibha V "An Analysis On The Doctrine Of Easement" (2020) 6(5) International Journal Of Legal Developments And Allied Issues <[Vibha-IJLDAI.pdf](#)> accessed on 14th June 2025

put in possession on 08/07/1969, and the remaining land was re-acquired by Vasant Ramchandra Borkar, who belongs to the family of the original owner. Vasant Ramchandra Borkar sold a part of the land on 09/07/1988 in Survey No.57 Hissa No.13A/2 to one Dharmadhikari, and the remaining part of the land in Survey No.57 Hissa No.13A/1 was sold to the family of Ramani through a Registered Sale Deed dated 11/09/1989. During 1994, Woler Francis passed away and the said property was inherited by his legal heir and legal representative, Joki Woler Ruzer. A suit was filed by Joki Woler Ruzer for the claim of an easementary right over a 20ft wide road, which is under the ownership of Ramani's (Survey No.57 Hissa No.13A/1). While the suit was ongoing, the entire property of Joki Woler Ruzer in Survey No.48 Hissa No.15 was transferred to and in favour of one Mahendra Gala who was then added as a plaintiff for the suit on 28/07/1998 and after the death of the said Gala, the current Galas were substituted as the Legal Heir and legal representative of the property. After the said suit was decreed in favour of Gala's, Ramani chose an appeal to Ad-hoc District Judge-2, and then this case followed an appeal to the High Court, where it was decreed in favour of Ramani. After the High Court judgement, Joki Woler Ruzer has not joined and did not prefer any separate appeal to the apex court as the original plaintiff has accepted the verdict of the Hon'ble High Court. Thus, the said two appeals to the apex court were preferred by the Galas.

ISSUES RAISED

- Whether Galas have Easementary Right over the 20ft wide road, which is owned by Ramani in Survey No.57 Hissa No.13A/1.
- Whether the testimony of the Power of Attorney Holder of the appellants is admissible.

APPELLANT'S ARGUMENTS

The Learned Senior Counsel Shri Huzefa Ahmadi argued on behalf of the appellants. Many contentions were presented before the Hon'ble Supreme Court. Galas are owners in possession of Survey No.48 Hissa No.15, and have no alternative way to access the said land apart from the 20ft wide road, which is owned by Ramani. Thus, the appellants have acquired the easementary right by prescription and necessity. Further, once the first suit was decreed and findings were recorded in favour of Gala's, the appellant court did not have to overturn those findings. As the Galas do not have an alternative way for their land, it clearly states the beneficial interest that they have been enjoying the said road "for many years". The words "For

many years” were in dispute, as it was contended that the Act specifies 20 years.² So, a case judgment was brought to the notice of the court to validate their contention, stating that “It is well settled that the pleadings need not reproduce the exact words or expressions as contained in the statute.”³ There were four witnesses for the side of appellants, PW-1, Navneet Liladhar Hariya, who is the Power of Attorney Holder for the Gala’s, has stated that the 20ft wide road has been used as an approach road to Gala’s land, but now it has been disputed by Ramani. Thus, access to the Dominant Heritage has been blocked. During the cross-examination, PW-1 also stated that Dharmadhikari has the easementary right to the disputed area of 20ft road. Further it was also discussed that “A power of Attorney can maintain a plaint on behalf of the person he represents provided that he has personal knowledge about the transaction”⁴ and “The Power of Attorney Holder can dispose and verify an oath before the court but must have witnessed the transaction as an agent and must have due knowledge about it.”⁵ PW-3 contents that there is a road that passes through the land of Ramani, which is being used by the agriculturist, but nobody has raised any objection. The other contention is the Galas have acquired their easementary right with their property in the Sale Deed dated 17/09/1994 and that would not stand extinguished as it is also discussed in a judgement that “A easementary right that is granted cannot be extinguished for the reason that easement of necessity has come to an end.”⁶ Thus, these are the arguments on behalf of the Appellants.

RESPONDENT’S ARGUMENTS

The Learned Senior Counsel Shri Devansh Anoop Mohta argued on behalf of the respondents. The counsel has opposed all the contentions of the appellant’s counsel. They have clearly stated that definition of ‘Easement’ is, “An easement is a right which the owner or occupier of certain land possesses, 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”⁷ with this in hand we can decide whether Gala’s have acquired any easementary right over the road. They have next stated that “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”,⁸ according

² The Indian Easements Act 1882, s 15

³ Ram Sarup Gupta (Dead) By Lrs. Vs. Bishun Narain Inter College & Ors (1987) 2 SCC 555

⁴ Janki Vashdeo Bhojwani vs. Indusind Bank Ltd (2005) 2 SC 217

⁵ A. C. Narayan vs. State of Maharashtra (2014) 11 SCC 790

⁶ Dr. S. Kumar & Ors. Vs. S. Ramalingam (2020) 16 SCC 553

⁷ The Indian Easements Act 1882, s 4

⁸ The Indian Easements Act 1882, s 15

to this statement it is clearly stated that a person must use the said land for 20 years without any interruption, but in this case the appellants have only stated that they have used the lands “For many years” (not specified the years clearly). The judgment findings that were cited by the appellants, that is, “It is well settled that the pleadings need not reproduce the exact words or expressions as contained in the statute”,⁹ as pleadings, even though liberal, the essential terms are necessary, was the point put forth. They also contend that there is no evidence to prove that the Galas have used the road for 20 years or more, nor have they acquired the easementary right through the Sale Deed. The respondents have bought a witness DW-1 who is Sanjay Borkar who is the grandson of the original owner who clearly states that Galas have an alternative way to access their land and deposited that as per the Sale Deed the disputed 20ft. wide road is only for the use for Dharmadhikari as no such right has been given to Gala’s by the predecessor. The other contention is that easement by necessity, which is present in Section 13 of The Indian Easements Act 1882, arises only when there is no other way to access the said land, but, in this case, it is stated that there is a way to access the said land; thus, the necessity does not arise. They had also replied to the case of Dr. S. Kumar & Ors. Vs. S. Ramalingam (2020) 16 SCC 553, which was cited by the appellants, states that this case is completely different from the above-stated case, as Galas has no evidence of the government transferring the easementary right to Woler Francis, who has acquired the property from the public auction. They further submit that “Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power to determine a case finally; to remand a case; to frame issues and refer them for trial and to take additional evidence or to require such evidence to be taken.”¹⁰ Thus, the Appellant Court have the powers to return the findings of fact and law.

JUDGEMENT

The Hon’ble Supreme Court held that the appellants did not have sufficient evidence to prove that they had the rights over the 20ft wide road, which is under the ownership of the respondents, that is, they said Ramani. The court had rejected their claim by stating that the appellants was not able to prove that they have used the 20ft. road for 20 years and the appellants have access to their land in an alternative way which is a bit too complicated nor the afore mentioned Sale Deed did not provide any agreement which is related to the 20ft. wide

⁹ Ram Sarup Gupta (Dead) By Lrs. Vs. Bishun Narain Inter College & Ors (1987) 2 SCC 555

¹⁰ Code of Civil Procedure 1908, s 107

road and the court further clarified that the appellate court has the power to review and overturn the findings of the trial court if they are not supported by evidence.¹¹ The divisional bench further discusses the Power of Attorney Holder and states that “Power of Attorney holder can only depose about the facts within his knowledge and not about those facts which are not within his knowledge.”¹² In further interpretation, it has also clearly stated that the said Dharmadhikari had acquired the easementary right from the Sale Deed, but such right is not acquired by Gala or by Joki Woler Ruzer. Thus, the apex court held that the Galas do not have an Easementary Right over the 20ft wide road, which is situated under the ownership of Ramani in Survey No.57 Hissa No.13A/1.

CONCLUSION

After the interpretation of the case, we come to the conclusion that, while claiming the easementary rights, we must see to it that the right comes from the Sale Deed or through necessity or through proper evidence stating that the said land has been used for about 20 years or more. As the case facts discuss that Galas have claimed the easementary right over the property of Ramani, but this contention was rejected by the Supreme Court. It has been stated that there is no clear evidence to prove that the said 20ft road was used by the Galas for 20 years or more, and it was neither proved that the said easementary right was possessed by them through the Sale Deed executed in favour of the Galas. Thus, the Hon’ble Supreme Court dismissed the above-stated suit.

¹¹ G.R.Hari “Easementary Rights Denied: Supreme Court Upholds No Right of Way Over Disputed Land in Manisha Mahendra Gala vs. Shalini Bhagwan Avatramani” (2024) In-Depth Analysis of Supreme Court of India Decisions < [Easementary Rights Denied: Supreme Court Upholds No Right of Way Over Disputed Land in Manisha Mahendra Gala vs. Shalini Bhagwan Avatramani \(2024\) - Legal Research Wing](#)> accessed on 15th June 2025

¹² Swasti Chaturvedi “Power of Attorney holder can only depose about the facts within his personal knowledge” (2024) Verdictum < [Power Of Attorney Holder Can Only Depose About Facts Within His Personal Knowledge: Supreme Court](#)> accessed on 15th June 2025