



HEADING OF JUDGMENT IN THE APPEAL
District: Howrah
**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
3RD COURT, HOWRAH**

Present: Abhijit Ghosh,
Additional District Judge,
3rd Court, Howrah

JO Code No. WB00910
Title Appeal No. 62/2019
CNR No. WBHW01-001716-2019

Dated, the 04th day of June, 2026

RAJU BHATTACHARYA

..... Appellant/Defendant

VS.

MALAY BHATTACHARYA

..... Respondent/Plaintiff

This appeal came up for final hearing on 18.05.2026 in presence of:

Sri Bablu TewaryLd. Advocate for the Appellant/Defendant

Sri Bikram DasLd. Advocate for the Respondent/Plaintiff

And having stood for consideration to this day, this Court has delivered the following Judgment:-

J U D G M E N T

1. This appeal is originated being aggrieved by and dissatisfied with the judgment passed on 28.02.2019 and the decree on

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08.03.2019 by Ld. Civil Judge (Junior Division) 6th Court, Howrah in connection with Title Suit No. 112 of 2017.

2. The grounds of appeal as preferred by the appellant/defendant are as follows :-

- i. The Ld. Trial Court while passing the impugned judgement and decree was wrong in deciding the issue No. 3 in favour of the plaintiff/respondent.
- ii. The Ld. Trial Court while passing the impugned judgement and decree, totally misconstrued the proposition of law as envisaged in Section 60(b) of Indian Easements Act and came to an erroneous finding that (i) to obtain the benefit of Section 60(b) of the Indian Easement Act the defendant is to prove that an irrevocable license was granted in favour of the defendant and (ii) the defendant obtained permission for making construction over the suit property without considering the basic principles of law that a license may be revoked by the grantor unless the licensee acting upon the license, has executed a work of permanent character and incurred expenses in the execution.
- iii. The Ld. Trial Court while passing the impugned judgement and decree under appeal, though held that a license may be of two kinds (i) a bare license which is purely a matter of personal privilege and (ii) a license coupled with creating an interest in favour of the licensee or grantee in respect of the property licensed and the control over the property licensed remains in the palm of the licensor/grantee in respect of the property licensed only under the direct supervision of the licensor and

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the licensee can not have any interest neither in corpus nor in usufructs of the property licensed.

- iv. The Ld. Trial Court while passing the impugned judgement and decree failed to scan the pleadings of both sides and the evidence adduced on behalf of both sides properly and came to an erroneous finding that on careful consideration of the pleadings as well as the oral testimony of the defendant it appears that the defendant is not sure as to his status in the suit property, especially when the plaintiff has filed the suit against the defendant for eviction of licensee admitting the defendant as a licensee in respect of “B” Schedule property and the same has also been admitted by the plaintiff in his evidence.
- v. The Ld. Trial Court while passing the impugned judgement and decree failed to scan the pleadings of both sides property and came to an erroneous finding that the defendant has not stated in his pleadings as to who has granted him a license and there is also no statement that acting upon the said license he has made construction in the suit premises without considering the statements made by the plaintiff in his plaint that on request of the defendant the plaintiff allowed the defendant to stay at the Schedule “B” property for a limited period of 4/5 months and the defendant with the aid and assistance of some local antisocial elements has already erected a separate bath and privy measuring about 50 sq. ft. at and over the Schedule “B” mentioned property.



- vi. The Ld. Trial Court while passing the impugned judgement and decree totally misconstrued the proposition of law as envisaged in Section 60(b) of Indian Easements Act and came to an erroneous find that to get the benefit of Section 60(b) of Indian Easements Act only license is required but presumption consent of the licensor to execute work of permanent character is also required.
- vii. The Ld. Trial Court while passing the impugned judgement and decree is absolutely wrong in deciding the issue No. 6 in favour of the plaintiff, on the other hand it should have decided the said issue against the plaintiff/respondent.
- viii. The Ld. Trial Court while passing the impugned judgement and decree passed by the Ld. Trial Court is bad both in law as well as in fact and is thus liable to be set aside.

POINTS FOR CONSIDERATION

- 3. Whether the impugned judgment passed on 28.02.2019 and the decree on 08.03.2019 by Ld. Civil Judge (Junior Division) 6th Court, Howrah in connection with Title Suit No. 112 of 2017 suffers from any illegality, err, irregularity and requires any interference of this court?

DECISIONS WITH REASONS

- 4. During the course of the hearing Ld. Advocate of the appellant drew the attention of the court to the provisions under Section 60 of Indian Easements Act and also relied upon the case decisions as

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reported in **1996 (1) CLJ 557 and AIR 1974 CAL 16(19) and 1996 (6) SCC 699 and AIR 1987 SC 1242.**

5. Respondent remained absent without step in spite of giving opportunity of hearing on several dates.

6. Now let me go to the facts of the pleadings as submitted by the plaintiff/respondent in the plaint case and the written statement as submitted by the appellant/defendant.

7. It is the plaint case of the plaintiff/respondent that the suit property originally belonged to Smt Gouri Bhattacharya who was the mother of the plaintiff who acquired the said property from her husband Debabrata Bhattachary by way of registered Deed of Gift being No. 6708 for the year 2011. During her right title interest and possession over the suit property, said Gouri Bhattacharya gifted the “A” Schedule mentioned property in favour of the plaintiff by a registered Deed of Gift vide No. 050110840 for the year 2015 and the plaintiff accordingly mutated his name in the ROR and in the Howrah Municipality. The defendant/appellant is the step brother of the plaintiff by relation and at the time of execution and registration of the Deed of Gift by the mother of the plaintiff, the defendant is/was in occupation of the Schedule “A” mentioned property measuring about 120 sq. ft. along with bath and privy as mentioned in the Schedule “B” which is part and parcel of the Schedule “A” mentioned property and it is the subject matter instant suit. On request of the defendant, the plaintiff allowed the defendant to stay at the Schedule “B”

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mentioned property for a limited period of 4/5 months with conditions that as and when the plaintiff will require the Schedule “B” mentioned property the defendant will vacate and deliver the vacant possession of the said property with the plaintiff. The plaintiff requested the defendant several times to vacate the property, but the defendant is a very notorious person and he has a close relation with the local antisocial elements and with the aid and assistance of those local antisocial elements he has already erected a separate bath and privy measuring about 50 sq. ft. over the “B” Schedule mentioned property without knowledge and consent of the plaintiff and lastly on 10.01.2017 openly declared that he would not vacate the “B” Schedule property at any cost. Hence, this suit for eviction of licensee in respect of “B” Schedule mentioned property and for recovery of khas possession.

8. The respondent/plaintiff in his written statement after denying all the materials allegations of the plaint case, specifically stated that when he was one and half year old, his mother Gouri Bhattachary married one Debabrata Bhattacharya about 30 years back and out of their wedlock the plaintiff was born and Debabrata Bhattacharya is not the biological father of the defendant and the defendant was brought up by them since his childhood in the same mess and subsequently the defendant was grown up and started to live in a separate room and got married and the defendant was allotted the said room with some vacant land as irrevocable licensee about 15 years back and he withing his allotted portion has erected separate bath and privy in the said portion and he has taken electric

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connection in his allotted portion, having his Voter Identity Card, Aadhar Card, Ration Card in respect of the said premises and defendant is enjoying the allotted portion for the last 15 years to the knowledge of rightful owner and have acquired a valuable right thereon. He further stated that the defendant is occupying more than the area of land as described the “B” Schedule property and however stated that the bath and privy was erected about 15 years back to the knowledge and consent of the original owner and accordingly prayed for dismissal of the suit.

9. Issues were framed by the Ld. Trial Judge and after completion of the trial, Ld. Trial Judge decreed the suit in favour of the plaintiff for a decree of eviction in respect of the “B” Schedule property.

10. To crack the ‘nut of the dispute’ as it appeared before this court during the course of this appeal, let me remind the notable legal case decision of Hon’ble Supreme Court of India in **Ram Sarup Gupta vs Bishun Narain Inter College (1987)**. This authoritative ruling set up a major precedent regarding property law on irrevocable license under section 60(b) of the Indian Easement Act 1882.

11. Let me quote from the decision of the Hon’ble Supreme Court in the aforesaid judgement : *“the question which falls for consideration is whether the respondent in their Written Statement had raised the necessary pleadings that the license was irrevocable as contemplated by section 60(b) of the Act and if so, is there any evidence on regard to support that plea. It is well settled that in the absence of pleading,*



evidence, if any, produced by the parties, can not be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet.The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities.”

12. Let me come to the instant case. In the plaint, the present plaintiff/respondent in para-5 stated that the defendant is the step-brother of the plaintiff by relation and at the time of execution and registration of the Deed of Gift by his mother in his favour, the defendant is/was in occupation of a portion of “A” Schedule mentioned property measuring about 120 sq. ft. along with bath and privy as mentioned in the “B” Schedule property which is part and parcel of “A” Schedule mentioned property which is the subject matter of the instant suit.

13. From the averment of the plaint case it is admitted fact of the Plaintiff/Respondent that the present Defendant/Appellant is the step brother of the plaintiff by relation and the present appellant was in the occupation portion of “A” Schedule mentioned property measuring about 120 sq. ft. along with bath and privy.

14. As per provision of **Section 58 of the Indian Evidence Act** admitted fact need not be proved.

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15. In deciding the pertinent issues No. 4 and 5, Ld. Trial Judge was stuck in deciding the two issues (i) the defendant has to prove that an irrevocable license was granted in favour of the defendant and the defendant obtained permission for making construction over the suit property.

16. In this juncture, let me examine the cross examination of PW-1 wherein it is admitted by PW-1 himself that defendant was residing in the suit property along with his wife and the defendant has constructed a privy just adjacent to his room and there is a kitchen in front of the room of the defendant and there is a vacant space in front of the suit property and there is municipal tap water which is used by the defendant and the year 2008 his mother granted permission to the defendant in the suit property and the defendant has electric connection in the “B” Schedule mentioned suit property forcibly.

17. Having regard to the averments of facts as stated by the respondent in the plaint and consequent to the facts averred and admitted during course of cross examination of PW-1, it has become admitted fact that the present appellant/defendant was residing in the “B” Schedule mentioned suit property with the permission of mother of the present plaintiff/respondent since 2008.

18. Ld. Trial Court in the impugned judgment made an observation that to get the benefit of irrevocable license, the presumption of consent is to be there and the plaintiff has alleged in his pleadings



that the defendant has very recently made the construction of bath and privy illegally and as such the plaintiff revoked his license.

19. It has nowhere been averred in the plaint case of the plaintiff as such that the appellant/defendant has constructed bath and privy very recently without the permission of the plaintiff. Rather it is the case of the plaintiff that he has at the time of the execution and registration of the Deed of Gift, the present defendant/appellant is/was in occupation of the "B" Schedule mentioned suit property along with bath and privy. Consequent thereto, it has been admitted by PW-1 during cross examination that the defendant was in occupation of the suit property (B Schedule) since 2008.

20. So, it is nobody's case that the present defendant/appellant constructed the bath and privy illegally and very recently.

21. This observation of the Ld. Trial Court is beyond the pleadings of the parties. Furthermore, admitted fact need not be proved (Section 58 of Indian Evidence Act).

22. **License** as defined in **Section 52 of Indian Easements Act** grant of permission, by a person to the other 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. Such right does not amount to an easement or any interest in the property. The rights so conferred is license.



23. Section 60 of the Act provides that 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 permanent character and incurred expenses in the execution.

24. Section 62 of the Act enumerates circumstances on the existence of which the license is deemed to be revoked.

25. One of such conditions contemplates that where license is granted for a specific purpose and the purpose is attained, or abandoned or if it becomes impracticable, the license shall be deemed to be revoked.

26. Section 63 and 64 of the Act deal with licensee's right on revocation of the license to have reasonable time to leave the property and remove goods which he may have placed with property and the licensee is further entitled to compensation if the license was granted for consideration.

27. These provisions indicate that a license is revocable at the will of the grantor and the revocation may be expressed or implied.

28. Section 60 of the Act enumerates the conditions under which a license is irrevocable.



29. In this context let me go through the pleadings raised in the written statement of the Defendant/Appellant in which it has been specifically averred by the defendant that *“the defendant was grown up and started to live in a separate room and got married and the defendant was allotted the said room with some vacant land as irrevocable licensee about 15 years back and the defendant within his allotted portion has erected separate bath and privy and he has in the said kitchen in the said portion”*.

30. Again in this juncture let me rely upon the observation of the Hon’ble Supreme Court of India in ***Bhagabati Prasad vs Chandramaul AIR 1966 SC 735***, a Constitution Bench of the Hon’ble Apex Court observed *“the general rule no doubt is that the relief should be founded on pleadings made by the parties”*.

31. In the present case the plaintiff/respondent went to trial knowing fully well that the defendant claimed in the written statement that he was allotted the suit schedule room with some vacant land as irrevocable license about 15 years back and has erected separate bath and privy and he has kitchen in the said portion.

32. The plaintiff/respondent knew the case he had to meet and for that purpose the plaintiff only produced himself as witness and evidenced that the license was granted to the defendant as licensee under his mother’s possession.



33. It is well settled that the pleadings are not reproduced the exact words or expression as content in the suit nor the question of law is required to be pleaded. The substance of the present pleadings clearly informed that the defendant made construction on the land acting upon the license which substantially made the requirement of law. When the facts admitted in the pleadings of the both sides, there is no requirement to prove the facts as admitted by the parties. It is not the case of the plaintiff that the present defendant had not made any construction over the suit schedule property. Rather it is admission of the plaintiff/respondent in his plaint as well as evidence that the present defendant/appellant residing in the suit property as licensee by making construction of bath and privy.

34. Ld. Trial Judge travelled beyond the pleadings as well as admitted facts in evidence.

35. Ld. Trial Judge observed in the judgement that the defendant is not sure as to his status in the suit property, when the plaintiff himself has filed the suit against the defendant for eviction of licensee admitting the defendant as licensee in respect of the "B" Schedule property and the same has been admitted by the plaintiff in his evidence.

36. Ld. Trial Judge caused an error in finding that the defendant has failed to adduce any evidence to show that he has made construction of the property by incurring expenses and nothing has been produced by the defendant in this regard without considering



the candid admission made on behalf of the plaintiff both in the plaint as well as evidence whereas the plaintiff/respondent himself admitted that the defendant has erected a separate bath and privy in “B” Schedule property at his own cost.

37. Ld. Trial Judge caused an err in holding the proposition of law as envisaged in Section 60(b) of the Indian Easement Act and came to an erroneous conclusion that in order to get the benefit of an “irrevocable license” presumption of consent is to be there, when it has been admitted by the plaintiff in his evidence that since 2008 his mother granted permission to the defendant in the suit property and he has constructed privy just adjacent to his room and there is kitchen in front of the room of the defendant and the defendant residing the suit property along with his wife.

38. Furthermore, the present defendant has submitted Exhibit-A (collectively) electricity bill in his name in respect of the suit property for the year 2012 and June 2018 in support of his occupation as licensee over the suit property. Therefore, the observation of the Ld. Trial Judge regarding presumption of consent to get benefit of irrevocable license neither finds any place in the factum of the law as envisaged in Section 60(b) of the Act nor it is required in the present facts and circumstances as averred in the pleadings of both sides.

39. In this juncture Ld. Advocate of the Appellant relied upon in the case decision reported in **AIR 1997 SC 1242**.



40. Ld. Trial Judge also observed in the impugned judgment that the defendant could have brought the original owner to depose in his favour as he had the opportunity to do so, but he refrained from doing so and so-called original owner would be the best evidence in support of the contentions of the defendant in respect of the license coupled with grant and this act on the part of the defendant gives rise to adverse presumption as contemplated in Section 114 (g) of the Indian Evidence Act against the defendant and therefore by preponderance of probability the Ld. Trial Court finds that the defendant has failed to establish that his license is an irrevocable one without considering the candid admission on behalf of the plaintiff both in the plaint as well as in the evidence that the plaintiff granted license to the defendant in respect of “B” Schedule Property and acting on such license the defendant had constructed a bath and privy over the “B” Schedule Property at his own cost.

41. In the instant case in their pleadings, the defendant have invoked the protection of exception of clause of Section 60 of the Act and pleaded that the license was an irrevocable license as defendant had executed permanent construction on the suit property and incurred expenses in execution thereof acting on the license.

42. In this juncture let me rely upon the case decision reported in **AIR 1976 SC 2506 Shankar Gopinath Apte vs Gangabhai Hariharraw Patwarbhan.**



43. In the present case “acting upon the license” as required by Section 60(b) of the Indian Easement Act, the appellant constructed bath and privy and executed work of permanent character by incurring expenses.

44. In the present case it is not required by the licensee to prove the irrevocability of the license as it has been admitted by the plaintiff/respondent in his pleading as well as evidence to the effect that the present licensee executed a work of permanent character acting upon the license by incurring his own expenses. Consequently the license became irrevocable under Section 60(b) of the Indian Easement Act.

45. Furthermore, the present plaintiff/respondent brought the instant suit against the appellant without serving any “notice” to vacate the suit property upon the defendant/appellant.

46. Although a license is revocable at the will of the grantor, the provision in the license that licensee would be entitled to a notice before being required to vacate, is not inconsistent with license. The mere necessity of giving a notice to a licensee requiring him to vacate premises could not indicate with the transaction as lease.

47. This is the observation of Hon’ble High Court at Calcutta in the decision **Radha Prosad Sharma vs Sm. Bejoy Sett 1996 (1) CLJ 557.**



48. Furthermore, “B” Schedule suit property is not an identified property. The present plaintiff/respondent did not cause any commission in respect of the “B” Schedule suit property which is part and parcel of “A” Schedule as per provision of the Civil Procedure Code to bring forth the exact measurement, identification and details of the property before the Ld. Trial Court for the purpose of getting the decree as granted by the Ld. Trial Court executable. The proper description, identification, measurement of the suit property as mentioned in the “B” Schedule which a part and parcel of “A” Schedule, was very much required to bring before the Ld. Trial Court for the exact identification of the property so that it can be meant for the prayer for decree of eviction executable in the eye of law. Ld. Trial Judge has caused an err in passing the judgement and decree in respect of the property the measurement and identification of which has not been proved by the plaintiff before the Trial Judge.

49. Having considered the facts and circumstances and pleadings of both sides, evidences adduced and appreciating the impugned judgement of the Trial Judge, I am of the view that Ld. Trial Judge has caused an err in law as well as in facts in passing the impugned judgement dated 28.02.2019 and decree dated 08.03.2019.

50. Accordingly, the impugned judgement and decree as passed by the Ld. Trial Court suffers from illegality and err and requires intervention of this court.

51. As a consequent corollary, the appeal succeeds.

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52. Court fees paid is correct.

53. Hence, it is

ORDERED

that the instant Title Appeal 62 of 2019 be and the same is hereby allowed on merit on contest and accordingly appeal disposed off.

The impugned judgement dated 28.02.2019 passed and decree dated 08.03.2019 drawn by the Ld. Civil Judge (Jr. Divn), 6th Court, Howrah is hereby set aside.

Let the copy of the Judgment be sent to the Ld. Civil Judge (Jr. Divn), 6th Court, Howrah for its information along with the TCR.

Dictated & Corrected by me

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3rd Court, Howrah**

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