

**Babu NarIn Das Vs. Behari Kahar**

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**SooperKanoon Citation :** [sooperkanoon.com/478207](http://sooperkanoon.com/478207)

**Court :** Allahabad

**Decided On :** Jan-25-1923

**Reported in :** AIR1924All724; 78Ind.Cas.844

**Judge :** Ryves, J.

**Appellant :** Babu NarIn Das

**Respondent :** Behari Kahar

**Judgement :**

**Ryves, J.**

1. The suit out of which this appeal arises was brought by Babu Narain Das v. behari Kahar Narain Das against three defendants (1) Behari Kahar, (2) the Municipal Board of Gorakhpur, and (3) the Secretary of State. The plaintiff was the owner of a house or adjoining houses lying to the south and west of two triangular pieces of land lying between the northern and eastern walls of his house or houses and the street, painted pink in the Map forming part of the decree of the trial Court. The land in question was nazul, that is to say, belonged to Government and that is why the Secretary of State was made a party. It had been handed over to the Municipal Board by Government for management and the Municipal Board had leased it to Behari Kahar on the 23rd of January 1918 for a period of 30 years for building purposes. The plaintiff oame into Court on the allegation that Behari Kahar had made certain constructions on the northern portion of this land which

interfered with his right of easement both of access and of light over that portion of the land, and with regard to the eastern portion, he alleged that Behari Kahar intended to build on that portion in such a way as to interfere with his easements of access and light and air on that side also and he, therefore, prayed that the buildings on the northern side, be removed and that a perpetual injunction be issued restraining the defendants from building on the eastern side in a way which might interfere with plaintiff's easements.

2. The trial Court decreed the suit against all the three defendants. All three defendants appealed and their appeals were decided by one judgment and all were decreed. The plaintiff comes here in second appeal only against the decree of the lower Appellate Court so far as it set aside his suit against Behari Kahar. The Court below held that, in order to prove his case it was necessary for the plaintiff to prove that he had enjoyed the easements which he claimed for a period of 62 years, and it came to the conclusion that so far as the piece of land on the north was concerned it was not proved that that part of the house had been in existence for anything like 60 years. The learned Judge seems to have been of opinion that that portion of the plaintiff's house could have been in existence for probably about 20 years. With regard to the eastern side of the house the lower Appellate Court has held that that was in existence probably for over 60 years.

3. Having come to the conclusion that the northern portion of the plaintiff's houses, that is to say the junglas or barred windows and that phatak or gate and darwasa or door had not been in existence for anything like 60 years and, that being so, the plaintiff had failed to establish the easements which he claimed over that portion of the land in dispute, because that land admittedly belong to Government and, therefore, under Section 15 of the Indian Easements Act the plaintiff must prove uninterrupted user for at least 62 years, and for this reason it held that the plaintiff's suit must failed with regard to the eastern portion of the land in dispute the Court held that although the plaintiff had established the easements which he claimed it was premature to ask the Court to issue an injunction because although there was every probability that Behari Kahar would build on that land there was nothing to show that he would build in such a way as to interfere with the rights of the plaintiff and, therefore, the Court dismissed this portion of the suit also, merely

warning Behari Kahar that if he did build on this eastern portion in any way so as to interfere with the plaintiff's easements he would have to bear the consequences. Incidentally, the learned Judge, who inspected the premises, came to the conclusion that the plaintiff had a means of ingress and egress through a door on the west side of the house and that so long as the defendant Behari did nothing to encroach on the plaintiff's convenient means of approach to this door, the plaintiff could claim nothing more. He, therefore, added in his judgment a note to the effect that the defendant should do nothing that would interfere with the land immediately in front of this door. This however, was not included in the decree which formally set aside the decree of the trial Court and dismissed the suit. The plaintiff comes here in second appeal and urges three points. The first is that the limitation applicable was 20 years and not 62 years. Counsel on his behalf has quoted three cases, Jagadindra Nath Boy v. Hemanta Kumari Debi 32 C. 129 (P. C); 31 L.A. 203 : 8 C.W.N. 809 : 6 Bom. L.R. 765 : 1 A.L.J. 585 : 8 Sar. P.C.J. 698, Pullanappally Sankaran Nambudri v. Vittil Thalakat Muhamod 28. M. 505 : 15 M.L.J. 416, and Kutha Perumal Bajali v. The Secretary of State for India 30 M. 245 : 17 M.L.J. 174. In my opinion none of these cases is applicable to the present case. They have nothing whatever to do with the question of easements. The land over which the plaintiff claims his easements undoubtedly belongs to Government and, therefore, in order to establish his right of easement he must prove user of the kind mentioned in Section 15 of the Act for a period of at least 62 years. If he fails to establish an easement over that land it seems to me that he cannot establish easement against a person who is merely in occupation of that land, for a less period. An easement is a right which attaches to one piece of land or building over another piece of land and you cannot have an easement in my opinion over a piece of land against A and not against B. It seems to me that on this point the Court below was right, and if that is so then the finding of fact that the windows and doors and gates on the north side have not been in existence for anything like 60 years concludes that portion of the case.

4. Next, it is urged that on the finding of the Court below that the plaintiff has established 60 years user over the land on the east the injunction should have been granted. Here again I think the Court below was right. It was within its discretion to grant an injunction or not. It clearly told the defendant Behari that he

must not build on this portion of the land so as to obstruct any of the easements which the plaintiff had acquired, and practically told the defendant that if he did so it would be at his peril. I am not prepared to say that the Court was wrong in not granting this injunction. The third point is that the Court should not have said anything about the door on the west side of the plaintiff's house. This ground is raised in the second paragraph of the memorandum of appeal to this Court. I agree to this extent that it was unnecessary for the Court to have said anything about it.

5. The Court has only done so in order to tell the parties dearly what in its opinion were their rights. This portion of the judgment is not incorporated in the decree and really amounts to nothing more than an expression of opinion. The only way in which I could interfere with it would be, I presume, to order that particular sentence to be expunged from the judgment. In my opinion the appeal fails and is dismissed with costs.

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