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**EASEMENT AND MORTGAGE****ABSTRACT**

World has truly become a global village now. So there are more free market economies in the world. Each and every country has opened its gates for the foreign firms to enter and do the business which brings diverse kind of benefits. Organizations all over the world use different methods for marketing and to enter the market to spread their legs such as exporting, licensing, joint venture, manufacturing, direct investment, sourcing and acquisition. The decision of which methods should be chosen depends upon the different factors such as the vision of the firm, financial resources and how much risk firm is willing to take. In this particular project, we will know about the nature, scope and concept of license which is an important topic in property law and forms most important parameter in the lives of the people and how do the people conduct their workings and business using the license. Easement and Mortgage forms the integral part of the property law where day to day happenings are revolved around this two important topics. There are many Case Laws and Facts which are related to these two topics and hence it is of great importance in the society and it is the most important part of the property law. We shall be studying all these in detail and will try to understand the meaning and nature of the concepts of easement as well as the mortgage.

**KEYWORDS-** [License, Licensor, Licensee, Mortgage, Nature and Concept of License]**INTRODUCTION-**

**Easement-** An easement is a non possessory right to use and/ or onto the real property of another without possessing it. It is “best typified in the right of way which one landowner, A may enjoy over the land of another, B.”

**License-** A license is simply a permission to use land. It allows someone access to the land of another for an agreed purpose. It is an authority that justifies what would otherwise be a trespass. It does not confer any interest in land.

License, in property law, permission to enter or use the property of another. There are three categories of license: **bare licenses, contractual licenses and licenses coupled with an interest.** A bare license occurs when a person enters or uses the property of another with the express or implied permission to enter or use the property in exchange for some consideration. For example, a person entering a gas station to ask for directions is a licensee and not a trespasser.

, express or implied permission to enter or use the property in exchange for some consideration. For example, the purchase of a movie ticket allows the ticket holder a license to enter the theatre at a particular time. Licenses that are acquired by contract normally include the right to use property that is protected by patent, copyright or trademark. A license coupled with an interest arises when a person acquires the right to take possession of property located on someone else's land, as when a lender acquires the right to repossess an automobile that is located on private property after the borrower has defaulted on a loan.

Bare licenses generally are not assignable (transferable) and are revocable at will by the property owner. The assignability and revocability of contractual licenses normally depend on the terms of contract. Licenses coupled with an interest usually are both assignable and irrevocable, at least until the holder of the license has had a reasonable time to retrieve the property that gave rise to the license.

When a landowner permits another to use the land under circumstances in which it is reasonable to foresee that the licensee will spend money or otherwise change position in the belief that the license will not be revoked, the license may become irrevocable. For example, if a person owns two parcels, one of which has no access to a public road, sells the landlocked parcel to another person, and gives him permission to build a driveway becomes irrevocable when the buyer invests in the property, reasonably believing that the permission will not be revoked.

**Differences between Licenses and Easements-** By definition, an easement is an interest in land that lasts either indefinitely or for some specified period of time. A license, on the other hand, is permission to use land that can be revoked at any time.

Because both easements and licenses involve the use of another person's land, they can look similar. If the party's agreement doesn't clearly specify whether the landowner can revoke

<sup>1</sup>*GM Sagars and Energy Pvt Limited, Bengaluru vs State of Karnataka, AIR 2018 (NOC) 446 Kar Hamelo v Jang Sher Singh, AIR 2002 PandH 147: ILR 2002 Sardar Lakhbir Singh vs Swargashram Trust, AIR 2013 Utr 25*

permission or whether the grant is durable, a court has to figure out whether they intended to create an easement or a license, which determines whether the landowner can revoke permission.

. Indications that the Grant was to last permanently or for a specific time: if the parties intended the grant to be permanent or for a specific time, the grant is an easement by definition.

. Designations of the area that the grantee can use:- Because a license is revocable at will, the licensor may not be specific about the area subject to the license. In contrast, because an easement is an interest in land, the statute of frauds may require some specification of the land subject to the easement.

. Even if it doesn't, the grantor of an easement is more likely to be specific about the grantee's rights, because the grantor can't just change her mind if she is unhappy with what the grantee does.

. The right to make improvements: - If the grantee has the right to improve the land somehow, the parties probably intended to create an easement. A license is more temporary and less substantial, so the licensee is unlikely to make investments in the licensee's havoc, knowing that the licensor can revoke permission to use her land anytime.

The difference between a license and an easement is that easements refer to the permanent right of use or interest over another's property. It is the non-possessory property interest that the benefit party holds in a land that is owned by the burdened party, which entitles the interest holder to enjoyment or limited use of that land.

Easements fulfill the need to use a property at another's expense. Since an easement is simultaneously a burden to the property owner (the servient) and of benefit to the holder, it will significantly affect the value of the individual properties. As such, the true extent of an easement must be clearly understood.

### **Creation of Easements**

Since an easement expresses actual interest in the land, the statutes of fraud are applicable and an easement grant must be written, either as reservations in a deed or a separate deed. Easements can also be created by-

#### **. Prescription**

#### **. Implication**

#### **. Necessity**

Most easements are created via express grant, consequently requiring the drafter to clearly express the duties and rights associated with it. Easements can be either negative, such as restrictions on fence height, or affirmative, such as the right of way to cross a property.

## **Easement vs. License**

### **Mistaken Identity- Easement vs. License**

An easement is a permanent right in property, whereas a license, which is not an interest in property, is a temporary right to use that property and may be revoked at any time.

**Easement-** A non possessory (incorporeal) property interest (short of an estate) that one person (the benefitted party) has in land owned by another (the burdened party), entitling the holder of the interest to limited use or enjoyment of the other's land an easement fulfills the needs of one property at the expense of another.

Because an easement is an actual interest in land, the statute of frauds applies and an express grant of easement must be in writing, usually in the form of a separate deed or a reservation in a deed. Thus, an easement is an interest in land rather than a mere contractual agreement. Easements are also created by necessity (as in landlocked situations), by implication, or by prescription. Because the easement is both a benefit to the holder and a burden to the servient property owner, it significantly affects the value of the respective properties and the extent of the easement should be clearly understood. Most easements originate by express grant, so the drafter should clearly express the rights and duties associated with the easement. 1

Easements are classified as either appurtenant or in gross. An easement appurtenant is a right in another's land (servient estate) that benefits and attaches to the owner's land (dominant estate.) An easement in gross is personal in nature and does not pass with the land because it does not benefit or attach to a dominant estate

Litigation involving easements usually results from the initial failure to adequately define the define the easement area (the floating easement ), the uses to which it may be put, or which party has responsibility to repair and upkeep. An easement for access purposes might not be appropriate for later use to lay utility lines to the property. When an easement or right-of-way is located by a grant that does not define its specific width, such width is assumed to be one that is suitable and convenient for ordinary, free passage.

Easements should not be confused with profits or licenses. A profit is the right to take the soil. Minerals or products of the land a license are not an interest in land, merely permission to use the land of another for some limited purpose; it can be revoked at any time.

**License-** Permission or authority to do a particular act on the land or property of another, usually

On a nonexclusive basis a license is a personal, revocable and non assignable right, but unlike an easement, it is not considered an interest in the land itself. If a right to use another person's land is given orally, it is generally considered a license rather than an easement. The landowner may revoke such a right at any time, unless it has become irrevocable by estoppels. A license ceases upon the death of either party and is revoked by the sale of the land by the licensor.

**Nature, Concept and Meaning of License-** In case where the courts are required to consider the nature of transactions and the status of its parties, one cannot go by the mere nomenclatures given by the parties such as license, licensee, license fee etc. In order to ascertain the substance of the transaction courts have to ascertain the purpose and the substance of the agreement. In such cases intention of the parties is a deciding factor which can be ascertained only by the surrounding circumstances and conduct of the parties. Where the possession of premises was given to respondents for monetary consideration with a clause for renewal after 11 years, municipal taxes were also paid by them and rent receipts are issued by executants of agreement, the circumstances suggested that the agreement was a tenancy in disguise of license.

Mere possession by party was not sufficient to create sub-tenancy. When sub-tenancy without written consent of landlord was not permissible under a Rent Control Act, it was held that the agreement between the parties would be in the nature of a license and not lease.

An agreement was executed only when the defendant had already come into possession of the residential flat. Because of the agreement there was no longer any threat of being thrown out. The defendant was highly educated. He must have executed the agreement with full knowledge of contents. He approached the Rent Controller for deposit of rent which was not accepted because there was no rent agreement. The fact that he was allowed to use electricity was held to be not sufficient for undoing the license agreement.

- (a) Allotment for amusement park-** A piece of land was allotted by a Development Authority for establishing an amusement park. The document of allotment used the words “license” and “license fee”. The clauses of the document provided that the Authority was to decide what games or rides could be provided in the park, in what manner they were to be purchased, the mode of collecting the entrance fee, right of inspection of documents was reserved and over and above all this, there was the superior right of cancellation of allotment for breach of clauses. The arrangement showed that the arrangement was nothing complete control of the land. The Supreme Court held that the arrangement was nothing more than license. It was not a lease. A lease creates a right in favor of the lessee on the demised premises. A license, on the other hand, makes the action of licensee lawful which without license would have been unlawful. The fact that the allotment for a further period of 15 years did not make the allotment anything more than a license.

### **Provision of Accommodation to Employee**

An accommodation was provided to an employee to facilitate his functioning, the intention being to provide facility during the period of service. The court said that in the matter of occupation of



the premises, the relationship between the employer and employee was that of licensor and licensee and not of lesser and lessee. The mere deduction of a sum of money from the remuneration of the employee in lieu of accommodation was not sufficient in itself to establish a lease transaction.

### **Provision of Accommodation to Private Tutor<sup>2</sup>**

In a suit for recovery of possession, the plaintiff's allegations was that the defendant was the resident private tutor of his son and he converted the residence allowed to him to a coaching centre and that he was a mere licensee and not a tenant. He also contended that he was not paying any rent and was drawing his electricity from the neighbor. He however, could not disclose the name of such neighbor. The resident contended that he had been paying rent regularly since commencement of his residence. No steps were taken the plaintiff to evict during the fifteen year period of his stay in the premises. The court, therefore, said that the defendant was a tenant and not a licensee.

### **Lease or Mortgage**

A case involved the question whether the transaction involved was a mortgage or lease. The document showed that there was, already a building in the property which was given as possessory mortgage and it also stated that if the amount is not given it will be treated as charge on the property of the mortgagor and the mortgagee was also made liable for committing any waste in the property. It was held that it was a mortgage and not a lease because mere payment of amount does not make the document a lease if it is otherwise a mortgage.

There is no automatic merger of two rights where mortgage is executed in favor of tenant and on redemption of mortgage, the tenancy rights kept in abeyance would revive and entitle the tenant to continue in possession even after the redemption of mortgage. On execution of mortgage, tenancy rights would terminate only if it is clear expressly or impliedly by conduct or from other related circumstances that the parties had intended so which would be a question of fact. Thus, as a normal rule, except where there is contrary intention, mortgage and lease operate independent of each other and on mortgage coming to an end by redemption, tenancy would revive.

### **Doctrine of Escheat**

Where ownership of suit land originally belonged to A and B who left village in 1953-54 and since then both plaintiff and defendant came forward with plea of ownership, the plaintiff advanced plea of oral sale claiming that he had purchased the suit land from owners but there was no evidence to prove that there was any consideration paid or possession delivered and the defendant also tried to assert his right over the suit land, it was held that neither of them had any

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<sup>2</sup> AIR 1959 SC 1262: ILR 1959 Punj 1897  
*Chandy Varghese vs. K Abdul Khader* 2003  
*Francis v Sarada (D)* AIR 2004 Ker 187: 2004(4)

right over the same and on the basis of the doctrine of escheat it can be safely concluded that the suit land will vest in the state.

### **Distinction between Composite Tenancy and Integrated Tenancy for Dual Purposes**

In case of composite tenancy, the premises are let out for defined purposes more than one, leaving the option open to the tenant to use the entire tenancy premises as one unit for either or both purposes. The tenancy premises are not demarcated separately into two words, in case of tenancy for composite purposes the two diverse purposes for user of the premises are demarcated or divided by reference to the purpose for which they will be separately used

### **CONCLUSION**

A lease involves transfer of an interest in some specific immovable property. It requires registration. In the present case the document between the parties defined and described the terms of the parties. The court found it to be not a lease deed. It was held that registration of such an agreement of tenancy was not necessary.<sup>3</sup> Henceafter going through the above paragraphs and studying in depth about the easement and mortgage we can conclude that these two concepts forms the integral part of the property law and hence it gives us the required information about the concepts of these two topics and also tells us why they are an important part in the field of property law.

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