

PETITIONER:
RAM SARUP GUPTA (DEAD) BY LRS.

Vs.

RESPONDENT:
BISHUN NARAIN INTER COLLEGE & ORS.

DATE OF JUDGMENT 08/04/1987

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 1242 1987 SCR (2) 805
1987 SCC (2) 555 JT 1987 (2) 76
1987 SCALE (1)700
CITATOR INFO :
R 1988 SC1845 (22)

ACT:
Indian Easement Act, 1882:
Section 52, 60, 62, 63 and 64 License grant of--Express
or implied--Also oral--To be inferred/ascertained from
conduct of parties and circumstances leading to grant of
license--When license becomes irrevocable--Person allowing
another to build on his land without reserving any right to
revoke--Whether entitled to revoke.
Practice and procedure:
Pleading--Form of--Undue emphasis not to be
placed--Substance of pleading alone to be considered.

HEADNOTE:
The property in dispute was under the occupation of a
school managed by a Registered Education Society. The Soci-
ety was managing the respondent college also. The school was
not recognised and had no endowment and building of its own.
In order to secure recognition for the school, the President
of Society, who owned the property in dispute, informed the
Inspector of Schools by a letter dated November 26, 1941,
that he had given away the premises occupied by the school
free of rent, which may be considered as his permanent
contribution to the cause of the school. Pursuant to this,
the school was recognised. To meet the need for additional
accommodation the management made permanent constructions on
the open land attached to the building without any objection
by the donor or any of his family members.

The donor had taken a considerable amount of loan and
mortgaged the property in dispute, alongwith a number of
properties on March 27, 1957. In order to pay off the loan
the property in dispute was got discharged and the donor
alongwith his three minor sons executed a sale deed trans-
ferring the property in dispute to the plaintiff-appellant.

The plaintiff-appellant served a notice on the school
and its managing committee terminating their license and
directing them to restore the possession of property to him
and upon their failure to do so,

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filed a suit for possession. The defendants pleaded that the

property in dispute had been donated to the school permanently and the school had made permanent constructions by incurring expenses and, therefore, their license was irrevocable.

The trial court dismissed the suit after recording findings to the effect that the property in dispute belonged to the joint family of which the donor was Karta, that though the property was donated to the school no title passed to it or to any of the defendants as the property being immovable could not be transferred except under a registered deed, and that in the absence of the transfer deed, then donor continued to be the owner and could transfer title in the property to the plaintiff, that under the U.P. Act. III of 1947 no allotment could validly be issued in favour of the school as there was no vacancy or likelihood of vacancy, that though the property had been given away to the school by the donor as permanent contribution, but in the absence of the registered deed, the transactions amounted to a license only, and since the defendants had made permanent constructions on the premises in suit, license was irrevocable under Section 60(b) of the Indian Easements Act 1882 and as the donor himself had no power in a law to revoke the license, the plaintiff being transferee from him could not acquire any better right and, therefore, he was not entitled to revoke the license or to obtain possession of the property. In the appeal before the High Court there was difference of opinion between the two Judges who constituted the Division Bench and the matter was referred to a third Judge. By majority, the High Court affirmed the findings of the trial court and held that the license granted to the school was irrevocable and the appellant was not entitled to any relief.

In the appeal to this Court, it was submitted that the trial court as well as the High Court both erred in holding that the license was irrevocable under Section 60(b) of the Indian Easement Act, that the defendants had failed to raise necessary pleadings on the question, no issue was framed and no evidence was produced by them, that in the absence of requisite pleadings and issues, it was not open to the trial court and the High Court to make out a new case for the defendants holding the license irrevocable, and that the defendants had failed to produce any evidence to prove the terms and conditions of the license and that the donor being Karta of the Joint family could not alienate the property permanently to the detriment of the minor co-sharers. It was contended on behalf of the defendants-respondents that both the courts had recorded findings of fact on appreciation of evidence on record, that the license granted by the donor/grantor was irrevocable and that

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acting upon the license, the school had made construction for the purposes of running the school and the license was irrevocable and that necessary pleadings had been raised and there was sufficient evidence in support of the pleadings.

Dismissing the appeal, this Court,

HELD: 1. Where license is granted for the purpose of running the school without reserving any right to revoke license and if the licensee erected works of permanent nature, the grantor of license is not entitled to recover land, as the execution of work was for the purpose of school and it fails within the expression "acting upon the licence". [821E-F]

2. If a person allows another to build on his land in furtherance of the purpose for which he is granted license, subject to any agreement to the contrary, he cannot turn

round, later on, to revoke the license. This principle is codified in Section 60(b) of the Indian Easements Act, 1882. [823E-F]

In the instant case, all the three conditions, viz. (1) the licensee executed work of a permanent character, (ii) he did so acting upon the license, and (iii) he incurred expenses in doing so, as required by Section 60(b) of the Act have been made out. [821A-B]

3.1 License, as defined in s. 52 of the Easements Act means 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 a right does not amount to an easement or any interest in the property. The rights so conferred is license. The grant of license may be expressed or implied which can be inferred from the conduct of the grantor. [817C-D]

3.2 Section 60 of the Act enumerates the conditions under which a license is irrevocable; firstly the license is irrevocable if it is coupled with the transfer of property and such right is enforced, and secondly, if the licensee acting upon the license executes work of permanent character and incurs expenses in execution. But Sec. 60 is not exhaustive. According to Section 62, a license is revocable at the will of the grantor and the revocation may be expressed or implied. 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. [817G-H; E-F]

3.3 The parties may agree expressly or impliedly that a license

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which is prima facie revocable not falling within either of the two categories of license as contemplated by s. 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise, and its terms or conditions may be express or implied. A license may be oral also, in that case, terms, conditions and the nature of the license, can be gathered from the purpose for which the license is granted implied with the conduct of the parties and the circumstances which may have let to the grant of license. [818D-E]

3.4 License had been granted to the school for the purpose of running the school and imparting education to the students, the license was not merely in respect of building alone but it was also in respect of open land attached to the building. Additional accommodation was required and the school carried out works on the open land which was appurtenant to the main building, with the knowledge of the licensor, as has been found by the trial court and the High Court. In view of the licensor's donation of the property to the school, and his subsequent conduct, the licensee could reasonably entertain a belief that the licensor had permitted the construction on the land and in pursuance thereof, the licensee made constructions and incurred expenses. The result is that the respondents "acting upon the license" had executed works by incurring expenses which rendered the license irrevocable. [819C-E]

3.5 If the licensee did not permit the school to execute any permanent constructions, the grantor would have certainly raised objections. His conduct of acquiescence to the raising of constructions, is eloquent enough to show that the license was irrevocable. [819H; 820A]

3.6 The pleadings, evidence and circumstances available on record, have fully established that the donor had granted license to the school in respect of building and the land

attached to it for the purpose of imparting education and the school, in furtherance of that purpose constructed additional building and it further incurred expenses in carrying out modifications and extensive repairs in the existing building during the period the donor continued to be the President of the Managing Committee of the school and he never raised any objection to it and there is nothing on record to show that licensee had retained right to revoke the license. [823D-E]

3.7 The conduct of the parties has been such that equity will presume the existence of a condition of the license by plain implication to show that license was perpetual and irrevocable. That being so, the grantor could not revoke the license or evict the school and the appel-
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lant being transferee from him could not and did not acquire any better right. The appellant, therefore, has no right to revoke the license or to evict the school, so long as the school continues to carry on the purposes for which the license was granted. [823F-G]

4.1 In the absence of pleadings, evidence, if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleadings and 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. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the pleadings, to determine the question. It is not desirable to place undue emphasis on form; instead, the substance of the pleadings should be considered. [814C-F]

4.2 Whenever the question about lack of pleadings is raised, the enquiry should not be so much about the form of the pleadings; instead, the court must find out whether in substance the parties knew the case and the issues. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, it would not be open to a party to raise the question of absence of pleadings in appeal. [814F-H]

In the instant case, the plaintiff knew the case he had to meet. and for that purpose he produced the donor in evidence in support of his plea and that the license was a simple license and it was not irrevocable as pleaded by the defendants. [816C-D]

Bhagwati Prasad v. Shri Chandramaul, [1966] 2 SCR 286; Gujarat Ginning and Manufacturing Co. Ltd. Ahmedabad v. Moti Lal Hirabhai Spinning and Manufacturing Co. Ltd., Ahmedabad AIR 1936 P.C. 77; Shankar Gopinath Apte v. Gangabai Harihar-rao Patwardhan, [1977] 1 SCR 411; Muhammad Ziaul Haque v. Standard Vaccum Oil Company, 55 Calcutta Weekly Notes 232; Dominion of India v. Sohan Lal, AIR 1950 EP 40; M.F. De Souza v. Childrens Education, Uplift Society AIR 1959 Bombay 533; Raghbir Saran v. Param Kirti Saran, AIR 1962 All. 444; Deep Chand v. Kasturi Devi, AIR 1975 Pat. 17;

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Karan Singh v. Budh Sen, AIR 1938 All. 342; Mohammad Ali v. Ahmad Husain, AIR 1932 Oudh. 264, Babulal Choukhani v. Caltex (India) Ltd., AIR 1967 Cal. 205; Hasmat Jahan v. Sheo

Dularev, AIR 1942 Oudh. 180; Brun Daban Jena v. Ram Chandra Misra, [1963] 29 Cut. L.T. 37; Banamali Dalbehura v. Ratnamani Dei, [1954] 20 Cut. L.T. 319; Jagat Singh and Others v. District Board Amritsar, AIR 1940 Lahore 18 and Thakur Prasad v. J. Thomkinson, AIR 1927 Oudh 206, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 638 of 1980.

From the Judgment and Order dated 18.2.1978 of the Allahabad High Court in First Civil Appeal No. 18 of 1965. S.N. Kacker, G.C. Mathur and C.P. Lal for the Appellants.

U.R. Lalit, K.K. Gupta, P.H. Parekh and P.K. Manohar for the Respondents.

Soli J Sorabjee, Prithvi Raj, N.B. Sinha and Sanjeev B. Sinha for Respondents No. 10 to 16.

The Judgment of the Court was delivered by

SINGH, J. This appeal by special leave is directed against the judgment of the High Court of Allahabad dated 18th February, 1978 dismissing the appeal preferred by the appellant against the judgment and decree of the Additional Civil Judge, Lucknow, dismissing the suit instituted by him for possession of the property in dispute.

The property in dispute situate at Nawal Kishore Road, Lucknow, consists of buildings and land which have been in the occupation of the Bishun Narain School. In 1938, certain public spirited persons of Lucknow city formed a society registered as the Progressive Education Society for establishing educational institution for imparting education. Raja Ram Kumar Bhargava who owned considerable property, in the Lucknow city, was elected Chairman of the Society. He permitted the society to run an English Middle School on rent in his building. which stood on the site in dispute, the school was commonly known as the "Narhi Middle School". The school was not recognised by the Education Department of the Government as it had no endowment and no building of its own. After protected correspondence with the

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authorities of the Education Department Raja Ram Kumar Bhargava president of the Society by his letter dated November 26, 1941 (Exhibit C-B-6) informed the Inspector of Schools Lucknow that he has given away the premises occupied by the school free of rent which may be considered his permanent contribution to the cause of the school. In pursuance to the declaration made by Raja Ram Kumar Bhargava the Education Department of the State Government recognised the institution. The members of the Committee of Management felt obliged to the Raja for his charitable disposition in donating the building to the school, accordingly, they unanimously passed a resolution expressing their gratitude to the Raja and they further resolved to change the name of the institution as the "Bishun Narain Anglo Vernacular School" to perpetuate the memory of late Bishun Narain Bhargava, the father of Raja Ram Kumar Bhargava. This meeting was presided over by Raja Ram Kumar Bhargava himself as the President of the Society. Thereafter Raja Ram Kumar Bhargava did not realise rent from the school and he allowed the school to occupy the building and the open land attached to it for the use of the school. With the passage of time the school progressed, it was raised to the status of a High School and then to the status of an Intermediate College which was also named after Bishun Narain Bhargava. Subsequently, the primary section of the institution was separated from the

College section and it was given the name as "Bishun Narain Basic School" This school has been occupying the property in dispute, however, the school and the college both were managed by committee of management of which Raja Ram Kumar Bhargava continued to be the President till 1961 and thereafter his wife Rani Lila Bhargava became the President, which office she continued to occupy since then. As there was considerable increase in the number of students, the institution felt short of accommodation. To meet the need for additional accommodation, the management made permanent constructions on the open land attached to the main building, to provide three class rooms and other facilities including bath-room to the students without any objection by the Raja or any of his family members.

It appears that Raja Ram Kumar Bhargava had taken considerable amount of money as loan from Central Bank of India and to secure the loan he executed a mortgage deed, on March 27, 1957 mortgaging a number of properties including the property in dispute occupied by the school, in favour of the Central Bank of India. The loan, however, could not be repaid. Raja Ram Kumar Bhargava offered to sell the mortgaged property and on negotiations, the Bank agreed to release the property from mortgage to enable Raja Ram

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Kumar Bhargava to sell the same for raising money to pay off the loan. The Bank released the property under a written agreement dated 27th June, 1961 and in pursuance thereof Raja Ram Kumar Bhargava along with his three minor sons executed a Sale Deed on 27th June, 1961 transferring the property in dispute occupied by the school along with other property to Ram Sarup Gupta, the plaintiff-appellant. In the registered sale deed the property in dispute was described as Portion II of ITD Block in Hazratganj, Lucknow, bearing house No. C-43/111 in the occupation of Bishun Narain High School. Ram Sarup Gupta the appellant after purchasing the property served notice on the school and its managing committee terminating their license and directing them to restore the possession of the property to him within a specified period. Since the property was not restored to him, he filed a suit for possession against Bishun Narain Inter College, members of the committee of management of the college and the Progressive Education Society in the court of Civil Judge, Lucknow. Subsequently under the order of the trial court the members of the committee of the management of the Bishun Narain Basic School were also impleaded as defendants 11 to 17. The defendants inter alia pleaded that the Raja had donated the property in dispute to the school permanently and the school had made permanent constructions by incurring expenses for that reason license was irrevocable.

On the pleading of the parties the trial court framed 8 issues and the parties produced evidence in support of their case. The trial court recorded findings that the property in dispute belonged to the joint family of which Raja Ram Kumar Bhargava as Karta. Raja Ram Kumar Bhargava had donated the property in dispute to the school, but no title passed to the school or to any of the defendants as the property being immovable could not be transferred except under a registered deed. In the absence of transfer deed Raja Ram Kumar Bhargava continued to be owner and he could transfer title in the property to the plaintiff. The defendants' plea that the civil court had no jurisdiction to entertain the suit or pass decree for possession was negated on the findings that under the U.P. Act III of 1947, no allotment could validly be issued in favour of the school as there was no

vacancy or likelihood of vacancy. The trial court recorded findings that Raja Ram Kumar Bhargava had given away the property to the school as his permanent contribution but in the absence of registered deed the transaction amounted to a license only and since the defendants had made permanent constructions on the premises in suit, the license was irrevocable under section 60(b) of the Indian Easements Act, 1882 (hereinafter referred to as the Act). The trial court
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further held that Raja Ram Kumar Bhargava himself had no power in law to revoke the license, consequently the plaintiff being transferee from him could not acquire any better right, therefore he was not entitled to revoke the license or to obtain possession of the property. On these findings the trial court dismissed the suit. The appellant took the matter in appeal before the High Court, the appeal came up for hearing before a Division Bench consisting of P.N. Jha and K.S. Verma, JJ. There was difference of opinion between two learned Judges. D.N. Jha, J. affirmed the findings of the trial court and opined that since license granted to the school was irrevocable, the appellant was not entitled to any relief. K.S. Verma, J. took a contrary view, according to him the defendants had failed to raise requisite plea that the license granted to them was irrevocable as contemplated by Section 60 (b) of the Act and they had further failed to produce any positive evidence to prove the terms and conditions of the license showing that the license was irrevocable. The learned Judge held that the defendants plea that they had made permanent constructions on the land in pursuance of the license incurring expenses, could not be considered as the defendants had failed to plead the necessary facts in their written statement, the evidence produced by them could not be considered. On these findings the learned judge proposed to set aside the trial court's order and decree the plaintiff's suit. Since there was difference of opinion the matter was referred to a third Judge. The appeal was then heard by T.S. Misra, J. he discussed the questions in respect of which the two judges had disagreed and by a detailed order he concurred with the view expressed by D.N. Jha, J. as a result of which the trial court's judgment was upheld and the appellant's suit was dismissed. The appellant has preferred this appeal by special leave under Article 136 of the Constitution.

Sh. S.N. Kacker, learned counsel for the appellant contended that the trial court as well as the High Court both erred in holding that the license was irrevocable under section 60(b) of the Indian Easement Act. He urged that the defendants had failed to raise necessary pleadings on the question, no issue was framed and no evidence was produced by them. In the absence of requisite pleadings and issues it was not open to the trial court and the High Court to make out a new case for the defendants, holding the license irrevocable. He urged that the defendants had failed to produce any evidence to prove the terms and conditions of the license. In order to hold the license irrevocable, it was necessary to plead and further to prove that the defendants had made construction, "acting upon the terms of the license". Shri Kacker further urged that Raja Ram Kumar Bhargava being Karta of
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joint family, could not alienate the, property permanently to the detriment of the minor co-sharers. Sri. U.R. Lalit, appearing on behalf of the defendant-respondents supported the findings recorded by the trial court and the High Court and urged that both the courts have recorded findings of

facts on appreciation of evidence on record that the license granted by Raja Ram Kumar Bhargava was irrevocable and that acting upon the license the school had made construction for the purposes of running the school and the license was irrevocable. He took us through the record to show that necessary pleadings had been raised by the defendants and there was sufficient evidence in support of the pleadings.

The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot 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. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In *Bhagwati Prasad v. Shri Chandramaul*, [1956] 1 SCR 286 a Constitution Bench of this Court considering this question observed:

"If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea

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was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the

parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to reply upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

Before we examine the pleas raised by the defendants in their written statement it is necessary to keep in mind that the plaintiff himself stated in paragraph 4 of the plaint that the property in dispute has been in occupation of the school as licensee under the permission of Raja Ram Kumar Bhargava erstwhile owner of the property. Defendant Nos. 11 to 17 in paragraph 10 to 16 of their written statement while dealing with the question of license expressly stated that the school had made pucca constructions and had been making various substantial additions and alterations in the building without any objection. Raja Ram Kumar Bhargava had given away the premises in dispute permanently to the school and they have been in occupation of the premises for the last 20 years and during that period they have been making substantial additions and alterations in the building including replastering, re-flooring etc. by incurring heavy expenses. In paragraph 18 of their written statement they pleaded that the license was coupled with a grant and in any case it was a permanent and irrevocable license in favour of the school and the same could not be revoked by the plaintiff. The pleadings so raised make it apparently

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clear that the defendants had raised a specific plea that the license was coupled with grant, it was a permanent and irrevocable license and in pursuance of the licence the licensee had carried out work of permanent character incurring expenses for the advancement of the purpose for which the license had been granted. In fact, issue numbers 4, 5 and 6 framed by the trial court relate to the question whether license was irrevocable. The issues so framed involved the question of irrevocability of the license under both the clauses (a) and (b) of the Section 60 of the Act. The plaintiff went to trial knowing fully well that defendants claim was that the license was irrevocable, on the ground that they had made permanent constructions and incurred expenses in pursuance of the license granted for the purpose of school. The plaintiff knew the case he had to meet, and for that purpose he produced Raja Ram Kumar Bhargava in evidence in support his plea that the license was a simple license and it was not irrevocable as pleaded by the defendants. This question has been considered in great detail by T.S. Misra, J. and we are in agreement with the view taken by him.

Mr. Kacker, then contended that mere execution of work of a permanent character and incurring expenses by the licensee is not sufficient to make the license irrevocable instead licensee must plead and prove by positive evidence that the licensee "acting upon the license", executed work of a permanent character and incurred expenses in its execution. The defendants failed to raise any such plea before the trial court that they had executed the work of permanent character and incurred expenses "acting upon the license" and they further failed to produce any evidence in support thereof. He urged that by making constructions and incurring expenses a licensee could not make the license irrevocable

as the law requires that constructions, if any, and expenses incurred thereon must be shown to have been made "acting upon the license". He placed reliance on the Privy Council decision in Gujarat Ginning and Manufacturing Co. Ltd. Ahmedabad v. Moti Lal Hirabhai Spinning and Manufacturing Co. Ltd. Ahmedabad, AIR 1936 P.C. 77 and also on a decision of this Court in Shankar Gopinath Apte v. Gangabai Harihar-rao Patwardhan, [1977] 1 SCR 411. In addition to these cases he referred to a number of High Court decisions in support of his submissions that benefit of Section 60 (b) of the Act could not be granted to the respondent school. Similar grievance had been raised by the appellant before the High Court on the ground on absence of requisite pleadings with regard to the respondents' claim for the license being irrevocable under section 60 (b) of the Act. The majority of the Judges of the High Court repelled the appellants' submission on a detailed scrutiny of the plead-

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ings. We have already referred to the pleadings raised by the defendants which contain necessary facts to sustain the pleading of the license being irrevocable under section 60 (b) of the Act. It is well settled that the pleadings need not reproduce the exact words or expressions as contained in the statute, nor the question of law is required to be pleaded. The substance of the respondents' pleadings clearly informed that their case was that they had made constructions on the land acting upon the licence which substantially met the requirement of law. Before we discuss the authorities cited by the appellants' counsel we consider it necessary to briefly refer to the provisions of the Act regulating the grant, revocation of license and other allied matters and also the evidence available on record.

License as defined by Section 52 of the Act means 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. The grant of license may be express or implied which can be inferred from the conduct of the grantor. Section 60 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. Revocation of license may be express or implied. Section 62 enumerates circumstances on the existence of which the license is deemed to be revoked. One of such conditions contemplate 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. Section 63 and 64 deal with licensee's right on revocation of the license to have a reasonable time to leave the property and remove the goods which he may have placed on the property and the licensee is further entitled to compensation if the license was granted for consideration and the license was terminated without any fault of his own. These provisions indicate that a license is revocable at the will of the grantor and the revocation may be expressed or implied. Section 60 enumerates the conditions under which a license is irrevocable. Firstly, the license is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the license executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case

where the grantor of the license may enter into agreement with the licensee making the license irrevocable, even though, none of the two clauses

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as specified under section 60 are fulfilled. Similarly, even if the two clauses of section 60 are fulfilled to render the license irrevocable yet it may not be so if the parties agree to the contrary. In Muhammad Ziaul Hague v. Standard Vacuum Oil Company, 55 Calcutta Weekly Notes 232 the Calcutta High Court held that where a license is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the license which may not prima facie fall within either of the two categories of license (as contemplated by section 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as he then was) in Dominion of India v. Sohan Lal, AIR 1950 EP 40. Bombay High Court has also taken the same view in H.F. De Souza v. Childrens Education Uplift Society, AIR 1959 Bombay 533. The parties may agree expressly or impliedly that a license which is prima facie revocable not failing within either of the two categories of license as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A license may be oral also in that case, terms, conditions and the nature of the license, can be gathered from. the purpose for which the license is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the license.

In their pleadings the defendants had invoked the protection of both the clauses of Section 60 of the Act, firstly, they pleaded that the license was coupled with the transfer of property inasmuch as the school had been realising rent from third parties who were permitted to use a portion of the land. Secondly, they pleaded that the licensee, namely, the school had executed permanent constructions and incurred expenses in execution thereof acting on the license. The trial court as well as the High Court both rejected the respondents' claim of license being irrevocable under section 60(a) of the Act. But they upheld the respondents plea of license being irrevocable under clause (b) of Section 60 of the Act. It is true that the pleadings raised in the written statement of defendants did not expressly use the expression that the school had executed work of permanent character "acting upon the license". But reading the entire written statement one cannot escape the conclusion that the defendants had raised the plea that Raja Ram Kumar Bhargava the grantor of the license had granted license for running the school in the building and for using the open land for

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the purpose of school and in pursuance of the license, so granted, the school had executed work of permanent character and incurred expenses in making the same. The defendants further pleaded that no objection had been raised by the grantor of the license or by anyone else against the school in making the constructions. Repeated assertions have been made in their written statement that Raja Ram Kumar Bhargava, had granted a permanent license which was irrevocable. Substance of the pleading was clear that defendants had raised a specific plea that the school had in pursuance of

the license executed work of permanent character and incurred expenses in execution and that no objection was raised by the licensor therefore the license was irrevocable. The license had been granted to the school for the purpose of running school and imparting education to the students, the license was not merely in respect of building alone but it was also in respect of open land attached to the building. Additional accommodation was required to provide class rooms for the students which was an integral part of the purpose for which the license had been granted and the school carried out works on the open land which was appurtenant to the main building, with the knowledge of the licensor as has been found by the trial court and the High Court. In view of the licensor's donation of the property to the school, and his subsequent conduct, the licensee could reasonably entertain a belief that the licensor had permitted the construction on the land, and in pursuance thereof, the licensee made constructions and incurred expenses. The result is that the respondents "acting upon the license" had executed works by incurring expenses which rendered the license irrevocable. As regard evidence we have perused the statement of Ganga Prasad Dhayani, DW 1, Shanker Dutt, DW 2, and Bhola, DW 3. Their testimony fully established that the school had constructed three class rooms, latrin and urinals and incurred expenses. Raja Ram Kumar Bhargava in his testimony claimed that the aforesaid constructions had been made by a trust constituted by his family members, but no account books were filed in support of the statement, although it was admitted that the trust maintained accounts on the other hand vouchers were produced on behalf of the defendants showing that the management had spent money for making constructions. Raja Ram Kumar Bhargava who was examined as a witness on behalf of the plaintiff admitted in his testimony that he continued to be the president of the school since 1938 to 1961 and thereafter his wife has continued to be the president, it is therefore difficult to believe that he had no knowledge of the constructions. If the license did not permit the school to execute any permanent constructions, Raja Ram Kumar Bhargava would have certainly raised objections. His conduct of acquiescence to the raising of

820 constructions, is eloquent enough to show that the license was irrevocable. No doubt Raja Ram Kumar made attempts to support the plaintiff's case by saying that he had not given the property to the school permanently but the trial court and the High Court both have discarded his testimony and we find no good reason to take a different view.

In Gujrat Ginning and Manufacturing Co. Ltd. Ahmedabad v. Moti Lal Hirabhai Spinning and Manufacturing Co. Ltd. Ahmedabad, protection of Section 60(b) of the Act was invoked by a party who had made constructions on his own land and not on the land of the licensor and in that factual backdrop the Privy Council held that the expression "acting upon the license" must mean acting upon a right granted to do upon the land of the grantor something which would be unlawful in the absence of such right. A man does not "acting upon a license" executes works and incurs expense upon his own property as that he can do without any one's license. These observations do not support the appellant on the other hand they show that if a man executes work of permanent character and incurs expense on the property of other person under a license he may have done so "acting upon the license". In Shanker Gopinath Apte v. Gangabhai Hariharrao Patwardhan the plaintiff had raised plea of tenancy failing which he claimed to be in possession of the

land, in part performance of an agreement for sale. On the rejection of both the pleas the plaintiff-appellant therein raised a further plea that he was protected under section 60(b) of the Indian Easements Act as he had executed works of permanent character on the land incurring heavy expenses. This Court rejected the submissions on the ground of absence of pleadings, issues and evidence. While rejecting the appellant's submissions the Court observed that even assuming that the appellant had executed work of a permanent character on the land it could not be said that he had done so "acting upon the license" as required by Section 60(b) of the Easements Act. The Court observed that the appellant improved the land by executing work of a permanent character, he did so, in the belief that being a tenant he would become statutory purchaser of the land or that the oral agreement of sale will one fine day be implemented. The execution of the work was done either in the capacity as a tenant or as a prospective purchaser but not as a licensee. The decision has no application to the facts of the present case as admittedly the school was a licensee and in that capacity it executed works of a permanent character, by incurring expenses and this plea was raised at the initial stage before the trial court.

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Reference was made to a number of decisions of the High Court in support of the proposition that a license is irrevocable under section 60(b) of the Act only if three conditions are fulfilled, namely, (i) the licensee executed work of a permanent character, (ii) he did so acting upon the license, and (iii) he incurred expenses in doing so. The onus of proving these facts lie upon the licensee and in the absence of any evidence on these questions the license could not be irrevocable under section 60(b) of the Act. Decisions relied are *Raghubir Saran v. Param Kirti Saran*, AIR 1962 All. 444; *Deep Chand v. Kasturi Devi*, AIR 1975 Pat. 17; *Karan Singh v. Budh Sen*, AIR 1938 All. 342; *Mohammad Ali v. Ahmad Husain*, AIR 1932 Oudh. 264; *Babulal Choukhani v. Caltex (India) Ltd.*, AIR 1967 Cal. 205; *Hashmat Jahan v. Sheo Dularey*, AIR 1942 Oudh. 180; *Brun Daban Jena v. Ram Chandra Misra*, [1963] 29 Cut. L.T. 37; *Banamali Dalbehura v. Ratnamani Dei*, [1954] 20 Cut. LT 319. We do not consider it necessary to discuss these authorities in detail as in our opinion all the three conditions as required by Section 60(b) of the Act have been made out to show that the license was irrevocable. The respondents placed reliance on the decisions of Lahore High Court and Oudh High Court in *Jagat Singh and others v. District Board Amritsar*, AIR 1940 Lahore 18 and *Thakur Prasad v. J. Thomkinson*, AIR 1927 Oudh 206. In these decisions the Court held that where a license was granted to a school in respect of a land, and in pursuance thereof the licensee constructed work of permanent character on the land, the license was irrevocable under section 60(b) of the Indian Easements Act. In our view the Court rightly held that where license is granted for the purpose of running school without reserving any right to revoke the license and if the licensee erected works of permanent nature, the grantor of license is not entitled to recover land, as the execution of work was for the purpose of school and it falls within the expression "acting upon the license".

Learned counsel for the appellant urged that in the absence of any document containing the terms and conditions of the license, the courts below committed error in holding that license was irrevocable. Since no written document was executed by the parties containing the terms and conditions of the license, the terms and conditions could be inferred

from the attending circumstances and the conduct of the parties. Raja Ram Kumar Bhargava was the President of the Society which was running the Narhi Middle School, but it was not recognised by the Education Department of the State of U.P. The correspondence which is on record shows that the Education Department insisted that there should be some endowment and school should own building

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and land before it could be granted recognition. Raja Ram Kumar Bhargava gave away the disputed property donating the building and the land in favour of school by his letter dated November 26, 1941 (Ex C-B-6) addressed to the Inspector of Schools, Lucknow. In that letter Raja Ram Kumar stated "I have given my building free of rent to the Narhi Middle School. I now write to inform you that the premises at present in the occupation of the school free of rent which may be considered my permanent contribution to the cause of the school." On the receipt of that letter the Education Department granted recognition to the school. The proceedings of the Managing Committee of the school held on January 6, 1942 (Ext. B-16) show that a meeting of the Managing Committee was held on that day president over by Raja Ram Kumar Bhargava and in that meeting the Managing Committee expressed its deep sense of appreciation and grateful thanks to Raja Ram Kumar Bhargava for donating the building to the school for procuring the recognition to the school from the U.P. Government, and it further resolved to name the school as the Bishun Narain Anglo Vernacular School to perpetuate the memory of Shri Bishun Narain Bhargava father of Raja Ram Kumar Bhargava. These documents clearly indicate that Raja Ram Kumar Bhargava had permanently donated the property in dispute to the school and in lieu thereof the institution was named after his father to perpetuate his memory. The purpose of the grant was to enable the school to carry on its activity of imparting education to the students. The school progressed and it required additional building, Management of the school which was headed by Raja Ram Kumar himself, constructed additional buildings to provide for class rooms and other amenities to the students. Raja Ram Kumar Bhargava himself never raised any objection against the school making additional constructions on the disputed land. These facts and circumstances point out the terms and conditions of the license, that the school was permitted to occupy and enjoy the land permanently for the purpose of education. In this background, it would be reasonable to infer, an implied condition that the license was irrevocable and the school was permitted to occupy and use the premises so long as it continued the purpose of imparting education to the students.

The appellant's submission that Raja Ram Kumar Bhargava being Karta of joint family could not create a permanent license in favour of the school without the consent of other co-sharers, to the detriment of his minor sons, is devoid of any merit. No co-sharer or member of the joint family ever raised any objection to the donation of the property to the school by Raja Ram Kumar Bhargava nor they

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raised any objection at any stage of construction of the additional buildings by the school. There is no evidence on record to show that his three minor sons, on whose behalf he executed sale deed on 27th June 1961 in appellant's favour were born prior to 1941. Moreover title in the property was not transferred to the school instead a permanent license was granted, in which every member of the joint family, must have been interested, as the school perpetuated the memory

of the common ancestor Shri Bishun Narain Bhargava father of Raja Ram Kumar Bhargava. The question of any legal necessity did not arise and the grant of permanent license in favour of the school' could not be rendered void merely because Raja Ram Kumar Bhargava was Karta of the joint family. No co-sharer has challenged the validity of the license, on that ground. On the other hand they have acquiesced to it. There is thus no merit in the appellant's contention.

In view of the above discussion we are of the opinion that the pleadings, evidence and the circumstances available on record, have fully established that Raja Ram Kumar Bhargava had granted license to the school in respect of the building and the land attached to it for the purpose of imparting education and the school in furtherance of that purpose constructed additional buildings and it further incurred expenses in carrying out modification and extensive repairs in the existing buildings during the period, Raja Ram Kumar Bhargava continued to be the President of the Managing Committee of the school. He never raised any objection to it and there is nothing on record to show that licensor had retained right to revoke the license. If a person allows another to build on his land in the furtherance of the purpose for which he had granted license, subject to any agreement to the contrary cannot turn round, later on, to revoke the license. This principle is codified in Section 60(b) of the Act. Moreover, conduct of the parties has been such that equity will presume the existence of a condition of the license by plain implication to show that license was perpetual and irrevocable. That being so, Raja Ram Kumar Bhargava could not revoke the license or evict the school and the appellant being transferee from him could not and did not acquire any better right. The appellant therefore has no right to revoke the license or to evict the school, so long the school continues to carry on the purpose for which the license was granted. The trial court and the High Court have therefore rightly dismissed the suit.

Before concluding, we would like to observe that the appellant purchased the property in dispute from Raja Ram Kumar Bhargava for valuable consideration and he continues to be the owner of the

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property, his desire to get the possession of the property is quite natural but at the same time we cannot shut our eyes to the hard reality that Raja Ram Kumar Bhargava erstwhile owner of the property had granted an irrevocable license in favour of the school. On 27th June 1961 when Raja Ram Kumar Bhargava executed the sale deed in appellant's favour the property in dispute was in possession of the school under an irrevocable license. The appellant should have known that the institution was occupying the property and it was rendering public service in imparting education to the students and it would be difficult to get possession, in spite of that, the appellant purchased the property. The school has been occupying the property since 1939 and it has made permanent constructions without any demur from any quarter, in this situation it is not possible to grant any relief to the appellant. To evict the school may result into closure of the institution and that would certainly be against public interest. Having regard to these facts and circumstances, we gave opportunity to the parties to evolve settlement to adjust equities without disturbing the cause of education. We regret to say that the parties could not settle the matter, we have therefore decided the appeal on merits.

In view of the above discussion we do not find any merit

in the appeal it is accordingly dismissed. In the circumstances of the case parties shall bear their own costs.

N.P.V.
dismissed.
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Appeal dis-

JUDIS