

Aged about 30 years,
Both are residing at No.107,
5th Cross, 7th Main,
Near Government School,
B. Narayanapura,
Dooravaninagara Post,
Bengaluru - 560 016.

(D.1 & 2 by Sri.E.M., advocate)

PARTIES TO I.A.NO.1

APPLICANT: 1. **Smt. Manjula.N**
W/o. Jayaram M.P.,
D/o. K.Narayanappa,
Aged about 44 years,
R/at No.107, 5th Cross,
7th Main Road, Near Government
School, B. Narayanapura,
Dooravaninagara Post,
Bengaluru - 560 016.

(By Sri.S.G., Advocate)

V/s

OPPONENTS: 1. **Sri.Muniraju**
S/o. Papaiah,
Aged about 65 years,

2. **Sri.Raja**
S/o.Muniraju,
Aged about 30 years,

Both are residing at No.107,

5th Cross, 7th Main,
Near Government School,
B. Narayanapura,
Dooravaninagara Post,
Bengaluru - 560 016.

(D.1 & 2 by Sri.E.M., advocate)

**ORDER ON INTERLOCUTORY APPLICATION No.I FILED
BY THE PLAINTIFFS UNDER ORDER XXXIX RULE 1 AND 2
R/W SEC.151 OF CODE OF CIVIL PROCEDURE.**

The learned counsel for the plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, for the relief of ad-interim order of temporary injunction restraining the defendants, their legal heirs, attorneys, representatives, contractors, labourers, lagatees, assignees, henchmen, agents and any other person/s claiming right or authority through or under them from preventing or interfering with the right of the plaintiff/ applicant to pass through the suit 'B' schedule property which is an easement of right and necessity of the plaintiff to reach her suit 'A' schedule property for ingress and

egress of herself, her family members and her labourers and to carry the materials through vehicles to her suit 'A' schedule property, pending disposal of the suit.

2. The plaintiff has sworn to an accompanying affidavit stating that the plaintiff is the absolute owner in possession and enjoyment of the suit schedule property, having acquired the same under a valid registered Gift Deed dated 17.02.2020 gifted by her father Sri.K.Narayanappa, out of love and affection and said Gift came to be duly accepted by the plaintiff and thereby, the same has become an legally enforceable document. It is further stated that the plaintiff is put into peaceful physical possession of the suit schedule property in pursuant to the recitals of the Gift deed and ever since then the plaintiff is holding and enjoying the suit schedule property as an absolute owner thereof to the knowledge of one and all. The plaintiff has also secured transfer of the entry in the

form-B property register into her name maintained by the BBMP authority in their books known as 'B' property register. In this regard it is stated that the BBMP authority have shown the schedule property coming within the Ward No.55 and the area known as Devasandra in their 'B' property register and the same is evident from the said extract. Thus, there is a recognition of the ownership and possession of the plaintiff over the suit schedule property by the local authority. The plaintiff in exercise of her ownership right she has been paying annual property tax in respect of the suit schedule property to the BBMP. The plaintiff initially residing in the suit schedule property after the Gift and thereby, she has secured her Aadhaar card showing the address of the suit schedule property as her permanent address. That it is further stated that the gift of the suit schedule property in favour of the plaintiff under the registered Gift deed referred to above is reflected in the encumbrance maintained by the jurisdictional Sub-

Registrar. At the time of the Gift, there existed a dilapidated sheet house and wherein, the plaintiff resided for some time. Now the same has become uncomfortable to reside there the plaintiff taken all the efforts to build a RCC house over the suit schedule property and thereby she has started dismantling of the old structure. There exists a 10 feet width public road in front of the suit schedule property and same is known as 5th Cross. The same starts from 7th Main in the area. The residents of 5th Cross are required to make use the 5th cross to reach the 7th main and further road and areas thereafter. The 5th Cross road is in a jig zag manner that means it takes turn at some places. In the first turn from the suit schedule property there exists the property claimed by the defendants on both sides i.e. Eastern and Western sides.

2(a). The defendants have illegally put up a shed at the first turn of the 5th cross from the suit schedule property encroaching 4 feet width of the road and the same is

evident from the photographs produced by the plaintiff. With the result the width of the 5th cross at the first turn reduced to 6 feet. The same was questioned by the plaintiff as it has become difficult for her to carry the building materials in a narrow turn on the 5th cross. Having questioned the same by the plaintiff the defendants illegally got enraged towards the plaintiff and thereby, the defendants are preventing the plaintiff and her labour force from making use of vehicles to lift the dismantled debris through the said turn in the 5th Cross road day in and day out. In that regard several galatas have taken place and the defendants are used all filthy languages towards the plaintiff and her family members and abused her. Now, they have taken a challenge against the plaintiff that they would not allow the plaintiff and her family members and labour force to pass through the said turn in the 5th cross. The said disputed area shown in the rough sketch annexed to the plaint for identification of the 'B' schedule

property since being the subject matter of the present suit the same is more fully described in the 'B' schedule given at the plaint. The suit schedule property is the property of the plaintiff and same is described as 'A' schedule property and thereby, the earlier reference to suit schedule property is pertaining to 'A' schedule property. Those incidents have taken place for the past over 1 months and since the matter became worse from day by day, the plaintiff was constrained to lodge a complaint on 19.03.2024 with the jurisdictional police Mahadevapura, Bengaluru. The defendants are no other than paternal senior uncle and cousin of the plaintiff. Due to parliamentary election in the Bengaluru city the police have taken considerable time to enquire into the matter and ultimately may be under the influence of the defendants they washed off their hands by issuing endorsement dated 29.05.2024 to the effect that the matter involves civil dispute and same is required to be resolved before the concerned civil Court. The entire 5th

cross in the area where the 'A' schedule property is situated is a public road belonging to BBMP and same is maintained by it out of the tax payers' money. Accordingly, neither the defendants nor anybody can have any right or claim over the 'B' schedule property and entire 5th cross exclusively or to prevent the residents to make use the same for their ingress and egress including making use of the same for vehicular movements. It is also necessary to state that the plaintiff has no other access to reach the 'A' schedule property belonging to her except through the 5th cross inclusive of 'B' schedule property. Accordingly, if the 'B' schedule property is blocked she cannot reach her property in the 'A' schedule property. Hence, the 'B' schedule property and the 5th cross is the easement of necessary and she has got an easementary right over the entire 5th cross including 'B' schedule property which is a part of the same. Since the dispute is pertaining to a turn in the 5th cross adjacent to alleged property of the

defendants who has encroached 4 feet width of 5th cross only that portion is shown in the rough sketch as 'B' schedule property as there is no any other impediment for the plaintiff to make use the 5th cross in the area where the 'A' schedule property is situate. In this regard the plaintiff reserves her right to seek for demolition of unauthorized illegal construction put up by the defendants by encroaching the 5th cross in a short duration after approaching the BBMP authority in that regard. The cause of action for the suit arose about 1½ months back when the defendants started preventing the plaintiff and her labour force to make use the 'B' schedule property to reach the 'A' schedule property and to shift the building materials and debris through the vehicles, on 19.03.2024 the date of complaint, on 29.05.2024 the date of police endorsement and on subsequent dates. The plaintiff has made out prima facie case. Balance of convenience lies in favour of the plaintiff. Therefore, prayed to allow the application.

3. Per contra, the defendants have filed memo to adopt their written statement as objections to I.A.No.1 stating that the suit filed by the plaintiff for declaration of easement right over the 'B' Schedule Property and permanent injunction against the defendants by metes and bounds is not maintainable either in law or on facts as the same liable to be dismissed in limine. The plaintiff has not approached with clean hands and is full of falsehood, total misrepresentation, based on devoid of truth, suppression of material facts, full of issues of lie, full of illusions and imaginations and he is not entitle for any relief. The suit filed by the plaintiff is one for imaginary relief of declaration of easement right over the 'B' schedule property and permanent injunction against the defendants is not maintainable either in law or on facts and same is liable to be dismissed as there is no title to plaintiff or alleged possession of schedule property. The averments made in the plaint are denied by the defendants as false. The plaintiff may be put to strict proof of

the said allegations. The cause of action is imaginary one, and the valuation made in the plaint is not correct and valued under the Karnataka Court Fee and Suit Valuation Act. The plaintiff is not entitle for any order from the hands of this Court and the reliefs sought by the plaintiff is vexations, mischievous, arbitrary and without any basis. The plaintiff with created documents, created cock and bull story and filed false case for harassing the defendants and also wasting this Court's Valuable time. Therefore, prays to dismiss the suit with exemplary costs.

4. From the contents of the I.A. and counter parts filed by the parties the following points that arise for my consideration:-

1. Whether the plaintiff has made out a prima-facie case for grant of temporary injunction as prayed in the I.A.No.1?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the irreparable loss or injury caused to plaintiff?

4. What order?

5. Heard arguments. After hearing the arguments and after considering the available material on record my answer to the above points are:-

POINT NO.1 : In the **Negative**,

POINT NO.2 : In the **Negative**,

POINT NO.3 : In the **Negative**,

POINT NO.2 : As per the final order,
for the following:-

REASONS

6. **POINT NO.1 PRIMA-FACIE CASE:-** The plaintiff has filed this suit against the defendants to declare that the 'B' schedule property is the part of 5th Cross and upon which the plaintiff has got easementary right to make use the same for ingress and egress including to carry the materials through vehicles to reach her 'A' schedule property. To issue permanent injunction, restraining the defendants, their legal heirs, attorneys, representatives, henchmen, agents, contractors, coolies, labourers, legatees, assignees and any

other person/s claiming from right or authority through or under them interfering with or objecting the plaintiff to make use the 'B' schedule property as an ingress and egress to reach the 'A' schedule property by herself, her family members, her labour force, her vehicles etc., in any manner and such other reliefs.

7. The learned counsel for the plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, for the relief of ad-interim order of temporary injunction restraining the defendants, their legal heirs, attorneys, representatives, contractors, labourers, lagatees, assignees, henchmen, agents and any other person/s claiming right or authority through or under them from preventing or interfering with the right of the plaintiff/ applicant to pass through the suit 'B' schedule property which is an easement of right and necessity of the plaintiff to reach her suit 'A' schedule property for ingress and egress of herself, her family members and her labourers and to carry the materials

through vehicles to her suit 'A' schedule property, pending disposal of the suit.

8. The plaintiff by reiterating the plaint averments stated that the plaintiff has filed the suit for declaration of her easementary right over the suit 'B' schedule property and for permanent injunction against the defendants. In order to put up a residential construction on the suit 'A' schedule property which is absolutely belonging to her is under progress and same is at the stage of demolition of old dilapidated sheet house in the suit 'A' schedule property. She has invested all her fortunes for the proposed construction. Her suit 'A' schedule property has no any other direct access except through suit 'B' schedule property which is a portion of 5th Cross, public road maintained by BBMP. The defendants have illegally encroached a four feet width of 10 feet 5th Cross road, at the place of suit 'B' schedule property and the same was objected and protested by her, he is preventing her from

making use of the suit 'B' schedule property to reach suit 'A' schedule property. The defendants are preventing the vehicles carrying the building materials and debris to pass through the suit 'B' schedule property with an intention to harass her and see that she should not raise any hue and cry against the illegal encroachment of the defendants over the public road. Accordingly, she is facing very difficult time to carry the building materials and debris out of her property. The defendants are unnecessarily raising galatas and using filthy languages against her and her family members. Even the police authority are not coming to her rescue on the alleged ground that the matter involved civil dispute. Therefore, prays to allow the application.

9. The defendants have seriously objected the application by reiterating the written statement averments and by denying the averments made in the application and prays to dismiss the application.

10. The learned counsel for plaintiff has also filed memo that BBMP has issued a letter to plaintiff that BBMP authorities have require some time to conduct spot inspection. The plaintiff has given a complaint on 28.04.2025 to BBMP. The defendants in para no.3 of the written statement submits that the plaintiff suit 'A' schedule property and defendants properties are not adjacent and far from each other. The plaintiff claiming public road as their property for ingress and egress. The suit 'B' schedule property is a public road not is the point to be decided after the full fledged trial. Therefore, at this stage prima facie case is not made out by the plaintiff. Hence, I answer point No.1 in the **Negative**.

11. POINT No.2 – BALANCE OF CONVENIENCE & IRREPARABLE LOSS :- When the prima facie case itself is not made out by the plaintiff balance of convenience and

irreparable loss does not lies in favour of the plaintiff.

Hence, I answer **Point Nos.2 & 3** in the **Negative**.

12. POINT No.4:- For the foregoing reasons, I proceed to pass the following,-

ORDER

I.A.No.I filed by the plaintiff under
Order XXXIX Rule 1 and 2 r/w Sec.151
of CPC is hereby rejected.

(Dictated to the Stenographer on computer, typed by her, corrected and pronounced by me in open Court on this **6th day of March, 2026**).

(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.