

KABG310026912025



IN THE COURT OF I ADDL. CIVIL JUDGE AND J.M.F.C.,
AT: BAILHONGAL

:Present:

Shri. Basavaraja Thulasappa Nayaka.,
LL.M.

I Addl. Civil Judge and JMFC, Bailhongal

Dated this 13th day of November 2025

OS No.326/2025

1. Shri. Mahantesh A/S/o Chintamani Puranikmath
Age: 46 years, Occ: Doctor,
R/o: Puranik Chawl, Bus Stand Road,
Bailhongal, Tq: Bailhongal, Dist: Belagavi
2. Smt. Sharada W/o Sangayya Hiremath
Age: 62 years, Occ: Agriculture,
R/o: Puranik Chawl, Bus Stand Road,
Bailhongal, Tq: Bailhongal, Dist: Belagavi
3. Smt. Shantavva W/o Parameshwarayya Hiremath
Age: 60 years, Occ: Household,
R/o: Puranik Chawl, Bus Stand Road,
Bailhongal Tq: Bailhongal, Dist: Belagavi

..... Plaintiff/Applicant

(By Shri. RKP, Advocate)

V/s

1. The Assistant Executive Engineer
Public Work Department (PWD)
Sub-division, Bailhongal,
Tq: Bailhongal, Dist: Belagavi

2. Shri. Javajee Bapuji
(Shri. Bapuji Constructions Pvt. Ltd)
Class-I Contractor,
No.40, Balaji Tower, 3rd Floor,
Room No.102, Adichunchanagiri Road,
Kuvempunagar, Mysore - 570023

..... Defendants/Respondents

(By Shri. RSK, Advocate)

1.	Date of filing of the IA No.II	26.09.2025
2.	Date of file in objection	04.11.2021
3.	Date of order	13.11.2025

ORDER ON IA No.II

The present application is filed by the plaintiff seeking to restrain the defendant from encroaching the suit property and proceeding with the construction of gutter or laying a slab or any other structure in the suit property as shown in Annexure – A.

2. The plaintiff contended that the suit property was originally owned by one Chintamani Gadigeyya Puranikmath and on the strength of the will and adoption deed executed by his wife Smt. Neelavva, the name of plaintiff No.1 has been entered in the CTS records of the suit property and the name of the plaintiff No.2 and 3 has been entered pertaining to suit property as per the mutual partition deed entered between the plaintiffs. The plaintiffs

are in peaceful possession and enjoyment of the suit properties. The defendant No.1 without initiating any acquisition proceedings, trespassed in the southern portion of plaintiff property measuring 5 x 100 feet and defendant No.2 being the contractor and agent of defendant No.1 commenced the illegal digging and construction of a gutter/drain in the suit property. The sketch map filed along with the application letters A, B, C, D clearly shows the encroachment by defendant No.1 and 2 on the southern side of suit property. The plaintiff contended that they have not consented, alienated, surrendered any portion of the suit property to defendant. The suit property was not acquired by the defendant. Further, contended that the suit bearing OS No.171/2022 before the Sr. Civil Judge, Bailhongal against the Metagud family filed by them as the Metagud family encroached portion of suit property. The defendant No.1 and 2 already commenced digging and constructing gutter in the encroached portion of suit property and are now intending to lay a concrete slab over the same and thereby permanently altering and encroaching upon the plaintiff suit property. Further contended that they have prima-facie case, balance of convenience lies in their favour. If the order of temporary injunction is not granted, they would be put to irreparable hardship and injury. Hence, prays to allow the application.

3. The defendant filed the objection denying the ownership over the suit property. Further, denied the boundaries of the suit property and survey map as alleged by the plaintiff. Further, defendant denied that plaintiffs are in possession and enjoyment of the suit property. The defendant denied that without initiating any acquisition proceedings, they have trespassed in southern portion of plaintiff property measuring 5 x 100 feet and commenced illegal digging and construction of gutter and drain. The defendant contended that there is existence of Jatta-Jamboti road which is passing through Bailhongal city limits. Existing road is having gutter towards northern side which is only existing gutter to pass the waste water of public at large. The said gutter is not newly formed by the defendant No.1. The said gutter in existence more than 100 years old. Except, the said gutter no alternative way to pass savage water. The Government has approved the development plan submitted by the Town Municipal Council Bailhongal, accordingly tender has been allotted to defendant No.2 as per norms of the Government orders. The defendant No.2 is only to carrying out renovation work. The defendant have made inspection of gutter work prior to commencement of work by the defendant No.2. The plaintiff had issued notice on 16.08.2025 to defendant No.1 contending not to proceed any work in the suit property. The defendant replied to the plaintiff that they have not made any encroachment nor putting any new structure in

the suit property. Further, contended that there is no any new gutter is going to form by the defendant in the suit property of plaintiff. Hence, question of making encroachment of suit property belongs to the plaintiff does not arise. The defendant contended that they are putting slab on the open gutter, which is already in existence. If the slab is not put on the gutter, there will be every chances to fall of a person or buffalos which will cause great hurdle to the defendants if it is kept open. Further, the plaintiff in order to grab the public gutter area which is in existence more than 100 year old has filed the present suit. Hence, prays for dismissal of the application.

4. Heard arguments. Perused records.

5. The following points are arises for my consideration:

POINTS

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in his favor?
3. Whether the plaintiff would be put to irreparable hardship and injury?
4. What order ?

6. My answer to the above points are as follows”-

Point No.1 to 3 : In the Negative.

Point No.4 : As per order for the following:

REASONS

7. Point No.1 to 3:- As these points are inter related they are taken together for discussion. It is the case of the plaintiff that, they are the owners in possession of the suit property. The defendant without acquiring the suit property has illegally trespassed in to southern portion of the suit property measuring 5 x 100 feet and commencing digging and constructing gutter on the encroached portion and now intending to lay concrete slab over the same. On the other hand the defendant denied the plaintiff possession over the suit property and further denied that they are putting construction in the suit property by constructing gutter. The defendant contended that they have taken renovation work, the gutter is already in existence. The defendants are putting slab on open gutter which is already in existence. If the same is kept open it would cause inconvenience to the people at large. The plaintiff has filed the present suit in order to grab the public gutter area, which is in existence more than 100 years. Further, contended that there is a existence of Jatta-Jamboti road which is passing through Bailhongal city limits. The existing road is having gutter towards northern

side which is only existing gutter to pass the waste water of public at large. Now they are only renovating the said gutter and said gutter is not newly farmed by the defendant No.1.

8. The plaintiff in support of his contention relied on ruled card, sketch and letter issued to defendant No.1 by the plaintiff and work order, letter to Chief Officer Town Municipal and endorsement issued by the Chief Officer Town Municipal, Bailhongal and notice issued to defendant No.1 and photos.

9. The plaintiff counsel argued that the suit property is the property of the plaintiff, in this regard relied on ruled card to show that suit property CTS 3659 stands in the name of plaintiffs. Further, relied on rough sketch to show that the encroachment by the defendant to construct gutter. Further, relied on the letter issued to defendant No.1 seeking information regarding construction of gutter in the suit property and argued that in the work order there is no mention of constructing gutter in the suit property, there is no acquisition of the suit property. The defendants are illegally encroaching suit property and trying to put up slab on the gutter.

10. The defendant counsel argued that the gutter is already in existence since 100 years, they are only taken

renovation work. In this regard issued work order. They are not constructing any new gutter. If the slab is not put, it would cause inconvenience to the public at large. Further, argued that for the developmental work temporary injunction should not be granted.

11. It is pertinent to note that on perusal of the ruled card, it appears that CTS 3659 stands in the name of plaintiff. According to the plaintiff the defendants are constructing gutter in their property. On the other hand the defendant contended that they are only taking renovation work. The gutter is in existence since 100 years. The plaintiff relied on the rough hand sketch. It is pertinent to note that on perusal of the letter issued to the defendant No.1, wherein the plaintiff No.1 has stated that the defendant No.1 is trying to put slab on the gutter and to make footpath and further on perusal of para No.9 of plaint wherein he has stated that the defendant now intending to lay concrete slab. On perusal of the photo produced by the plaintiff it appears that there exist gutter towards the norther side of the Jatta-Jamboti road as contended by the defendant. Further it appears that another small gutter connect to the gutter which is situated next to jatti jambati road. Which prima-facie shoes that there is already gutter and the defendants are putting concrete slab over the gutter. Though the plaintiff contended that the defendant have commenced digging and

constructing gutter but in order to show that the defendants are intending to lay new gutter as contended by them has not placed any material before the Court. Further, except ruled card and the rough sketch, the plaintiff has not placed any material before the Court to show that the defendants are trying to lay gutter and put up slab over the gutter in the suit property of the plaintiff. On perusal of the work order, it appears that the Government has called for improvement of road Jatta-Jamboti and has granted Rs.14 crore for the developmental work. The defendant contended that the gutter which is existence since 100 years is adjoining to northern side of Jatta-Jamboti road which is the only public gutter for pass of wastage water and they are renovating the same. Renovation of road also includes the renovation of gutter also. Hence, the developmental work cannot be stayed at this stage. At this stage, the plaintiff has not made out prima-facie , balance of convenience and irreparable hardship in his favour. Hence, I answer the point No.1 to 3 in the negative.

12. Point No.4: In view of the above discussions, I proceed to pass the following order portion:

ORDER

The IA No.II filed by the plaintiff
U/o 39 rule 1 & 2 R/w Sec. 151 of CPC
is hereby dismissed.

No order as to cost.

(Dictated to stenographer typed by him, corrected by me, then pronounced
in the open court on this the 13th day of November 2025)

**I Addl. Civil Judge and JMFC
Bailahongal.**