

**IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.**

**Present: Sonu. B
M.B.A LL.B**

II Addl.C.J & JMFC, Chikodi

Dated this the 13th Day of July, 2026

ORIGINAL SUIT No.417/2025

Plaintiffs Smt. Sushila W/o Pundalik Khot, and
Others.

Vs

Defendants. Shri.Nandakumar Anna Kothiwale and
Others.

Parties To I.A.No.I

Applicant/Ori. Plaintiffs

Smt. Sushila W/o Pundalik Khot, and
Others
(By Sri. P.G.A Advocate)

Opponent/Ori. Defendants:

Shri.Nandakumar Anna Kothiwale and
Others,
(By Sri. K.R.T Advocate)

i	Nature & number of the I.As	I.A No.I U/O XXXIX rule 1 R/w sec 151 of CPC
ii	The IA No. I filed on:	27-10-2025

iii	Objections to IA No.I filed on:	12-03-2026
iv	Order passed on:	13-07-2026
v	Duration :	00 Year 04 Months 01 Days

ORDER ON I.A.NO.I FILED UNDER ORDER
XXXIX RULE 1 R/W SEC.151 OF CPC

This is an application filed by the plaintiff U/O. 39 Rule 1 and 2 R/W Sec,151 of CPC., and prayed for grant of temporary injunction in favor of plaintiff, against the defendant and the men or agents on their behalf restraining them from encroaching upon the suit lands of the plaintiff's thereby creating any road on the said suit land till disposal of the suit.

2. In support of this application, plaintiff No.1 sworn to the affidavit and stated that,

(a) She has filed this suit for the relief of permanent injunction. Plaintiff No.1 is the owner in actual possession, wahiwat and in enjoyment of the suit landed property bearing R.A. No.95/8 of Ankali village. Whereas Plaintiff No. 2 to 5 are the owners in actual possession, wahiwat and in enjoyment of the suit landed property bearing R.A. No. 95/7 of Ankali village since long and accordingly their names are appearing in the RTC extract of the respective suit

lands as owners. The suit lands along with the other land properties were originally the joint family ancestral properties. One Shri. Baburao Kallappa Khot filed a suit of partition in respect of all the joint family properties in the court of Prl. Civil Judge Chikodi, on file of OS No.206/2010. The said suit was decreed on 21-12-2013 thereby allotting the shares in the said suit properties. Thereafter the said decree FDP No.07-2017 was filed to allot the respective shares of the parties to the proceedings. Tahasildar Chikodi, was appointed as Court commissioner for effecting actual partition. The final decree was drawn 07-12-2021, which is undisputed till today.

(b) It is further contended that, the defendants No. 1 to 6 and the deceased father of defendant No. 7 & 8 obstructed the surveyor. So the complaint was before Ankali PS which was registered as LPT NO.35/2023. The ADLR Chikodi also sought for Police protection while doing survey. As per Court commissioner report original RS No.95/2 was divided into RS No.95/2, 95/7, 95/8 and 95/9 of Ankali and share was allotted plaintiff NO.2 to 5 was given RS No.95/7 and share allotted to plaintiff no.1 was given RS No.95/8. According to the plaintiffs are in exclusive possession and in enjoyment of their respective suit lands.

(c) It is further contended that, RS No.95/1 is the defendant land and the said land is situated towards north of the suit land. The defendants malafide intention without reasonable cost have unnecessarily started putting tractors of the suit lands and destroyed the sugar cane crops grown by the plaintiffs in order to harass and caused hardship to the plaintiff. The defendant have also poured mud and stones in the suit land thereby trying to encroach upon the suit lands and make road from the suit lands. So the plaintiff requested the defendants not to encroach upon the suit lands as it will cause wrongful loss to the plaintiff and it would reduce their cultivable land. The plaintiffs also filed police complaint to stop their legal activities, But the defendants are doing forceful activities from time to time. If the defendants are not restrained from their illegal activities, then the plaintiffs will be put to irreparable loss and hardship which cannot be compensated in terms of money. Hence the suit for injunction was filed by the plaintiffs. Application was filed to grant temporary injunction restraining defendants from encroaching and creating road on the suit land and prays to allow the application.

3. Per contra, defendants No.1 to 5, 7 & 8 filed written statement and objections to I.A No.I. The defendants in their written statement and objections denied all the plaint averments specifically and contended that RS No.95 of Ankali village totally measuring 09 Acres 21 Guntas including PK 05 Guntas remain cultivable land 09 Acres 16 Guntas, the defendant family is owner in possession of entire land of RS No.95 and they were in the actual possession of the same. It is further contended that the plaintiffs are the tenants of the land and the acquired some area from land Tribunal Chikodi, In RS No.95 the defendants family has created the commons road in the middle of the landed property the said road is in existence before tenants and it is used and made wahiwat by the defendants family since beginning. Further it is contended that there is already existing of road but the plaintiffs and defendants don't know the existence of the said road whether it is northern side or southern side of the suit property. It is contended that, the plaintiffs pleading ar silent in respect of existence of road, so question of creating road does not arise.

4. It is further contended that, the defendant family left the village and residing in RS No.95 of Ankali Village. The defendants constructed the respective house and buildings in the said RS No.95 to support the fact about the existence of houses the defendants produced photographs. The defendants are using the existing road for the purpose of movement of their vehicles, tractors and bullock car. The said road is 12 feet(South-north) and situated to the north of their houses. The said road in RS No.95 of Ankali Village is connected to Ankali Kadapur road. The houses are having electric connection and property extract for Gram Panchayat Ankali has been obtained. Also independent house numbers are obtained. Further it is contended that without consent of defendants, the plaintiffs have measured the land and created strips but surveyor has not shown the existence of well belongs to defendants and houses belongs to the defendants are also not shown. The existing road is also not shown. The plaintiff intension is to destroy the existing road which is situated in the southern are of the plaintiff land. It is further contended that, the plaintiffs obtained temporary injunction against the defendants not to encroach and not make any road in the suit property till disposal of the suit is not

maintainable because the question of encroaching the creating road does not arise. Hence, prayed to reject the application filed by the plaintiffs by vacating exparte interim injunction order.

5. Heard, plaintiffs counsel, perused the materials on record.

6. The following points arise for my consideration are;

POINTS

1. ***Whether the plaintiff has made out a prima facie case?***
2. ***Whether balance of convenience lies in favour of plaintiff?***
3. ***Whether the plaintiff will be put to irreparable loss and injury, if the application is allowed?***
4. ***What order ?***
7. My answer to the above points are;

Point No.1: Partly in the ***Affirmative.***

Point No.2: Partly in the ***Affirmative.***

Point No.3: Partly in the ***Affirmative.***

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

REASONS

8. POINT NOS. 1 TO 3 : Since these points are interlinked, hence, I proceed to discuss all 1 to 3 points together to avoid repetition.

9. The law is well settled that in order to ascertain whether there is prima- facie case the court must be satisfied that the applicant has raised bonafide dispute which needs investigation and decision on merits and there is probability of applicant being entitled to the relief claimed by him/her.

10. The counsel for plaintiff and defendants have reiterated what is stated by them in their application, objection and pleadings put forth by them. Plaintiff has filed this suit for the relief of permanent injunction on the ground that, the plaintiffs are owners and are in possession and enjoyment of suit properties in pursuant to the decree passed in OS No.206/2010 and the final decree proceeding in FDP No.07/2017, the suit properties have been partitioned by metes and bounds through the Court commissioner. According to the RS No.95/7 has been allotted to plaintiff No. 2 to 5 and RS No.95/8 has been allotted to plaintiff No.1. It is there specific case that revenue records have mutated in their names and they are in lawful possession of their respective lands.

11. The plaintiff further contended that, the defendants have absolutely no right over the suit schedule properties and with an intention to create and illegal road, attempted to enter the suit lands using tractors, destroyed standing sugar cane crop and dumped mud and stones. According to plaintiffs, despite police innervation the defendants are repeatedly attempting to interfere with their peaceful possession.

12. Pre Contra, the defendants denied the allegations and contended that the suit schedule description is defective and not properly identifiable. According to them, there exist and old common road in RS No.95 from time immemorial which has been continuously used there family and the plaintiffs. The contended that, the plaintiffs have deliberately suppressed the existence of the said road, while preparing the sketch and have filed the present suit only with an intention to obstruct to use of the said existing road. They also contended that the defendants residential house are situated at in Sy No and that they have no other access except the existing road.

13. At this interlocutory stage, it is not expected to record final findings regarding title, easementary rights or exact location of the alleged the road. In

order to determined that, it needs full fledged evidence and cannot be conclusively decided while considering this application. At this stage, what is required to be ascertained is that, whether plaintiff has made out prima facie case. However the defendants have also produced material indicating existence of residential houses and have specifically pleaded existence of an old road leading from Ankali-Khadapur road to their houses. Whether such road legally exists, whether it forms part of the suit lands or whether the defendants possess any easementary or customary right are matters requiring evidence.

14. The dispute substantially relates to the identity and location of the alleged road. Both parties have produced rival sketches and have made contradictory claims regarding the same. Therefore, preservation of the existing physical features till disposal of the suit would be in the interest of justice. If either party is permitted to alter the physical features of the property pending the suit, multiplicity of proceeding may arise and the subject matter of the suit may be irreversibly effected. On the other hand merely directing both parties to maintain the status quo regarding existing nature of the property would not prejudice either side. Accordingly, it appears that the plaintiffs have

established a prima facie case regarding their possession, they have not made out a case for granting an absolute injunction restraining the defendants from using any alleged existing road, particularly when the existence and location of such road itself is seriously disputed. The balance of convenience therefore lies in preserving the existing state of affairs until adjudication of the rights of the parties.

15. This court is also of the opinion that the controversy can be effectively resolved by appointment of a qualified Court Commissioner/ Survey commissioner at the appropriate stage for local inspection and measurement with reference to the Final Decree records, survey records and village map. Accordingly, the application deserves to be partly allowed. **Hence, I answer point Nos.1 to 3 partly in the affirmative.**

16. POINT NO.4: In view of above findings, I proceed to pass the following:

ORDER

***IA No.I filed by the plaintiff U/O 39
Rule 1 and 2 R/W Sec.151 of CPC. is
hereby allowed in part.***

***Further, the defendants, and the
men or agent on their behalf are***

restrained from encroaching or changing the existing physical of the suit properties till disposal of the suit.

Both plaintiffs and defendants are directed to maintain status quo with regard to the existing physical features and possession of the suit schedule property as on the date of this order.

Neither party shall form any new road, remove any existing path way, dump mud, remove boundary stones or make any alteration in the nature of the suit properties without prayer permission the Court till disposal of the suit.

For compliance U/Sec.89 of CPC.

(Dictated to the steno directly on computer, typed by him, corrected by me and then pronounced in open Court on this 13st Day of July, 2026)

**(Sonu.B)
II ADDL. CIVIL JUDGE & JMFC,
CHIKODI.**