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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,

GOKAK

BEFORE: Sri. Umesh S. Atnure

B.Com.LL.B.(Spl)

Prl. Senior Civil Judge, Gokak

Regular Appeal No.43/2025

DATED THIS 11th DAY OF AUGUST-2026

1. The Executive Engineer,
Karnataka Neeravari Nigam Ltd.,
G.RBC Div No.2, Hidkaldam, Tq: Hukkeri.
2. The Assistant Executive Engineer,
Karnataka Neeravari Nigam Ltd.,
Sub Division, Ghataprabha

Appellants

- Versus -

1. Chandrappa S/o. Shivanagouda Kabadagi,
Age: 61 years, Occ: Agriculture,
R/o: Shivapur (Konnur), Tq: Gokak, Dist: Belgaum.
2. Basavaraj S/o. Ningappa Kabadagi,
Age: 48 years, Occ: Agriculture,
R/o: Shivapur (Konnur), Tq: Gokak, Dist: Belgaum.
3. Govt. of Karnataka, Represented by
D.C. Belagavi.

Respondents

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Appellants by Sri.A.V.H., Advocate

Respondent No.1 by Sri.R.M.K., Advocate,

Respondent No.2 by Sri.R.B.K., Advocate

Respondent No.3 by AGP

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Appealed against	:	Appeal against the judgment and decree passed in O.S.No.243/2019 dated 06.08.2024 by the Prl. Civil Judge and JMFC, Gokak.
Date of institution of Appeal	:	23-09-2025
Date of Disposal	:	11-08-2026
Total Duration	:	Year/s Month Days 00 10 18

: J U D G M E N T :

1. This is an appeal filed Under Order XLI Rule 1 of CPC.
2. This present appeal is preferred by the appellants/defendants No.1 and 2 aggrieved by the judgment and decree passed by the Hon'ble Prl. Civil Judge and JMFC, Gokak in O.S.No.2435/2019 dated 06.08.2024.
3. The parties are referred to their respective ranks as referred before the Trial Court.
4. The Respondent No.1/plaintiff filed the suit for the relief of declaration of easementary right over suit 'XY' road and for the relief of injunction restraining the defendant from interfering with the use and enjoyment of suit 'XY' road.
5. It is the case of the Respondent No.1/plaintiff that the suit property is 12 feet width road situated in the land bearing R.S.No.753/2 measuring 03 acres 39 guntas

leading to land bearing R.S.No.753/8 measuring 21 guntas 08 annas. Earlier these suit lands together form single unit as R.S.No.753/2 totally measuring 04 acres 21 guntas of Shivapur village. They have shown the location of the suit property and situation of suit 'XY' road in the hand sketch map annexed to the plaint. Earlier the plaintiff was holding 21 guntas 08 annas of land and present holding of the land is shown in R.S.No.753/2 measuring 03 acres 39 guntas which is held by defendants and Kabadagi Satteppa Basappa were single unit in R.S.No.753/2 measuring 04 acres 21 guntas. The earlier record of rights reveals that his land along with other independent holdings in the said land in R.S.No.753/2 measuring 04 acres 21 guntas. Later on he got separated his 21 guntas 08 annas land by effecting podi in the revenue records and his 21 guntas 08 annas separately shown in R.S.No.753/8 in his name. In the RTC extracts the holdings of the other persons are separately shown. His land bearing R.S.No.753/8 is measuring 21 guntas 08 annas bounded towards East land of defendants No.1 and 2 measuring 01 acre 05 guntas out of R.S.No.753/2, West land of Digambar Gasti, South the land of Satteppa Basavanneppa Kabadagi measuring 02 acres 13 guntas, North land of

defendant No.3 measuring 21 guntas 08 annas. The situation and location of this land clearly shown by the annexed hand sketch map and apart from the suit 'XY' road he is not having any other alternative passage to reach his land bearing R.S.No.753/8. Earlier the entire land bearing R.S.No.753/2 totally measuring 04 acres 21 guntas was abutting to reach the main road situated towards Eastern side. After he purchase 21 guntas 08 annas of land the suit 'XY' road was in his use and enjoyment so as to reach his land. Since 'XY' road is there since long time and he is using the said road as easement of necessity. The land held by the defendant No.3 is measuring 21 guntas 08 annas is also part and parcel of R.S.No.753/2. The irrigation department i.e., defendants No.1 and 2 acquired 01 acres 05 guntas of land out of R.S.No.753/2 accordingly, in the RTC extract of R.S.No.753/2 the name of defendants No.1 and 2 is incorporate as Niravari Nigam. Even after acquisition the defendants No.1 and 2 being the officers of irrigation department are looking after the management of the acquired land and using the said lands for their department use. Now, the defendants No.3 being supported by some miscreant and political personalities hatched plan to gulp the land of defendants No.1 and 2

and started illegal cultivation of 01 acre 05 guntas of land and thereby the defendants colluding with each other making misuse of land belonging to irrigation department and defendant No.3 in colluding and in the support of the defendants No.1 and 2 started obstructing him to use and enjoyment of his right over suit 'XY' road knowing fully well that the suit 'XY' road is the only road to reach his land and it is his easement of necessity. For the illegal act of defendant No.3, he has raised objections before defendants No.1 and 2 by presenting an application but the defendants are not taken any action against the defendant No.3. Now the defendants colluding with each other trying to dismantle on the suit 'XY' road. Except the suit 'XY' road there is no other alternative rod for him to reach his land and he has got right to use the said 'XY' road as easement of necessity. In spite of his objections with regard to illegal cultivation of the defendant No.3 in the land acquired by the defendants No.1 and 2, the defendants No.1 and 2 allowed the defendant No.3 to make illegal cultivation over 01 acre 05 guntas of land which belongs to them. Now the defendants with an intention to cause loss to him, they are denying his right of way which passes through suit 'XY' road. The suit 'XY' road is the only

road to reach his land from the main road. As the defendants are obstructing him to use the said road he filed this suit. Hence, he prayed to declare that he has got easement of necessity over suit 'XY' road with consequential relief permanent injunction restraining the defendants from obstructing him to use and enjoyment of the 'XY' road.

6. In pursuance of the service of suit summons, the defendants No.1, 3 and 4 appeared through their respective counsels and defendant No.2 is placed exparte.
7. The defendant No.1 filed the written statement by denying entire contention of the plaintiffs. Further they contended that they being an irrigation concerned public officer for the purpose of irrigating the lands of Konnur village under irrigation project, several lands have been acquired by them under the provisions of Land Acquisition Act and they have acquired land bearing R.S.No.753/2 measuring 01 acre 05 guntas of Konnur village for irrigation purpose and the acquisition vest with beneficiary / Government with free from all encumbrances. The plaintiff and defendant No.3 have no right, title or interest over the acquired extent and the acquired extent is in their use and enjoyment and defendant No.3 was not allowed by them to cultivate the

acquired land. There is no cause of action arose to the plaintiff to file this suit as such, they prayed to dismiss the suit.

8. Based on the following pleadings the trial court has framed following issues for consideration;

:: ISSUES ::

1. Whether the plaintiff proves that he has right of easement of necessity over the suit 'XY' road?
 2. Whether the plaintiff proves that the defendants are interfering with the plaintiff's to use and enjoyment of the suit "XY" road?
 3. Whether the plaintiff is entitle for the relief as prayed?
 4. What Order or Decree?
9. In support of the case of the plaintiff, the plaintiff got examined himself as PW1 and got marked Ex.P1 to 18 and got examined one witness as PW2. The official of defendant No.1 is examined as DW1 and got marked Ex.D1 and 2 and closed their side.
10. After hearing the arguments of both side the trial court was pleased to decree the suit.
11. Aggrieved by the said judgment and decree passed by the trial court the appellants/defendants No.1 and 2 have filed this present appeal on the following;

:- GROUNDS :-

- 1) The impugned judgment and decree passed by the trial court is completely incorrect, illegal and contrary to law and evidence.
- 2) The trial court has not understood the case of both parties and erred in answering the issues infavour of the plaintiff which leads to miscarriage of justice.
- 3) The trial court has not properly read the evidence of both parties and not arrived at a proper conclusion and erred by decreeing the suit infavour of the plaintiff.
- 4) The trial court ought to have dismissed the suit in its entirety by holding that the plaintiff is not entitled for relief of easementary right of 12 feet road in their lands.
- 5) The trial court has erred in giving findings on Ex.P16 i.e., sale deed dated 19.02.2004 and thereby completely failed to render the justice.
6. The trial court has not relied on the averments made in the written statement, examination-in-chief of DW1 and exhibits produced by the defendants and the points urged during the course of arguments.

7. The admission given by the plaintiff with regard to acquiring 01 acre 05 guntas of land in R.S.No.753/2 by them in the year 1984 and thereafter the plaintiff has purchased 21 guntas 08 annas, the said fact is not considered by the trial court and without focusing on Ex.P16 wrongly answered the Issue No.1 and 2 infavour of the plaintiff which is contrary to law.
8. The trial court has not observed that the appellants are not party to the sale deed marked as per Ex.P16 and the contents in-corporate therein are not binding upon them.
9. The trial court failed to hold that the witnesses in the alleged sale deed are not examined in support of the claim of the plaintiff with regard to existence of 12 feet road towards eastern side i.e., in their acquired land.
10. The trial court has not observed the admission given by the plaintiff in his cross-examination that since 2014 he was stopped using the alleged road but the plaintiff has filed this suit in the year 2019 after lapse of four years. Even if this statement is considered then the suit is filed after lapse of four

years on this ground the suit is not maintainable and the trial court ought to have dismiss the suit.

11. The trial court even though there is a rebutal evidence inspite of it erred in decreeing the suit by giving much importance to a time barred suit.

12. The trial court wrongly observed about Ex.P16 as well as admission given by the DW1 regarding his no knowledge about the alternative road to reach the plaintiff land. Even though the DW-1 admitted that there is no alternative road to reach the plaintiff land it is look out of the plaintiff to produce the document but the trial court completely put wrong steps and erred holding that the plaintiff has got easementary right of 12 feet road as per the boundaries mentioned in Ex.P16 which is contrary to law.

13. The trial court has totally not understood and given proper findings based on the evidence of record as such, miscarriage is caused to them. Hence, they prayed to allow the appeal and dismiss the suit.

12. In pursuance of the service of notice to the respondents, the respondents No.1 to 3 are appeared through their respective counsels.

13. Lower court records were secured.
14. Heard the arguments of both side. The learned counsel for the appellants filed the written arguments and I have also perused the same.
15. The following points that arise for my consideration are as follows;

//POINTS//

1. Whether the trial court was justified in holding that plaintiff has proved that over the suit 'XY' road he has got right of easement of necessity?
 2. Whether the judgment and decree passed by the Trial Court suffers from any perversity or legal infirmity requires interference by this court?
 3. What order or decree?
16. My answer to the above points are as under;

Point No.1	:-	In the Negative
Point No.2	:-	In the Negative
Point No.3	:-	As per final order for the following;

//REASONS//

17. **Point No.1**:- As per the case of the plaintiff that he has purchased 21 guntas 08 annas land in R.S.No.753/2 which is totally measuring 04 acres 21 guntas. After purchase of 21 guntas 08 annas of land he got bifurcated his land by effecting podi in the R.S.No.753/2 and

R.S.No.753/8 is assigned to his purchased extent of 21 guntas 08 annas. Towards Eastern side of his land 01 acre 05 guntas of land acquired by the defendants No.1 and 2 in which he has got 12 feet suit 'XY' road to reach his land. The said road is the only road to approach his land to the main road which is situated towards Eastern side of 01 acre 05 guntas of land which is acquired by the defendants No.1 and 2.

18. Now the defendant No.3 colluding with the defendants No.1 and 2, he is cultivating the acquired land of 01 acre 05 guntas and they are obstructing him to use and enjoyment of suit 'XY' road and obstructing him to use the said suit 'XY' road to reach his land. On the other hand the defendants No.1 and 2 have admitted that they have acquired 01 acre 05 guntas of land in R.S.No.753/2 and in the acquired land they are in possession and enjoyment and they are using the said land for their project purpose. The defendant No.3 is not in possession and enjoyment of the said land. Now the plaintiff and defendant No.3 have no right, title, interest over their acquired portion inspite of it the plaintiff has filed this false suit against them.

19. In support of the case of the plaintiff, the plaintiff got examined himself as PW1, in his examination-in-chief he

reiterated the plaint averments and got marked the RTC extracts of the suit property as per Ex.P1 and 2, legal notice, postal receipts and postal acknowledgment cards are marked as per Ex.P3 to 10, returned postal envelop cover as per Ex.P11, letter issued by the KNNL as per Ex.P12, postal receipt and acknowledgment card as per Ex.P13 and 14, application given to KNNL as per Ex.P15, sale deed dated 19.02.2004 as per Ex.P16, RTC extract of R.S.No.753/2 as per Ex.P17, PT sheet of R.S.No.753/2 as per Ex.P18. By perusing the Ex.P16 it is clear that in R.S.No.753/2 the plaintiff has purchased 21 guntas 08 annas of land. By perusing the recitals of the said sale deed it is clear that one Murageppa and Ningappa sons of Gurusidappa Kabadagi sold 21 guntas 05 annas of land infavour of plaintiff in R.S.No.753/2 which is bounded by East-Road, West-Mallappa Digambar Gasti's property, South-Satteppa Basvanappa Kabadagi's property and North-the plaintiff's vendor second hiss in remaining land. Further by perusing the RTC extracts marked as per Ex.P1 and 2 they clearly goes to shows that after the podi proceedings the plaintiff purchased extent of 21 guntas 08 annas is assigned in the Sy.No.753/8. Further the plaintiff has produced the RTC extract of R.S.No.753/2 for the year 2018-19 as per

Ex.P2 wherein the name of Satteppa Basavanneppa Kabadagi is appearing to an extent of 02 acres 13 guntas, irrigation department 01 acre 05 guntas and plaintiff's name to an extent of 21 guntas 08 annas. These RTC extracts clearly goes to shows that based on the sale deed of the plaintiff the name of the plaintiff is mutated to 21 guntas 08 annas of land which is now assigned as R.S.No.753/8.

- 20.** The plaintiff is contending that towards Eastern side of his purchased extent there is a road and the said fact is also mentioned in the sale deed. By perusing the sale deed marked as per Ex.P16 it is clear that towards the Eastern side of 21 guntas 08 annas it is shown as road. The plaintiff has produced the hand sketch map annexed to the plaint, wherein by perusing the same it clearly goes to shows that towards Eastern side of the land of the plaintiff, the defendants No.1 and 2 have acquired 01 acre 05 guntas of land. The plaintiff has shown the suit 'XY' road towards Eastern side of his property in the acquired land of defendants No.1 and 2 which reaches the main road situated towards Eastern side of land acquired by the defendant No.1 and 2. It is the specific contention of the plaintiff that he is using the suit 'XY' road to reach his land apart from the suit 'XY' road he is

not having any other alternative road to reach his land. The defendants No.1 and 2 in their written statement they have denied the entire contention of the plaintiff and it is not the case of the defendants No.1 and 2 that apart from suit 'XY' road the plaintiff is having another alternative road to reach his land. It shows that the suit 'XY' road is in existence towards Eastern side of the plaintiff's purchased extent and same is mentioned in the sale deed marked as per Ex.P16.

- 21.** In this case it is an admitted fact that the defendants No.1 and 2 have acquired 01 acre 05 guntas of land in R.S.No.753/2 and in the said 01 acres 05 guntas of land is comes towards Eastern side of the plaintiff and land of defendant No.3. The plaintiff contending that the defendants No.1 and 2 are allowed the defendant No.3 to cultivate their acquired 01 acre 05 guntas of land, now the defendant No.3 colluding with the defendants No.1 and 2 are obstructing him in use and enjoyment of suit 'XY' road.
- 22.** From the contention of the plaintiff and the documents which are got marked by the plaintiff as per Ex.P3 which clearly goes to shows that the plaintiff clearly stated in the said legal notice issued to the defendant NO.1 and 2 that the defendants No.1 to 3 colluding with each

illegally commenced cultivating 01 acre 05 guntas of land which is acquired by irrigation department and the act of the defendants No.1 to 3 with oblique motive only with an intention to harass him and damage the existing suit 'XY' road. Hence, from the recitals of the Ex.P3 it is clear that the plaintiff has requested the defendants No.1 to 3 not to obstruct him for using the suit 'XY' road to reach his land. To the said notice was duly served on the defendants No.1 and 2 but they have not issued any reply to the said notice. Further the plaintiff has produced letter issued by the defendant No.1 stating that the notice issued by the plaintiff on 14.01.2019 does not come within their jurisdiction and they have sent the same to Executive Engineer, KNNL GRBC, Division-2, Hidakal Dam. Apart from this the defendants have not given any reply to the notice issued by the plaintiff.

- 23.** In the cross-examination of PW1 by defendants No.1 and 2, he clearly deposed that he purchased 21 guntas 08 annas of land the survey number was 753/2, now his extent is assigned as Sy.No.753/8. Further he deposed that in his sale deed towards Eastern side it is mentioned as road. Further he admitted that the defendants No.1 and 2 have acquired 01 acre 05 guntas of land in R.S.No.753/2 and the said 01 acre 05 guntas of

land comes towards Eastern side of his purchased land. Further he admitted that prior to purchase of 21 guntas 08 annas of land the defendants No.1 and 2 have already acquired 01 acre 05 guntas of land in R.S.No.753/2. Further he admitted that in his sale deed towards Eastern side it is not mentioned that there is a 12 feet road which exists in 01 acre 05 guntas of land which is acquired by defendants No.1 and 2. Further he admitted that towards Eastern side of his land in 01 acre 05 guntas the defendant No.1 is in possession. Further he deposed that since from the purchase of the said land he is using the suit 'XY' road to reach his land. After 2014 the defendant No.1 is obstructing him for using the suit 'XY' road to reach land, as such he stopped using the suit 'XY' road. Further he clearly deposed that apart from suit 'XY' road he is not having any other alternative road to reach his land. He denied that colluding with the defendant No.3 they are falsely claiming 12 feet road in the Government land. Further he denied that he has got created the hand sketch map annexed to the plaint as per his convenience. Further he denied that as he is having other alternative road, as such he has not produced the village map. He denied that he is deposing

falsely and falsely claiming the suit 'XY' road in the land of defendants No.1 and 2.

24. From the cross-examination of PW1 it is clear that the PW1 has purchased 21 guntas 08 annas of land in R.S.No.753/2, now it is assigned as R.S.No.753/8 and towards Eastern side of plaintiff land, the defendants No.1 and 2 have acquired 01 acre 05 guntas of land. Further it is clear that the defendants No.1 and 2 are in possession of 01 acre 05 guntas of land which is acquired by them and nothing worth is brought in the cross-examination of PW1 to show that apart from suit 'XY' road the plaintiff is having other alternative road. Further it is clear that the defendants No.1 and 2 without pleading about the existence of another alternative road they have suggested the PW1 that as he is having other alternative road to reach his land, as such he has not produce the village map. When the defendants have not pleaded about the existence of other alternative road whatever contentions taken by the defendants No.1 and 2 in the cross-examination of PW1 with regard to existence of alternative road is not acceptable one.

25. Further the plaintiff got examined one witness by name Basavaraj Shivalingappa Kabadagi as PW2. In his

examination-in-chief he deposed as per the case of the plaintiff and in his cross-examination he deposed that for the right of way the plaintiff has filed this suit against irrigation department and one Basavaraj Kabadagi. Further he deposed that his land is situated at a distance of 02 KM from the suit property and he don't know what is the extent of the acquired land by the defendants No.1 and 2. Further he admitted that the land abutting to the canala is belonging to irrigation department and he further admitted that to the acquired land the defendant No.1 is the owner and he further deposed that from the suit 'XY' road he use to reach his land. When it was suggested to him whether the defendants are causing obstruction for him to using the suit road for that he deposed that the defendants No.1 and 2 are making any obstruction to the plaintiff for using the said suit road but the defendant No.3 is causing interference for the plaintiff for using the suit 'XY' road. He denied that he is falsely deposing that the defendant No.3 is obstructing the plaintiff suit 'XY' road. He denied that there is no road is in existence as alleged by the plaintiff in the land acquired by the defendants No.1 and 2 even though there is no road is in existence only to support the plaintiff, he is deposing falsely.

- 26.** From the evidence of PW2 it is clear that he is also using suit 'XY' road and for using the suit 'XY' road by him the defendants are not causing any obstruction only the defendant No.3 is causing obstruction to the plaintiff for using the suit 'XY' road. Hence, for the evidence of PW2 it is clear that there is a suit 'XY' road is in existence towards Eastern side of the plaintiff's land and in the cross-examination of PW2, the defendants even not suggested the PW2 with regard to the existence of the alternative road for the plaintiff to reach his land. From the oral and documentary evidence adduced by the plaintiff it is clear that the suit 'XY' road is in existence in the land of defendants No.1 and 2 and defendant No.3 is causing obstruction for the plaintiff for using the suit 'XY' road.
- 27.** The official of defendant No.2 is examined as DW1, in his examination-in-chief he deposed as per contentions taken by them. Further he deposed that there is no road is in existence in their acquired 01 acre 05 guntas of land. The plaintiff falsely alleging the existence of 12 feet suit 'XY' road and in their acquired 01 acre 05 guntas of land there suit 'XY' road is not existing inspite of it the plaintiff is intending to use their land as way to reach his land. He got marked authorization letter as per Ex.D1,

RTC extract of R.S.No.753/2 as per Ex.D2. In his cross-examination by the plaintiff, he deposed that the plaintiff has filed this suit in respect of the road, he has seen the plaintiff's property. Further he deposed that he is not having any information whether the plaintiff is having any alternative road apart from suit 'XY' road and he further admitted that he has not produced any documents to show that there is an alternative road is in existence to reach the plaintiff's land. Further he admitted that they have made enquiry with regard to the allegation made by the plaintiff in the legal notice dated 14.01.2019 but he is not having any documents in this regard. Further he admitted that along with the legal notice the plaintiff has furnished one hand sketch map. Further he also admitted that in the said notice the plaintiff has alleged that the defendant No.3 is cultivating their acquired 01 acre 05 guntas of land but they have not taken any steps against the defendant No.3 for evicting him from cultivating the acquired 01 acre 05 guntas of land but his earlier officer has issued notice to defendant No.3 but he has not produced the same. Further he admitted that he has not produced any documents to show that there is no road is in existence as alleged by the plaintiff in R.S.No.753/2. Further he

admitted that the plaintiff purchased an extent of 21 guntas 08 annas and towards Eastern side of their acquired 01 acre 05 guntas of land there is a main road and towards Northern side there is a canal. Further he deposed his ignorance that apart from the suit 'XY' road the plaintiff is not having any other road to reach his 21 guntas 08 annas of land. He denied that even though the suit 'XY' road is in existence they are denying the existence of the said road. He denied that only to harass the plaintiff, he is deposing falsely.

- 28.** From the cross-examination of DW1 it is clear that in the acquired 01 acre 05 guntas of land by the defendants No.1 and 2, the defendant No.3 is cultivating the 01 acre 05 guntas of land for which the defendants No.1 and 2 have not taken any steps against the defendant No.3. Further it is clear that the DW1 has clearly admitted that he has not produced any documents to show the existence of alternative road to reach the land of the plaintiff. When it was specifically suggested to the DW1 stating that apart from suit 'XY' road the plaintiff is not having any alternative road to reach his land for that he deposed his ignorance. When the defendants are denying the existence of suit 'XY' road they ought to have pleaded with regard to any other alternative road through which

the plaintiff can reach his land but no such pleadings putforth by the defendants and they also not produced any documents to show that the plaintiff is having other alternative road to reach his land. The official witness of defendants No.1 and 2 department clearly admitted his ignorance with regard to other alternative road the plaintiff can reach his land. Under such circumstances, whatever contentions taken by the defendants is not acceptable one and from the oral and documentary evicting adduced by the defendants shows that in the acquired 01 acre 05 guntas of land the defendant no.3 is illegally cultivating the said extent and he is obstructing the plaintiff for using the suit 'XY' road and in the sale deed of the plaintiff which is marked as per Ex.P16 it is clearly mentioned the existence of road towards Eastern side. Further it is an admitted fact that towards Eastern side of plaintiff's 21 guntas 08 annas land, the land measuring 01 acre 05 guntas was acquired by the defendants No.1 and 2 and towards Eastern side of 01 acre 05 guntas of land there is a main road. Hence, it is clear that apart from the suit 'XY' road the plaintiff is not having any other alternative road to reach his land from the main road situated towards Eastern side of 01 acre 05 guntas of land which is acquired by defendants No.1

and 2. If at all no road was in existence towards the Eastern side of the plaintiff's purchased extent of 21 guntas 08 annas land there was no need to mention towards Eastern side boundary as road. Admittedly the main road is in existence towards Eastern side of 01 acre 05 guntas of land which is acquired by the defendants No.1 and 2. In order to reach the plaintiff land from the main road the plaintiff has to pass through the acquired 01 acre 05 guntas of land and through that land only i.e., the suit road only the plaintiff is having access to his land. Apart from that there is no other alternative road for the plaintiff to reach his land. Hence, it is clear that the suit 'XY' road is in existence and through which the plaintiff is reaching his land for cultivation. As defendants are failed to prove the existence of other alternative road for the plaintiff to reach his land. Under such circumstances, I am of the considered view that the trial court was justified in holding that the plaintiff has proved that over the suit 'XY' road he has got right of easement of necessity. **Hence, I answered the Point No.1 in the Affirmative.**

- 29. Point No.2**:- The learned counsel for the appellants contended that the trial court has not properly appreciated the oral and documentary evicting adduced

by both the parties and the trial court is failed to understand the case of both the parties but this contentions of the learned counsel for the appellants is not acceptable one, because by perusing the judgment and decree passed by the trial court it is clear that the findings given by the trial court is based on the contentions of taken by both the parties and oral and documentary evidence adduced by both the parties. Hence, the contention of the learned counsel for the appellants is not acceptable one.

- 30.** Further the learned counsel for the appellants contended that the plaintiff is a subsequent purchaser of 21 guntas 08 annas land in R.S.No.753/2. The plaintiff are mainly relied on Ex.P16 which is the sale deed dated 19.02.2004 in the said sale deed towards Eastern side boundary is shown as road but the PW1 has admitted in his cross-examination stating that nothing is written in the sale deed whether the said road is in 01 acre 05 guntas of land acquired by defendant No.1 and the trial court has not seen this admission and came to a wrong conclusion. Admittedly in the sale deed marked as per Ex.P16 there is no mention with regard to existence of suit 'XY' road towards Eastern side of the plaintiff land but it is brought on record that towards Eastern side of the

plaintiff purchased land and land of defendant No.3, the defendants No.1 and 2 have acquired 01 acre 05 guntas of land and towards Eastern side of land there is a main road. From the main road if the plaintiff want to reach his land the plaintiff has to pass to the suit 'XY' road which is in existence in 01 acre 05 guntas of land which is acquired by the defendants No.1 and 2. As the road was in existence prior to purchase of the 21 guntas 08 annas land by the plaintiff and it is also appears that the said road is used by the plaintiff's vendor. As such, in the sale deed towards Eastern side it is mentioned as road. If at all no road is in existence and the plaintiff is having any other alternative road to reach his 21 guntas 08 annas of land in the sale deed it is ought to have mentioned that 01 acre 05 guntas of acquired land by defendants No.1 and 2 but no such recitals are forthcoming. Hence, it shows that prior to purchase of the 21 guntas 08 annas land by the plaintiff towards Eastern side the suit 'XY' road was in existence as such, it is mentioned as road. Hence, the contention of the appellants is not acceptable one.

- 31.** Further the learned counsel for the appellants contending that after acquired 01 acre 05 guntas of land the plaintiff has purchased 21 guntas 08 annas land and

to the said sale deed the defendants are not the witness and consent of the defendants were not taken and the plaintiff has not examined any witness to show the existence of road towards Eastern side of 21 guntas 08 annas land. Admittedly the defendants No.1 and 2 are not the witnesses to the said sale deed and it is not necessity to examine the witnesses of the sale deed to prove the existence of suit 'XY' road but the plaintiff has got examined one witness who is also using suit 'XY' road to reach his land and from the evidence of PW2 it clearly reveals that there is existence of suit 'XY' road in 01 acre 05 guntas of land which is acquired by the defendants No.1 and 2 and the said road is also used by PW2. When plaintiff has putforth sufficient acceptable material evidence to prove the existence of suit 'XY' road then taking the consent of the defendants No.1 and 2 at the time of execution of the sale deed and examining in the witnesses of the sale deed is not at all warranted. Hence, the contentions of the learned counsel for the appellants is not acceptable one.

- 32.** Further the learned counsel for the appellants contended that as per Section 15 of Indian Easement Act, the important ingredients for claiming easementary right is that 20 years of continuous period of using the property

without any obstruction and the ingredients of the Section 15 of the Indian Easement Act 1982 are not full filled by the plaintiff and it not sufficient merely stating last many years in the pleading to show that the plaintiff is using the suit 'XY' road from last 20 years is not acceptable one and in this regard relied on the authority reported in *2005 SAR (Civil) Page No.53 in between Justuiniano Antao @ others Vs. Smt. Berandette B and 2024 SAR (Civil) Page No.483 in between Manish Mahendra Gala and others Vs. Shalini Bhagvan and others*. By perusing the contention of the plaintiff it is clear that the plaintiff is not seeking the relief of declaration of easement by way of prescription. The plaintiff is seeking the right of easement by way of necessity. Hence, there is no need to plead that since last 20 years continuously he is using the said suit road and when the plaintiff is claiming his right of easement as necessity then complying the ingredients of Section 15 of Indian Easement Act is not at all warranted. Further I have perused the judgments which are relied by the learned counsel for the appellants, the said judgments are not helpful for the appellants because in those suits the defendants have pleaded the existence of alternative road to reach the suit land and they have establish the

same and in this present case on hand the defendants have not at all pleaded about the existence of alternative road to reach the plaintiff's land and there is no such documents are putforth by the appellants to show the existence of alternative road to the plaintiff to reach his land. Hence, the contention of the appellants is not acceptable one.

- 33.** Further the learned counsel for the appellants contended that the plaintiff admitted in his cross-examination that since 2014 he stopped using the alleged road but the relief of easementary right claimed in the year 2019, as such suit is filed after lapse of more than four years hence, the suit is not maintainable. In this regard there is no pleadings putforth by the appellants and before the trial court no such contentions taken by the appellants. Now in the appellate stage they are contending that the suit is not maintainable as after lapse of four years from stopping the suit 'XY' road the suit is filed. Hence, the contentions of the appellants that the suit is filed after more than four years of stopping the usage of the suit road is not maintainable one. Further the learned counsel for the appellants contended that the point of limitation can be considered by the trial court even though there is no contention of limitation was raised in

the written statement and further contended that as per the judgments of Hon'ble High Courts and Apex Court the point of limitation can be raised in the appellate stage also. No doubt in the appellate stage the point of limitation can be raised but to show that the suit is barred by limitation apart from the cross-examination of PW1 nothing worth is brought on record and the plaintiff has shown the specific date of cause of action in their plaint and since from the date of cause of action within period of limitation the plaintiff has filed this suit. Hence, the contention of the appellants based on the cross-examination of PW1 is not acceptable one. The learned trial court by considering all these facts has come to right conclusion that the plaintiff has proved the existence of suit 'XY' road and same was used by him to reach his land and accordingly decree the suit infavour of the plaintiff. The learned trial court has not at all committed any error in giving the findings on the issue No.1 to 4 and the judgment and decree passed by the trial court does not suffer from any perversity or legal infirmity, hence, the interference of this court is not at all warranted in the judgment and decree passed by the trial court. **Hence, I answered the Point No.2 in the Negative.**

34. **Point No.3:-** In view of the discussion made above and findings given on points, I proceed to pass the following;

: O R D E R :

The appeal filed by the appellants/ defendants No.1 and 2 under Order XLI Rule 1 of CPC is hereby dismissed with costs.

The judgment and decree passed by the Hon'ble Prl. Civil Judge and JMFC, Gokak in OS.No.243/2019 dated 06.08.2024 is hereby confirmed.

Draw decree accordingly.

Office is directed to send the LCR along with copy of this judgment to the trial court for reference.

(Dictated to stenographer, transcribed by him, script corrected, signed and then pronounced in the open court by me on this the 11th DAY OF AUGUST-2026).

(Umesh S. Atnure)
Prl. Senior Civil Judge, Gokak