

IN THE COURT OF CIVIL JUDGE & JMFC, HUKKERI

**PRESENT; SMT. BHAGYAMMA
B.COM. LLB.,
CIVIL JUDGE & JMFC, HUKKERI.**

O.S.No. 138/2020

Dated this 19th day of January 2021

1. Sri. Kadappa Parappa Chougala and another
.... Plaintiffs

V/s

1. Sri. Shivaling Mallesh Hanchinal and another
..... Defendants

PARTIES TO I.A.NO. II

1. Sri. Kadappa Parappa Chougala and another
....applicant/ plaintiffs

V/s

1. Sri.Shivaling Mallesh Hanchinal and another
.....opponent/defendants

ORDER ON I.A.NO.II

This I.A has been filed by the plaintiff under Order 39 Rule 1 & 2 r/w Sec.151 of CPC and Sec.29 of Specific Relief Act seeking mandatory injunction against the defendant No.1 to vacate the sugarcane crop grown in suit schedule property 'ABCD' road till the disposal of suit in the interest of justice.

2. The plaintiff No.1 filed affidavit and sworn that they filed suit for declaration, permanent injunction and mandatory injunction against the defendant in respect of 'ABCD' schedule road. The suit

schedule property is the road measuring east-west 12 feet which runs towards southern side from Hulloli to Gudas village and it exists towards eastern side of RS No.458 as shown in sketch at 'ABCD' annexed with plaint. It is asserted by the plaintiff that the property at RS No.457 is come from their ancestors and it was in the possession of plaintiff No.1, later he relinquished his right in favour of plaintiff No.2 in the year 2000. Ever-since both of the plaintiffs have been in possession of said property by having revenue records in their names. Earlier the plaintiff No.1 cultivated the property at RS No.457 by growing sugarcane, maize etc and supplied yield to the sugar factory. Thereafter, the plaintiff No.2 cultivated the said landed properties by growing crops since 2000.

3. It is further stated by the plaintiff that the property at RS No.458 situated towards southern side of RS No.457 which originally belonged to Badiger. The plaintiff No.1 and defendant No.1 purchased the property at RS No.458 through registered Sale Deed on 24-02-1971 and they paid sale consideration amount equally. The suit road mentioned in the said Sale Deed and after the purchase of said RS No.458, the father of plaintiff and defendant No.1 had compromised each other and divided the said property into two portions, wherein the southern side 01Ac-29Gs-08Anas fallen to the defendant No.1 and northern side 29Gs-08Anas fallen to plaintiff No.1 and they have been in possession of aforesaid property since 1971. Afterwards the portion fallen to plaintiff No.1 comes under RS No.458/1 and RS No.458/2 fallen to defendant No.1 in the year 2013. Further the plaintiff No.1 relinquished his right in respect of

01Ac-29Gs-08Anas in favour of his son Mahaveer Kadappa Chougala by executing relinquished deed. Earlier the plaintiff No.1 had been in possession of RS No.457 and 458 by growing sugarcane and supplying the same to the factory through suit schedule road. Except said, road there is no other road to supply the yield grown in the land of plaintiffs. They have been in use and enjoyment of said road since long years and the plaintiffs have been in possession of said road since 1971 and they have easement rights in respect of said road.

4. Further it is averred in the plaint that the dispute arose between plaintiff No.1 and defendant No.1 in respect of said road, as such the agreement executed in between them on 08-11-2016 in respect of existence of 12 feet width road. In spite of that, the defendants caused obstruction to the use and enjoyment of said road in the month of March 2020 and the defendant No.1 cultivated sugarcane by encroaching said suit schedule road and tried to demolish on the instigation of ill-will persons of the village. For which the plaintiffs complained before the police, but they have not taken any action against them due to pandemic disease of Covid-19. By taking undue advantage of such situation defendant No.1 cultivated his land by encroaching suit schedule road. As such they filed suit in respect of declaration, mandatory and permanent injunction to vacate the sugarcane and grass grown in the suit schedule road. Further, it is stated by the plaintiff that there is stream in between the lands at RS No.457 and 458 which runs from south to north. As such except the suit schedule road there is no other road to supply the yield grown at RS No.457 and 458 belongs to plaintiff. The sugarcane

grown by the plaintiff already harvested and it has to be cut down to supply the same to the factory. But there is no road to the plaintiffs to supply the same to the factory. As such they have made out prima-facie ground to grant mandatory injunction against the defendants. Hence, they prayed to allow the IA in the interest of justice.

5. In pursuance to summons, the defendants appeared through their counsel and filed written statement. Further they have filed memo by adopting the written statement contents as objection to IA. In the written statement, the defendant No.1 denied the claim of plaintiffs. They specifically denied the easement right of plaintiffs in their land. they sought declaration in respect of suit schedule road, the suit for permanent injunction is not at all maintainable. They contravened the existence of road as shown in hand sketch by the plaintiffs and also the alleged agreement deed dated 08-11-2016. But they have admitted the purchase of property at RS No.458 jointly. Further they have specifically contended that the plaintiffs came up with this false suit by suppressing true materials. It is submitted that the existence of road in the land of defendant No.2 at RS No.446 towards western side of property of plaintiffs. The plaintiffs and defendant No.2 been in use and enjoyment of east-west 10 feet width road, which runs from south to north till the land at RS No.457 for transfer of agriculture implements and yields. The existence of said road has been shown at 'ABCD' in the hand sketch filed with written statement of defendant No.1. When that being the state of affairs, the plaintiffs have wrongly shown the existence of road in the land of defendant No.1. But there is no such road in his

land. Either the plaintiff or defendant No.2 never used such suit schedule road at any point of time. The defendant No.1 is absolute owner in possession of RS No.458/2 to an extent of 01Ac-29Gs-08Anas since earlier and he has been in peaceful possession of said land by growing commercial crops such as sugarcane, maize etc. Even there is no road which runs from south to north in his land, it is falsely alleged by the plaintiffs that the defendant No.1 demolished the same and cultivated illegally. The sugarcane grown in the land of defendant No.1 is already harvested and it is to be cut down. Disdain of it, the plaintiffs have came up with this false IA and suit in order to make inconvenience to him. It is also denied that the beingness of suit schedule road for egress and ingress to the plaintiffs to reach their lands. Even there is no stream in between the lands of RS No.458/2 & 458/1 and in the land of RS No.457. The defendant No.1 installed cement pipe in the distance of six feet inside the land and excess water runs towards southern side drainage exists adjacent to the main road of Hulloli – Gudas. The IA filed by the plaintiffs is not at all maintainable and they have not made out prima-facie case and balance of convenience not lies in their favour. As such they prayed to dismiss the IA with cost.

6. Heard both side. Perused the available materials on record for determination of IA under discussion.

7. Now the points that would arise for consideration of IA are :

1)Whether the plaintiffs have made out prima-facie case to grant of temporary injunction as prayed in I.A ?

- 2) *In whose favour balance of convenience lies ?*
- 3) *Whether the plaintiffs will be put to irreparable loss or injury, if temporary injunction order is not granted ?*
- 4) *What order ?*

8. My findings to the aforesaid points are as below:

Point No.1 : In the Negative

Point No.2 : In favour of defendant No.1

Point No.3 : In the Negative

Point No.4 : As per final order, for the forgoing;

REASONS

9. **POINT No.1 :**

The plaintiff filed this suit seeking for the relief of declaration, consequential relief of permanent injunction and also mandatory injunction in respect of suit schedule road by asserting that he has been absolute owner in possession of RS No.457 and 458/1 situated at Kotabagi village. According to him, the suit schedule road to an extent of east-west 12 feet runs from south to north in the land at RS No.458, for which the defendant No.1 caused obstruction to the use and enjoyment of said road and it is only the road to egress and ingress to reach the land of plaintiffs. Despite of it, the defendant No.1 caused obstruction to use and enjoyment of said road by cultivating crops illegally in the suit schedule road. Per contra, the defendant No.1 contravened the existence of road in the land belongs to him at RS No.458/2. Instead of it, the defendant No.1 pleaded about the existence of road towards western side in the land of

defendant No.2 at RS No.446, which reaches the main road of Hulloli – Gudas.

10. The plaintiffs have produced so many documents in support of their assertion. They are Mutation Register of MRH No.2096, MRH No.69 and MRH No.261, RTC extract of RS No.457, the certified copy of Sale Deed dated 24-02-1971. Apart from, they have produced the xerox copy of agreement between the plaintiff No.1 and defendant No.1, affidavits of one Kallappa Jinnappa Chougala, xerox copy of village map of Kotabagi, Record of Rights of RS No.457, 458, 456. Per contra, the counsel for defendant No.1 relied on some documents such as five positive photos with CD, affidavits of Parappa Chougala and Bahubali Kadappa Chougala.

11. It is the argument of learned counsel for plaintiffs that the situation of properties is not disputed by the defendants and also devision of land. So also the Sale Deed dated 24-02-1971 is undisputed. The property at RS No.458 is in two strips at RS No.458/1 and 458/2. Towards eastern side of said property 12 feet width road exists to transport the agricultural implements. The defendants No.1 and 2 are the owners of RS No.458, although the plaintiffs filed in IA against defendant No.1 seeking interim mandatory injunction and the stream runs from north to south in between the lands of plaintiffs and defendants. In contrary, the learned counsel for defendant No.1 canvassed arguments that there is no such road as pleaded by plaintiffs towards eastern side of his property, but it is in the land of defendant No.2 at RS No.446 towards western side. The plaintiffs have not at all produced any

photos at the time of filing of suit and IA to show the suit schedule road. Despite of use and enjoyment of road exists towards western side, the plaintiffs came up with this IA which is not at all maintainable and there is no necessity arise to seek road in the land of defendants. Apart from, the standing crop will be destroyed if at all IA is allowed. Herein the preponderance of probability has to be shown by the plaintiffs in respect of the suit schedule road as on the date of filing of suit and IA.

12. Having gone through the available materials produced by the parties, it is seen that there is no dispute in respect of existence of landed properties to plaintiffs at RS No.457 and 458/1, so also the existence of RS No.458/2 to defendant No.1. The plaintiffs produced the hand sketch, wherein it discloses the suit schedule road exited towards eastern side of RS No.458/1 and 458/2 as shown in 'ABCD'. Contrary to that, the counsel for defendant No.1 furnished the hand sketch along with his written statement, which reveals the road to reach land of plaintiffs towards western side of RS No.458/1 and 458/2 as shown at 'ABCD'. It exists in the land of defendant No.2 at RS No.446. It is also undisputed fact that the Sale Deed in respect of 458 and two portions in said property. But the only dispute is with regard to the existence of road. To substantiate such pleading, the plaintiffs have relied upon Sale Deed of RS No.458 which disclosed the recital of road towards eastern side of the land. For which, the dispute arose since earlier in respect of said 12 feet road between the parties. As such agreement dated 08-11-2006 executed between plaintiff No.1 and defendant No.1 with respect to said road. All these

facts crystallized that even there is road in the Sale Deed, it was not in use and enjoyment by the parties continuously. If at all the road as shown in 'ABCD' at plaint schedule exists and used the same by plaintiffs, nothing prevented them to use continuously for ingress and egress to reach their land. But they have kept silent till growing crop in the said road. Now they came up with this IA seeking grant of interim mandatory injunction against the defendant No.1 by stating that he has obstructed to the use and enjoyment of suit schedule road. It is important to note that the contention taken by defendant No.1 that the plaintiffs used the road to reach their land existed in the land at RS No.446 of defendant No.2. For which, he produced the five positive photos with CD and they clearly demonstrate the existence of cart road. Apart from two affidavits of adjoining land owners furnished by the defendant No.1 and they stated on oath regarding existence of 'ABCD' road as shown in hand sketch of defendant No.1. Of them one Bahubali Kadappa Chougala is brother of defendant No.2, he categorically affirmed in the affidavit with respect to east-west 10 feet road which runs from south to north till the end of property at RS No.457. Even they have been in use and enjoyment of said road continuously to reach their respective lands. It is no doubt the affidavits of the parties have not taken much importance in determining the IA under Order 39 Rule 1 and 2 of CPC. Although, other substantial materials furnished by the parties corroborated the affidavits of aforesaid parties. As such there is no impediment to accept the defence taken by defendant No.1. Even though the plaintiffs have produced the photos, they have not been

supported with CD. More particularly there is no recital of existence of suit schedule road in RTC extract of RS No.458 for the year 2019-20. More particularly, the plaintiffs have not at conflicted the road available in the land of defendant No.2 towards western side their lands. Further more, Sec 29 of Specific relief Act does not notified to seek interim mandatory injunction in the suit for easement right and permanent injunction. However, it is only available in the suit of specific performance of contract. the section clears that Any how, it needs full pledged trial to consider the suit schedule road. At this juncture, this court is opined that the plaintiffs have not at all made out ground to grant interim mandatory injunction. **Therefore, the point No.1 answered in the Negative.**

13. **POINTS NO.2 and 3 :**

Since these points are interlinked to each other, I have taken up these both points together in order to avoid repetition of facts.

It is the assertion of plaintiffs that defendant No.1 encroached the suit schedule road exists towards eastern side of RS No.458/2. Wherein the defendant No.1 denied it. It is no doubt the defendant No.2 has not contravened the sale deed and recital of road in the land. But it is to be looked into whether it is in use and enjoyment by the parties at this point of time. Admittedly the plaintiffs sought for interim mandatory injunction regarding suit schedule road. This itself shows that there is no use and enjoyment of said road either by plaintiffs or by defendants. In order to get the equitable relief, the

parties must prove the prima-faice case first. They must approached the court with clean hands. Herein the suit schedule property is cart road asper say of plaintiffs, whereas the defendant No.1 caused obstruction by growing sugarcane in road. As I have already told, the plaintiffs are kept silent even though there is recital of road in the land at RS No.458 without using. This conduct of plaintiffs demonstrates that they have not used suit schedule road to egress and ingress to their lands. It could be seen that they came up with this suit and IA by taking undue advantage of recital of road in the sale deed. Further it is unable to determine whether there is encroachment or not without leading evidence by the parties. As such, it needs full pledged trial as I have already said. Under fact and circumstances, let to consider the balance of inconvenience caused to whom in this case, if temporary injunction order is granted. Herein the defendant No.1 pleaded that he cultivated and grown sugarcane in his land. It is already harvested and it is to be cut down. The plaintiffs have also pleaded about it, but it will takes longer time to defendant No.1 compared to plaintiffs to cut down the sugarcane crop. When that being so, the much hardship and irreparable loss caused to defendant No.1 which can not be compensated in terms of money, if IA is allowed in favour of plaintiffs. At this juncture, the balance of inconvenience caused to defendant No.1, if temporary injunction order is granted. On the other hand, if temporary injunction order is not granted in favour of plaintiffs, no hardship and inconvenience caused to the plaintiffs as they have alternative cart road in adjoining land towards western side their lands. Anyhow, this

order will not be affected while determining the suit on merits after conclusion of full pledged trial. Therefore, **I constrained to answer point No.2 in favour of defendant No.1 and point No.3 in the Negative.**

14.**POINT NO.4** : For the foregoing reasons and discussion made in point No.1 to 3, I proceed to pass the following order.

O R D E R

The I.A.No.II filed by the plaintiffs
U/O.XXXIX Rule 1 and 2 r/w 151 of CPC is
hereby dismissed.

No order as to cost.

(Dictated to the stenographer, typed by her on the computer, corrected by me
and then pronounced in open court on this the 19th day of January 2021)

(SMT. BHAGYAMMA)
CIVIL JUDGE & JMFC.
HUKKERI.

19-01-2021

(Order pronounced in open court, vide separate order)

ORDER

CIVIL JUDGE & JMFC HUKKERI.