

**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C,  
MUDHOL, AT: MUDHOL.**

**PRESENT:**

**SMT. SARASWATI HOTAKAR,**

B.A., LL.M.,  
Addl. Civil Judge & JMFC., Mudhol.

**Dated this the 13<sup>th</sup> February 2024**

**O.S.No.132/2022**

**Plaintiff:**

Somappa S/o. Ramappa Yadawad.

**-V/s-**

**Defendant:**

Tammanna S/o. Ramappa Yadawad.

**I.A.No.I**

**Applicant/:**

**Plaintiff:**

- 1) Somappa S/o. Ramappa Yadawad.  
R/o. Metagudda, Tal: Mudhol,  
Dist. Bagalkot.

**-V/s-**

**Opponent/:**

**Defendant:**

- 1) Tammanna S/o. Ramappa Yadawad.  
R/o. Metagudda, Tal: Mudhol,  
Dist. Bagalkot.

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**Applicant: by Sri.ASY, Advocate**

**Opponent: by Sri.PAP, Advocate**

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**Order on I.A.No.1 filed U/Or.39 R. 1 & 2**  
**R/w Sec. 151 of CPC**

The plaintiff/applicant has filed this application seeking ad-interim order of exparte temporary injunction against opponent/defendant restraining him or anybody on his behalf from causing obstruction to the peaceful possession and enjoyment of XY suit way to transport the agricultural produce and to undertake agriculture work using the suit way situated on western side lying North South shown by letters RO Yadawad - Mudhol PWD road and reach the main road and defendant's property shown by letters CDEF towards South 12 feet width XY suit way in the property bearing No.124/1 measuring 5 acres 15 guntas of Uttur village.

2. In the affidavit annexed to the application the applicant/plaintiff has contended that, he has filed suit for declaration and permanent injunction and he is owner of land bearing R.S.No.124/1 to the extent of 5 acres 15 guntas out of total land measuring 10 acres 30 guntas shown by letters ABCD and defendant is the owner of land bearing R.S no.124/1 to the extent of 5 acres 15 gutnas out of total land measuring 10 aces 30 guntas both situated at Uttur

village of Mudhol taluka shown by letters CDEF. That they are in the actual possession and enjoyment of their lands as per Diary No.959 of Uttur village as per the Apsat watni between their father Ramappa Laxmappa Yadawad and both lands are adjacent to each other. That towards South of defendants property i.e. CDEF abutting to it there exists a XY road lying East-West 12 feet in width. Plaintiff and his ancestors were using the said road since from their ancestors without any obstruction from anybody either defendant or his father or their ancestors at any time. Defendant is obstructing the use of said XY road by plaintiff for transporting the sugarcane to factory and other agricultural produce and if he is restrained he would suffer irreparable loss. That he has got good case and balance of convenience leans in his favour and if defendant is not restrained he will suffer heavy loss and on the contrary no loss will be caused to the defendant.

3. The defendant by filing memo submitted that the written statement filed by him may kindly be considered as objections to I.A.No.1. Wherein they have denied the allegations of plaint and contend that plaintiff and defendant are own brothers and as there was difference of

opinion under registered watni patra dated 23-04-1990 they have separated and they are in use and enjoyment of 5 acres 15 guntas each in R.S.No.124/1 totally measuring 10 acres 30 guntas of Uttur village. There is no mention with respect to suit way in the apsat watni patra. Only with intention to harass the defendant plaintiff has filed present suit. The defendant to irrigate his land has dug a bore well in the year 2000 and took KEB supply and installed one TC on South bank of Eastern side and got constructed a house and living with his family. Thereafter he has dug another two bore wells and irrigating his land and there is no other source of water to the land of the defendant. The defendant has shown the location of suit land in his hand sketch map. Property of plaintiff shown by letters IJKL and defendants property is shown by letters IJMN house property shown by letter H and Well and TC are shown by letters W & T respectively. Plaintiff use to go from his land towards land of defendant on North side towards East-West and then reach the Main road on Mudhol - Yadawad road and he is using the said road. This being so, with intention to harass the defendant and cause monetary loss and with intention to extract money from defendant filed this false suit and

there is no such road as shown by plaintiff in his hand sketch map. The defendant so many years back had dug three bore wells and installed TC and constructed house and cattle shed by investing huge amount. Except the bore wells there is no other source of water to the defendant and if the well is destroyed the defendant will be put to irreparable loss and prayed to dismiss the application.

4. On the above pleadings, following points that arise for my consideration:

**:POINTS:**

- 1. Whether the plaintiff has made out prima-facie case against the defendant?**
- 2. Whether the plaintiff further proves balance of convenience lies in his favour?**
- 3. Whether irreparable loss causes to plaintiff, if application is not allowed?**
- 4. What order?**

5. Heard the arguments of both sides.

6. I have perused the pleadings, application, objections and documents on record. I have also Perused the citations produced by both the parties.

7. On careful perusal of records, my findings 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.4: As per final order for the following

**: R E A S O N S :**

08. **POINT NO.1 to 3:-** As these points are interlinked with each other they are taken up together for consideration in order to avoid repetition of facts.

The suit of the plaintiff is for the relief of declaration that he is having right of easement over the suit XY way and to restrain the defendant from obstructing the plaintiff from use and enjoyment of suit way for his peaceful possession and enjoyment of the suit way. That towards South of defendants property i.e. CDEF abutting to it there exists a XY road lying East-West 12 feet in width. Plaintiff and his ancestors were using the said road since from their ancestors without any obstruction from anybody either defendant or his father or their ancestors at any time. Defendant is obstructing the use of said XY road by plaintiff for transporting the sugarcane to factory and other

agricultural produce and if he is restrained he would suffer irreparable loss.

On the contrary it is the contention of defendant is that there is no mention with respect to suit way in the apsat watni patra. Only with intention to harass the defendant plaintiff has filed present suit. The defendant to irrigate his land has dug a bore well in the year 2000 and took KEB supply and installed one TC on South bank of Eastern side and got constructed a house and living with his family. Thereafter he has dug another two bore wells and irrigating his land and there is no other source of water to the land of the defendant. The defendant has shown the location of suit land in his hand sketch map. Property of plaintiff shown by letters IJKL and defendants property is shown by letters IJMN house property shown by letter H and Well and TC are shown by letters W & T respectively. Plaintiff use to go from his land towards land of defendant on North side towards East-West and then reach the Main road on Mudhol - Yadawad road and he is using the said road. This being so, with intention to harass the defendant and cause monetary loss and with intention extract money from defendant filed this false suit and there is no such

road as shown by plaintiff in his hand sketch map. The defendant so many years back had dug three bore wells and installed TC and constructed house and cattle shed by investing huge amount. Except the bore wells there is no other source of water to the defendant and if the were destroyed the defendant will be put to irreparable loss.

09. In support of his contentions plaintiff has produced RTC of R.S.No.124/1, Diary No.959, Acknowledgement issued by police station Mudhol, Request for transferring T.C. On the contrary defendant has produced registered Apsat watni patra, Certificate issued by Village Accountant, KEB bill, Bore well certificate and photographs original receipt of Hescom of T.C. installation.

10. On going through the entire documents produced in this case by both the parties and pleadings of the parties, hand sketch maps produced by both the sides do not tally with each other. They both depict different locations of the suit properties. The party who seeks the relief has to come with clean hands and show the correct description of the property for seeking the relief of easementary right over the suit property i.e. XY way. On perusal of apsat watni patra

allotment of properties to plaintiff and defendant is clear and in the said amsat watni patra it is in between four brothers i.e. Somappa Siddappa Tammanna and Yallappa. Present suit is by Somappa against Tammanna. The defendant has produced certificate issued by Sweta Bore wells and another certificate issued by Village Accountant, Uttur certifying bore well in the land and electricity payment bill is produced. Thereby it appears that the plaintiff is having a way exists on North side of the defendants property on East-West direction road and using the same. At this stage the plaintiff has failed to prove that he has got prima facie case and balance of convenience leans in his favour. On the contrary the defendant has proved at this stage that there is a alternative way to the plaintiff to go to main road towards North of defendants property and plaintiff has wrongly shown the said road on the south of the property. In view of the above discussion, I am constrained to answer **Points No.1 to 3 in the negative.**

11. **Point No.4:-** In view of my findings on points No.1 to 3, 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 the CPC is hereby **rejected**.

No order as to costs.

(Dictated to the stenographer directly on to the computer typed by him, transcript revised, corrected and then pronounced by me in the open court this the day of 13<sup>th</sup> February 2024)

Sd/-

**(Smt.Saraswati Hotakar)**  
Addl. Civil Judge & JMFC., Mudhol.