

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.,
BADAMI, AT : BADAMI.**

PRESENT

Sri.V.Hanumanthappa
M.A.LL.B.,
Senior Civil Judge and JMFC, Badami.

O.S.No.273/2023

Dated this the 10th day of November 2023

1. Laxmappa S/o Bhimappa Mannur

...Plaintiff

- Versus -

1. Devaraj S/o Pavadeppa Gaji
And others.

.... Defendants

PARTIES TO I.A.No.I

1. Laxmappa S/o Bhimappa Mannur
Age: 50 Years, Occ: Agriculture
R/o Karadigudda S.N, Tq: Badami,
Dist: Bagalkot.

...Applicant/Plaintiff

- Versus -

1. Devaraj S/o Pavadeppa Gaji
Age: 45 Years, Occ: Agriculture
R/o Karadigudda S.N, Tq: Badami,
Dist: Bagalkot. And others

....Opponents/Defendants

ORDER ON I.A.No.I

This application filed by the plaintiff against the defendants Under Order 39 Rule 1 & 2 of CPC, seeking an order of temporary injunction restraining the defendants or anybody claiming under them from causing obstructions and interruption to the plaintiff

peaceful enjoyment of the suit AB way in the southern boundary of RS No.55/11, 55/7, 55/6, 55/5 & 55/4 at AB cart way as shown in the hand sketch map in the southern boundary to reach his land RS No55/1 of Karadigudda S.N. village of Badami taluka till disposal of the suit.

2. This application supported with an affidavit sworn by the plaintiff contending that, the contents of the plaint may be treated as part and parcel of the affidavit. The present suit filed for declaration that he has acquired prescriptive easementary right of way as well as easement of necessity to reach his land of RS No.55/1 through the lands of defendants in RS No.55/11, 55/7, 55/6, 55/5 and 55/4 of Karadigudda S.N. village which is shown in the hand sketch map. His ancestors have purchased the property of RS No.55/1 from the ancestors of the defendants in the year 1972 under a registered sale deed and hence now he is the owner in possession of RS No.55/1 measuring 4A-25Gts. His land is situated towards western side. The properties of the defendants is situated in their lands as shown in the hand sketch. AB is the cart road which is situated in the lands of the defendants abutting to the public road pass from Karadigudda to Mustageri village. Since the date of purchase of his land, his ancestors were using AB cart road to ingress and egress without any obstructions and interruption. Hence, he has acquired the right of easement prescriptive as well as easement of necessity. There is no other road to reach his land accept the cart road. The defendants have illegally obstructing and denying his right of easement. Hence, he has filed his suit so also the application.

3. The counsels for the defendants have filed their objections, that the application is not maintainable either in law or on facts. The contents of the application and affidavit are false, the rough sketch annexed to the plaint is false. The plaintiff has not used AB road. The plaintiff has stated false thinks that from the date of purchase of property he has been using the AB road. The plaintiff has not produced any documents to show that there is a road to the property f the plaintiff. This court has no jurisdiction to try the suit the suit is not properly valued and court fee paid is insufficient. Hence, prays for rejection of the I.A.No.1.

4. I have heard arguments and perused material available on record.

5. The following points would arise for my consideration.

- 1 Whether the plaintiff has made out prima facie case to show that AB road shown in the hand sketch is the only way to reach his land from the main road?
- 2 Whether the balance of convenience lies in favour of the plaintiff?
- 3 Whether the plaintiff will be put to hardship in the event of not granting the relief of temporary injunction ?
- 4 What order ?

6. Upon perusal of the pleadings and documents produced by the both parties and after hearing the arguments of the respective counsels my answers to above points are as follows:

- Point No.1. In the Affirmative
Point No.2. In the Affirmative

Point No.3. In the Affirmative
Point No.4. As per final order
for the following:

REASONS

7. **Points No.1 to 3**:- These points are inter related with one another, hence, I have taken up these points together for common discussion to avoid repetition of the facts.

An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing. It is a remedy of equitable nature not available in common law. Injunction can be granted as a decree on adjudication of a suit. It can also be granted during the pendency of suit when it is called a temporary injunction. The power to grant an injunction during the pendency of a suit without finally adjudicating the rights of the parties thereto flows from the provisions of Sec.94 of the Civil Procedure Code. From the opening words of Sec.94 of the Civil Procedure Code it is amply clear that such powers are given to prevent the ends of justice from being defeated. Hence, if there is any apprehension that the defendant may by his action change a state of things in respect of the subject matter of dispute in such a way that decree eventually passed would become meaningless or ineffective or difficult to execute the court can exercise the power of granting an injunction to prevent such an intended or apprehended action.

8. The detailed instructions regarding temporary injunction are available in order 39 of the C.P.C A temporary injunction is of two types. The one which is granted even when an application for temporary injunction has not been decided and it operates till the

disposal of such operation is called ad interim injunction. It may be confirmed or vacated or modified when the application for temporary injunction is decided.

There are three well known basic principles for seeking/granting an order U/O 39 rules 1 C.P.C. They are:

1. Prima-Facie case”
2. Balance of Convenience:
3. Irreparable damage:

9. The foremost of these principles is prima-facie case.

The concept of a prima-facie case needs to be clearly understood. Generally speaking prima-facie case means a good case. That is to say that the case on first sight appears good on merit and a good case to go in for trial. A prima-facie case implies the probability of the plaintiff obtaining relief on the material placed before the court. As explained by various Hon'ble High Courts in examining the prima facie case the court is called upon to see whether the party who has approached to court has a plausible case and whether there is a possibility of such a case succeeding at a trial.

10. On perusal of the documents produced by the plaintiff it appears, the property of RS No.55/1 of Karadigudda village is standing in the name of the plaintiff, Sannlaxmappa Bhimappa Mannur, Dyavappa Bhimappa Mannur, Yallappa Bhimappa Mannur, Kanakappa Bhimappa Mannur, Bhimavva Chinnappa Mandalur, Laxmavva Fakirappa Malnad, Yallavva Parasappa Joginnavar, Dyamavva Hanamappa Sannadyamannavar, Fakiravva Shivappa Metiyavar and Basappa Yallappa Mannur.

The property of RS No.55/2 of Karadigudda village is standing in the name of Bhimarayappa S/o Balappa Gaji the defendant No.6. RS No.55/3 of Karadigudda village is standing in the name of Amyateppa S/o Balappa Gaji the defendant No.5. RS No.55/4 of Karadigudda village is standing in the name of Basavaraj Pavadeppa Gaji the defendant No.4. RS No.55/5 of Karadigudda village is standing in the name of Laxmana S/o Pavadeppa Gaji the defendant No.2. RS No.55/6 of Karadigudda village is standing in the name of Shekappa a S/o Pavadeppa Gaji the defendant No.3. RS No.55/7 of Karadigudda village is standing in the name of Devaraj S/o Pavadeppa Gaji the defendant No.1. RS No.55/8 of Karadigudda village is standing in the name of Devaraj S/o Pavadeppa Gaji the defendant No.1. RS No.55/9 of Karadigudda village is standing in the name of Shekappa S/o Pavadeppa Gaji the defendant No.3. RS No.55/10 of Karadigudda village is standing in the name of Basavaraj S/o Pavadeppa Gaji the defendant No.4. RS No.55/11 of Karadigudda village is standing in the name of Laxmana S/o Pavadeppa Gaji the defendant No.2.

11. The Sy sketch issued by the ADLR, Badami in respect of RS No.55 discloses Sy No.55/2, 55/3, 55/4, 55/6, 55/7, 55/8, 55/9, 55/10 and 55/11 are situated towards eastern side of RS No.55/1. The property of RS No.54 is situated towards western side of RS No.55/1. The property in RS No.66 is situated towards northern side and RS No.52 is situated towards southern side. RS No.55/4, 55/5, 55/6, 55/7 are adjacent to one another by partition of strips towards east to west. The property of RS No.55/8 to 55/11 are

made strips of north to south. ME No.1737 dated:09.02.1973 discloses the property of RS No.55/1+2+3+4+5A is alienated by Yallappa, Hanamappa, Chandappa sons of Ningappa Gaji in favour of Kanakappa Mannur.

12. The certified copy of the sale deed dated:07.12.1972, executed by Yallappa, Hanamappa, Chandappa sons of Ningappa Gaji in favour of Kanakappa Mannur in respect of RS No.55/1+2+3+4+5A measuring 04A-25Gts. The village map of Karadigudda S.N village is also produced on careful scrutiny of this document the property of RS No.55, 57, 62, 66 and 54 are situated adjacent to one another.

13. The photographs produced clearly indicates that, stones and wild plant fencing erected from the main road to the pathway passes on the agricultural land.

14. The defendant has produced two photographs showing there is alternative road to the land of the plaintiff which is attached to main road passes to guddada road. He has also produced an important document the sale agreement which is unregistered one, executed by Bhimappa S/o Kanakappa Mannur Basappa Yallaappa Mannur R/o Karadigudda in favour of Ramanna Hanamappa Gaji R/o Karadigudda in respect of RS No.51/1+2+3+4+5A measuring 04A-25Gts out of which 25Gts. The recitals discloses the property of RS No.55/1+2+3+4+5A measuring 04A-25Gts is standing in the name of plaintiff and Basappa Yallappa Mannur, the same is purchased by Kanakappa Mannur the father of the plaintiff from the father of

Ramappa Hanamappa Gaji. At the time of purchase of said property there was an agreement to reconvey the property of 25Gts. Therefore, the present plaintiff and Basappa Yallappa Mannur have agreed to execute sale deed of 25Gt which is in possession of Ramanna S/o Hanamappa Gaji. Since there was encumbrance on the property, after clearance of the same the plaintiff agreed to execute the registered sale deed. This document executed on 29.10.2002.

15. By producing the unregistered sale agreement the defendants have admitted that, the property of RS No.55/1+2+3+4+5A measuring 4A-25Gts purchased by the father of the plaintiff. So, the defendants have admitted the title of the plaintiff in respect of the said property. Now the question is the 25Gts which is stated to be in possession of the defendants is to be re-conveyed by the plaintiff and Basappa Yallappa Mannur. The defendants are at liberty to get the relief by filing necessary suit on the basis of this document. Since, the defendants have not filed any written statement denying the title and existence of AB road shown in the rough sketch. On perusal of the rough sketch annexed with the plaint. The same is tallied with the Sy sketch issued by the ADLR, Badami. The plaintiff claims AB road in the extreme southern side of property of RS No.55/4, 55/5, 55/6, 55/7 and 55/11. According to the hand sketch map, Karadigudda to Mustageri main road is situated towards eastern side of RS No.55/2, 55/3, 55/8, 55/9, 55/10 and 55/11. The cart way is shown as AB passes from the main road to RS No.55/1 through RS No.55/11, 55/7, 55/6, 55/5 and 55/4. Even though the defendants

have contended that, there is alternative road available to the plaintiff to reach his land but the property of RS No.55/1 and properties of the defendants is bifurcated from the same Sy No.55. Therefore, even though there is no recital in the sale deed regarding leaving of cart road but in order to ingress and egress to RS No.55/1 there is no other alternative road found in village map. During the court of arguments the counsel for the plaintiff has argued that the plaintiff has grown sugarcane in the suit property of RS No.55/1, if the road blocked by the defendants is not opened, the plaintiff will be put to great hardship and monetary loss. If the road is not opened the plaintiff is unable to transport the sugarcane grown in his land. Admittedly the defendants have not grown any permanent crops like sugarcane in RS No.55/4, 55/5, 55/6, 55/7 & 55/11 but is is only a crops grown in the dry land like maize. Even at present the harvesting of maize crop is over. Under these circumstances, I am of the opinion that if the plaintiff is permitted to transport his sugarcane through AB cart road the defendants will not be put to any kind of hardship. Even if any monetary loss causes to the defendants in the portion of the crop raised in AB cart road the same can be compensated and the defendants are at liberty to get the extent of the land which they going to loose for AB cart road the same can be claimed by them. Considering the raising crop of the sugarcane in the land of the plaintiff it is necessary to restrain the defendants from using AB cart road at least for limited period of transporting the sugarcane raised in the land of the plaintiff. The documents produced by the plaintiff made out prima facie case balance of convenience is lies

in favour of the plaintiff. With this observation I answer to these points is in the **Affirmative**.

16. **Point No.4:-** For the reasons stated above, I proceed to pass the following.....

:ORDER:

I.A.No.I filed by the plaintiffs U/o 39 Rule 1 & 2 of CPC is hereby allowed.

Consequently, the defendants are hereby restrained from using the AB cart road by the plaintiff in any manner till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer, transcribed and typed by her, script corrected and signed by me, then pronounced in the open Court on the 110th day of November - 2023)

(V.Hanumanthappa)
Senior Civil Judge and J.M.F.C., Badami.