

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC, AT  
BANAhattI.**

**Present: Sri. ASHAPPA, B.Com., LL.M.  
Senior Civil Judge & JMFC,  
Banahatti**

**Dated this 25<sup>th</sup> day of January -2025**

**OS.No.270/2024**

**Plaintiffs:**

Siddram S/o: Ghulappa Bhilawadi  
and Others.

(By **Sri. A.J.V. Adv**)

**// Versus //**

**Defendants:**

Prabhu S/o: Doddayamanappa Naik  
and Others.

(By **Sri. H.R.P. Adv** for D.1 to D.4 &  
D.7 **Sri. A.V.B. Adv** for D.5 & D.6)

**-I.A.No.I-**

**Applicant/plaintiff:**

Siddram S/o: Ghulappa Bhilawadi  
and Others.

**-Versus-**

**Opponent/ Defendant:**

Prabhu S/o: Doddayamanappa Naik  
and Others.

**:ORDER ON IA NO.I:**

The plaintiffs filed the present I.A U/O-39 Rule-1 & 2 of CPC, with a prayer to grant temporary injunction to restrain the defendants from digging drainage, making plots in the suit area as shown ABCD and CDEF letters in green and pink ink of hand sketch map, till disposal of the suit.

**2.** In supporting affidavit the plaintiff No.3 stated that, they are exclusive owners and possessors of their plots. Towards Southern side of their plots there is 21 meter width KJP approved road is existence in land Sy.No.65 for their use and enjoyment. The defendants have no any right, title or interest over the suit road but they created false sale deeds and map in their land Sy.No.64 for NA use. There is no any space mentioned in their sale deeds.

**3.** It is stated EFGH public road situated towards Southern side and these defendants started to dig drainage for laying out their plots by including ABCD road as shown in the map. The defendants have not obtained any approval of their plots

from concerned authority. The defendants by using their political power and money have started to create the plots in the suit portion of road illegally and highhandedly. In that regard, the plaintiffs filed the complaint before police but they have not taken any action.

**4.** It is further stated that, they are using Southern side road and passage in RS.N.64 for reaching the public road. The defendants wants to engulf area of suit road for creating their plots. The defendants very well knows that, there is no such open space for laying out the plots as shown in the sale deed and Record of Rights. If the defendants allowed to laying the plots they will sell the plots by engulfing ABCD road. Moreover, the easement right of plaintiffs will be lost and they will face to multiplicity of the proceedings which cannot be compensate in terms of money. Hence, filed the suit and IA under discussion.

**5.** It is further stated, they got prima-facie case, balance of convenience lies in their favour and if injunction is not granted they will put irreparable loss and hence, sought to allow the IA.

6. After issuance of suit summons and notice on IA, the defendant No.1 to 4, 7 appeared through Sri. H.R.P Adv. The defendant No.5 & 6 appeared through Sri. A.V.B. Adv. The defendant No.1, 4 to 7 filed their written statement and memo stating the contents of written statement are to be treated as objections to IA.No.I. The said memo allowed and contents of written statement are treated as objections to IA.No.I.

**7. Brief facts of the written statement of the defendant No.1 to 4 & 7 are as under:**

The contents of averments of plaint are specifically denied. It is stated that, the suit of the plaintiffs is not at all maintainable in eye of law. It is stated that, the property of plaintiffs and property of defendants are different and suit is for representative in nature and therefore, it is not maintainable. It is denied that, the plaintiffs purchased their respective plots and accordingly, they are in possession and enjoyment. It is further denied that, the layout of the plaintiffs plots have been approved by town planning authority,

accordingly, KJP was approved. The plaintiff No.5 not at all approved his plots from town planning authority.

**8.** It is denied that, the portion as shown in the hand sketch map as CDEF is not the road but it is the property of defendants. The plaintiffs in their sale deed intentionally mentioned towards Southern side of road is in existence. It is further stated that, towards Northern side of land Sy.No.64 the properties of plaintiff No.1 to 4 were existence. The plots of plaintiffs not situated adjacent to the Rabkavi-Kudachi road. The plaintiffs falsely stated that, towards Southern side of their plots Rabkavi-Kudachi road is in existence. It is denied that, the plaintiffs are having easement right over the suit road, there is no any road in existence and therefore, the question of easement right has alleged by the plaintiffs does not arise. Without cause of action the plaintiffs filed the present suit and therefore, it is liable to be dismissed.

**9.** The defendant No.1 & 2 are the owners and possessors of land Sy.No.64/29, the defendant No.3 is owner and

possessor of land Sy.No.64/35, the defendant No.4 is owner and possessor of land Sy.No.64/34 and the defendant No.7 is owner and possessor of land Sy.No.64/33. The plaintiffs never used the suit road at any point of time. Only to harass the defendants, filed the present suit and IA under discussion. On these and other grounds, they sought to dismiss the IA.

**10.** The defendant No.5 & 6 filed their objections to IA.No.I wherein the averments of affidavit filed along with IA.No.I are categorically denied. It is stated that, the averments of plaint and documents produced by the plaintiffs are contrary to each other. The plaintiffs prayed the negative relief which cannot be granted. The plaintiffs sought for the relief of easement right as main prayer for road in respect of open space of plaintiffs and defendants. Easement rights cannot be created or granted to the open plots, as the definition of easement is not fulfilled in this case. The defendants are owners and possessors of land Sy.No.64/30, 64/31 and 64/32 each measuring 09-Guntas. The defendants have purchased the said property for valuable consideration on 11.08.2022 and accordingly, they are in

possession over the property. The plaintiffs filed the suit without any cause of action, the suit itself is not maintainable in eye of law and therefore, liable to be dismissed on these and other grounds, sought to reject the IA.No.I.

**11.** On the basis of the said pleadings, the following points arise for consideration:

### **POINTS**

- 1. Whether the plaintiffs have made out prima facie case in their favour?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether plaintiffs will be put to hardship and injury if order of Temporary injunction is not granted?**
- 4. What Order?**

**12.** Heard both sides.

**13.** My findings on the above points are as below:

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:

**:: REASONS ::**

**14. Point No.1:** The plaintiffs have filed the suit seeking the relief of declaration and permanent injunction. Under IA.No.I, the plaintiffs sought to relief of temporary injunction restraining the defendants from making plots, digging drainage in the suit road. The material averments of plaint are categorically denied. The plaintiffs have come up with present IA under discussion for grant of temporary injunction, the plaintiffs have to make out three golden principles for granting the temporary injunction i.e., plaintiffs have to make out a prima-facie case to go in to trial, they have also make out balance of convenience lies in their favour and the plaintiffs are bound to establish that, prima-facie i.e., they are going to be irreparable loss or injury which cannot be compensated in terms of money if injunction is not granted.

**15.** The prima-facie case means, the court must be satisfy that, the applicants have raised the bonafide dispute which needs investigate and decide on merits and facts and there is a

probability of applicants are entitle the relief claimed by them.

The burden is on the plaintiffs to prove and establish that there is a prima-facie case in their favour.

**16.** Keeping the above principles in mind I have perused the materials documents produced by the parties. The plaintiffs relied the documents in support of their case i.e records of rights, sale deeds, gift deed, notice, maps and copy of endorsement issued by the Police. The defendants also filed the order of deputy commissioner, Sale deeds records of rights and copies of maps. On perusal of the documents, particularly copies of sale deeds, they reveals that, the plaintiff No. 1 purchased the plot No. 55, 56, 62 and 63 on 07.05.1999, plaintiff No. 2 purchased the plot No. 56 and 63, the mother of plaintiff No. 3 purchased the plot No.43 and 51, plaintiff No.4 purchased the plot No.65. Meanwhile the plaintiff No.3 gifted her plots No.43 and 51 purchased under sale deed to her son i.e plaintiff No.3. The plaintiff No.5 is one of the vendor of said plots and also owner of the plots made in the land

Sy.No.65/1+2/5. The plots of plaintiffs are coming in the land Sy.No.65/1+2/5 situated at Rabakavi, Tq: Rabakavi-Banahatti.

**17.** The documents relied by the defendants are also shows that, name of defendant No. 1 and 2 appearing in the land Sy.No.64/29 measuring 00 acres 09 guntas, name of defendant No. 3 appearing in the land Sy.No. 64/35 measuring 00 acres 17 guntas, name of defendant No.4 is appearing in land Sy.No.64/34 measuring 00 acres 17 guntas, name of defendant No.7 is appearing in land Sy.No.64/33 measuring 00 acres 08 guntas and the name of defendant No. 4 and 5 appearing in respect of property Sy.No. 64/30, Sy.No.64/31 and land Sy.No.64/32. Herein , the defendants not at all denied the ownership and possession of plaintiffs over their plots situated in NA Land Sy.No. 65/1+2/5 and purchase of the said plots by the plaintiffs under registered sale deeds. They stated that, the plaintiffs got executed the sale deeds by mentioning wrongly towards southern side the road is existence. It is further their contention that, there is no any such road is existence towards southern side of their plots. Towards southern side of the

plots of plaintiffs, the land Sy.No.64 belongs to the defendants is existence and thereafter the Kudachi-Rabakavi road is existence. They further stated, the plaintiffs never using the land of defendants to reach the main road at any point of time.

**18.** The plaintiffs filed the hand sketch map to show the situation of their plots, suit road as per letters ABCD, property of defendants and Kudachi-Rabakavi road as per letters DCEF and EFHG. To substantiate said contention no any material documents produced. The other two maps produced herein are reveals that, towards the southern side of plots of the plaintiffs there is no such road is existence on the spot. The map issued by the ADLR Jamakhandi and produced by the defendants clearly goes to show that, towards southern side of land Sy.No.65 the land Sy.No. 64 is in existence and thereafter the Kudachi-Rabakavi road is existence. So, there is no any corroborate material evidence to show there is suit way is in existence and these plaintiffs are enjoying to reach the Kudachi-Rabakavi road.

**19.** While considering an interlocutory application, the court is not called upon to decide the real disputes between the parties. The court is called upon to see whether the party who has approached the court has a plausible case and whether there is a possibility of such case succeeding at the trial. If that test is satisfied then it is the duty of the court to see whether the damages the plaintiff is likely to suffer for the action of the defendants complained of can be compensated in money and if so whether there is a standard for ascertaining such compensation. If such compensation can be ascertained and afforded in money then the interlocutory order of injunction should normally be refused. On the other hand, the court is of the view that, such compensation cannot be ascertained and afforded in money then it is the duty of the court to see the balance of convenience and inconvenience is in favour of grant then the court shall normally issue an interlocutory order of injunction upon undertaking of the plaintiff to compensate the defendant against whom the order of injunction is passed if at the trial it is held that the plaintiff is not entitled to such

permanent injunction. On the other hand, if it is found that, the balance of convenience is against passing of such order, the civil court will normally refuse to pass interlocutory injunction. The aforesaid are broadly the principles on which the court acts while discretion in deciding an interlocutory application for temporary injunction made.

**20.** In the present case also, there is serious dispute between the parties in respect of suit way. The plaintiffs contended that, they are using and enjoying the suit way to reach the main road and on the other hand the defendants stated there is no any such way as stated by the plaintiffs. So, at this stage the court can not decide the revival contention of the parties and it required full pledged trial. The plaintiffs sought the relief of declaration declaring that,they have got easement rights for use of passage existence in Rs. 64 to reach main road but as per hand sketch map the said path way shown in the land Sy.No.65. Even assuming the said road is in the land Sy.No.64, as per Indian Easements Act, 1882 - the land for the beneficial enjoyment of which the right exists is called the dominant

heritage, and the owner of occupier thereof the dominant owner, the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner. In the present case also the plaintiffs seeking the relief on the land Sy.No. 64 but the plaintiffs not admits the ownership and possession of the defendants on the land Sy.No.64. If the plaintiffs admits the ownership and possession of defendants on the land Sy.No.64 then only they can seek such reliefs. The court has to examine in between the plots of plaintiffs and land Sy.No.64 there is passage and then the main road is existence. This is required full pledged trial and at this stage it can not held that, there is suit road is existence. Even there is no such material on record that, the defendants have digging the drainage, making plots over the suit path way. Therefore at this stage it can not be hold that, the easement rights of the plaintiffs has been disturbed by the defendants. If the entire plaint is read as a whole, it shows that the intention of plaintiffs is something else and from the present suit, it appears they have not come to the court with clean hands

seeking the relief. If case of the plaintiffs not in definite, they are not entitled such relief. Thus, I come conclusion that, the plaintiffs failed to show the prima facie case in their favour. Accordingly, the **Point No.1 is answered in the Negative.**

**21. Point No.2**:- Balance of convenience; before granting the injunction the court must be satisfied that the hardship likely to be caused to the applicants/plaintiffs by refusing the injunction is greater than that likely to be afflict the opponent, if it is granted. If on weighing conflicting probabilities the court is of the opinion that balance of convenience in their favour must grant the injunction.

**22.** Herein the plaintiffs claiming that, they are using suit way to reach the main road but they have not pleaded that, how they are acquired the easement rights over suit way. The existence of property of defendants itself denied by the plaintiffs and therefore they can not seek the injunction on the basis of easement right over the land Sy.No. 64. Moreover the using of road by the plaintiffs strongly denied by the

defendants. These facts can be weighed at the time of full pledged trial. At this pretrial stage any opinion on material issue will affect the minds of the parties. As answered the point No. 1 in the negative the balance of convenience not lies in favour of plaintiffs. Hence I have answered **Point No.2 in the Negative .**

**23. Point No.3:** Irreparable Injury ; The applicants/plaintiffs must satisfy the court that they will suffer irreparable loss, injury if the injunction is refused as there is no other remedy by which they can be protected from consequences apprehending injury. The grant of injunction is an equitable right and it can be exercised when judicial intervention is necessary to protect the applicants/plaintiffs. An injunction can be regarded as irreparable where there is no pecuniary standard for measuring damages.

**24.** In the present case the contention of the plaintiffs that they are enjoying suit way to reach main road but failed to establish the prima facie case and balance of convenience in

their favour. As stated the ownership and possession of plots of the plaintiffs not disputed by the defendants. It is not the case of the plaintiffs that, except the suit road there is no any road to reach the plots of the plaintiffs. Therefore the plaintiff will not be put any irreparable loss if temporary injunction is not granted. On the other hand if injunction is granted definitely more hardship caused to the defendants. Therefore the material on record are not sufficient to hold at this stage that there is a way in existence as stated by the plaintiffs and if injunction is not granted it will effect on their rights. Hence the court is of the opinion that, no loss would be caused to the plaintiffs in case of injunction order is not granted. Hence, I answer point No.3 also in the Negative.

**25. Point No.4:** In view of the above said discussions, I proceed to pass the following:-

**ORDER**

The I.A.No.I filed by plaintiffs U/O.39  
rules 1 and 2 of C.P.C is here by rejected.

No order as to costs.

(Typed to my dictation directly on computer by the stenographer, corrected, signed by me, and then pronounced in the open Court on this 25<sup>th</sup> day of January -2025)

**(Sri. Ashappa)**  
**Senior Civil Judge & JMFC,**  
**Banahatti.**