

KABK610029112024



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.
AT BANAHATTI

: PRESENT :

Miss. Shushma T.C.
B.Com., LL.B.,

Civil Judge & J.M.F.C., Banahatti

O.S No.200/2024

Dated this, the 10th day of March, 2025

1. Ismail S/o Maqbool Horatti

.... Plaintiff

(Represented by Sri. H.R.P., Advocate)

- Vs -

1. Meerasab S/o Modinsab Horatti & another

.... Defendants

(Represented by Sri. S.M.F., Advocate)

: PARTIES IN I.A No. I & III :

1. Ismail S/o Maqbool Horatti,

R/o: Hosur, Tq: Rabakavi-Banahatti, Dist.: Bagalkot.

.... Applicant/Plaintiff

- Vs -

1. Meerasab S/o Modinsab Horatti,

2. Khatunabi W/o Modinsab Horatti,
Both are R/o: Hosur, Tq: Rabakavi-Banahatti,
Dist.: Bagalkot.

.... Opponents/ Defendants

Provision under which applications are filed	:	U/o 39 Rule 1 & 2 R/w sec.151 of CPC
Reliefs sought for	:	Discretionary reliefs of temporary injunction
Date of filing the applications	:	07.08.2024 & 31.01.2025
Number of the applications	:	I.A No.1 & 3
Date of filing objection/ memo	:	28.01.2025 & 18.02.2025
Date of pronouncement of the order	:	10.03.2025

: COMMON ORDERS ON I.A NO. I & III :

The plaintiff has filed these applications U/o 39 Rule 1 & 2 R/w sec.151 of CPC seeking temporary injunction against defendants restraining them or anybody claiming through them from causing obstruction to the construction going on in the properties of plaintiff bearing CTS No.4588, 4589 & 4590, all situated at Hosur, Tq: Rabkavi-Banahatti and from digging the road and by putting stones and mud in the property bearing CTS No.4586 denoted by letters 'CDIJ' till

disposal of this suit. These applications are filed at the initial stage of filing this suit.

2. In support of I.A No.1 & 3, plaintiff has sworn to affidavits stating that, he is the absolute owner in possession of lands bearing CTS No.4590, 4588 & 4589, each measuring 15 sq. mtrs, 16.25 sq. mtr and 15 sq. mtrs all situated at Hosur village. It is submitted that, he acquired the property bearing CTS No.4590 from defendants under a registered partition deed dated 27.10.2016 and has acquired the property bearing CTS No.4588 in a decree passed in the suit bearing O.S No.16/2017 filed before this court and accordingly, he has acquired the property bearing CTS No.4589 under a gift deed dated 03.11.2009. It is submitted that, all the above-mentioned properties are situated adjacent to each other within one boundary and there is a common road denoted by letters 'CDGIJ' for the use and enjoyment of plaintiff and defendants and the same is given number as CTS No.4586. It is submitted that, he is using and enjoying the suit properties and the bol road without obstruction from anybody. The suit properties under his possession are denoted by letters 'ABCDE' in plaint hand sketch map. It is submitted that,

defendant No.1 has encroached common road to the extent of east-west 4 feet at the eastern side of his property bearing CTS No.4585 while construction of building and has encroached up to the properties of plaintiff. When plaintiff requested defendant No.1 to remove encroachment, in the anger of the same, they are not heeding to the request made by plaintiff and are causing obstruction for the construction of building in 'ABCDE' portion of plaintiff. It is submitted that, he is constructing the building in his properties by removing the old structure and around 90% of the work is completed and he has invested in sand, bricks, iron rod and cement for the further completion of building and if defendants continued to cause obstruction, if the rainy season begins, the said materials would be spoiled and he would incur heavy loss. Further, defendants are digging road in the common way denoted by letters 'CDIJ' and are putting stones and mud and this would cause obstruction for his use and enjoyment of common way to reach his properties. It is submitted that, he has got prima facie case and balance of convenience leans in his favour and if the applications are rejected, he would be put to heavy and irreparable loss which

cannot be compensated in terms of money. Moreover, the very object and purpose of filing this suit will be frustrated. On the other hand, if the applications are allowed, no harm or loss would be caused to defendants. On these grounds, prayed to allow the applications.

3. On the other hand, defendants appeared through their counsel and filed objection to I.A No.1 and a memo to consider the same as objection to I.A No.3. In the statement of objection, defendants have denied the entire case of plaintiff and contended that, there is no bole road i.e. C.T.S No.4586 at the northern side of the property of plaintiff and at the eastern and western sides of their property. There is a common road as dented by letters 'CDGIJ' in the plaint hand sketch map at part-I and denied about the encroachment by defendant No.1 and denied the right of way in bole road to plaintiff. It is contended that, four branches have got right of way in the property bearing C.T.S No.4586 and plaintiff alone is not the owner of the same and moreover, he has not made all the four branches as parties to this suit. Hence, suit is not maintainable. It is contended that, plaintiff has not made out prima facie case and has no balance of convenience and if the

applications are rejected, plaintiff will not be put to loss and injustice. On the other hand, if the applications are allowed, defendants will be put to irreparable loss and injury which cannot be compensated in terms of money. On these grounds, prayed to reject the applications.

4. Heard both sides and perused the materials placed on record.
5. On the basis of rival contentions of parties, the points that would arise for my consideration are as follows:
 1. Whether plaintiff has made out prima facie case in respect of I.A No.1 & 3?
 2. In whose favour, balance of convenience lies?
 3. Who will be put to irreparable loss or injury if temporary injunction is rejected?
 4. What order?
6. My findings on the aforesaid points are as under:
 - Point No.1 : In the **Affirmative**
 - Point No.2 : In favour of plaintiff
 - Point No.3 : Plaintiff will be put to irreparable loss & injury if TI is rejected
 - Point No.4 : As per final order, for the following,

: R E A S O N S :

7. **Point No.1:** The brief contents of applications and the statement of objection are discussed in detail in the above

paragraphs and hence, I am directly discussing merits of these applications. It is the case of plaintiff that, he is the absolute owner of suit properties denoted by letters 'ABCDE' as shown in plaint hand sketch map and the property of defendant No.1 is situated at the northern side of his property as shown in plaint hand sketch map and it is stated that, there is a bole road in the property bearing CTS No.4586 as denoted by letters 'CDGIJ' shown at part II and and parties are in possession of their properties as denoted at part II. But, defendant No.1 has encroached while construction of his building and in suit common way and when the same was questioned by plaintiff, defendants are causing obstruction for the construction of plaintiff in his properties and are also causing obstruction for the common way by digging and putting stones and mud therein and this is causing obstruction for the use and enjoyment of suit properties of plaintiff. As defendants did not heed to the requests made plaintiff, he is constrained to file this suit and applications. In support of these applications, plaintiff has produced property extracts, partition deed, gift deed, plaint and compromise

decree along with order sheet in O.S No.16/2017, CTS map and photographs.

8. On the other hand, it is contended by defendants that, suit is not maintainable as there plaintiff is not the exclusive owner of common way and there is no common way as shown by plaintiff in his hand sketch map and has filed two sketches and it shows that, plaintiff is not sure of his case. Hence, plaintiff is not entitled for the discretionary relief of temporary injunction. It is specifically contended that, defendant No.1 has not encroached any portion in common way and has not constructed building by making encroachment. In support of this contention, learned counsel for defendants has produced CTS map.
9. It is argued by learned counsel for plaintiff that, he has shown two hand sketches at part I and part II and part one is as per CTS map and part II is as per the possession and defendants have not denied his ownership over suit properties. Moreover, plaintiff is constructing building by removing old structure in his property only and the construction is in the flag end and if the applications are not allowed, plaintiff will be put to heavy loss as the building

materials are stored by investing huge amount. Further, defendants themselves have stated in objection that, there is road in CTS No.4586 and he has shown possession over suit properties. Hence, plaintiff is entitled for the reliefs claimed in the applications. On the other hand, learned counsel for defendants argued that, parties are in possession and enjoyment of their respective properties as per the CTS map and suit is not maintainable without seeking the relief of declaration and he has not made all the parties to the deed as parties to show the right of way. Further stated that, suit prayer and the prayer made in these applications are one and the same. Hence, plaintiff is not entitled for the reliefs claimed in the applications.

10. It is a settled law that, while considering an application under Order 39 Rule 1 & 2 of CPC, court has to look into prima facie case and not to examine the case on merits that, whether the plaintiff is likely to succeed in the case or not. Plaintiff has to make out prima facie case for the grant of discretionary relief of temporary injunction. It is a settled position of law that, one who seeks equity, must show equity to others and should come with clean hands to have a discretionary relief of the

Court, such as order of temporary injunction. It is also a settled law that, a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that, unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The court further has to satisfy that, non-interference by the court would result in irreparable injury to the party seeking relief.

11. In the light of above principles, when we look into the present case on hand, based on the rival contentions urged by both parties and after careful consideration of the pleadings of parties, it is observed that, there is a dispute with regard to alleged encroachment in common way and it is stated that, defendant No.1 has encroached the same and has put up construction of his building. The ownership of plaintiff over suit properties is not at dispute and it is the case of plaintiff that, defendants are causing obstruction for his construction over suit properties and are digging the way and putting

stones and mud therein and thereby are causing obstruction for his use and enjoyment of suit properties. It is true that, plaintiff has shown two hand sketch maps and it is contended that, parties are in possession and enjoyment of properties as per part II and as per CTS map the same is shown at part I of the hand sketch. The exact location as per enjoyment will be adjudicated on trial and the possession of plaintiff over suit properties is not at dispute and hence, it is just and necessary to protect alleged right over suit properties. Further, the right of way is also not disputed and it is contended that, four branches have got the said right. Hence, right of plaintiff is also not at dispute. It is contended that, defendants are causing obstruction to the use and enjoyment of right of way by digging and putting stones and mud and the alleged right of plaintiff is required to be protected until conclusion of trial. In view of the rival contentions urged by both parties, it is clear that, there is triable issue and the same has to be adjudicated only after recording of evidence of both parties and the same cannot be decided at this instant stage.

12. Hence, without going into merits of the case, I am of the opinion that, it is necessary to protect alleged right of plaintiff over suit subject matter till conclusion of trial and for the proper adjudication of this case on merits. Otherwise, it will lead to multiplicity of proceedings. It is for the plaintiff to prove the exact possession and to disprove the same as per CTS map if any, and the same has to be done only during trial and the trial takes time. Moreover, on perusal of the photographs, it is seen that, construction is in the flag end and if the defendants continue obstruction for the construction, it would cause heavy loss and injury to plaintiff. Hence, in order to protect alleged right of plaintiff over suit property and alleged right of way in CTS No.4586 and to avoid multiplicity of proceedings, it is necessary to restrain defendants from causing obstruction to plaintiff for the construction of building in his properties and also to restrain defendants from digging common road and from putting stones and mud in the property bearing CTS No.4586 of Hosur village. Hence, without going into merits of the case, at this juncture, I am of the opinion that, plaintiff has made out prima facie case for the grant of temporary injunction in his

favour in respect of I.A No.1 & 3. Accordingly, point No.1 is answered in the **Affirmative**.

13. **Point No.2:** The plaintiff has made out prima facie case for the grant of temporary injunction in his favour in respect of I.A No.1 & 3 and by looking into the available materials on record produced by plaintiff, it is just and proper to hold that, balance of convenience lies in favour of plaintiff. If an order of temporary injunction is not granted, it would definitely prejudice the rights of parties over suit properties and the question whether there is common road as shown in plaintiff hand sketch maps or not and whether there is any encroachment by defendant No.1 or not and whether plaintiff has got right of way in CTS No.4586 or not will be adjudicated after full fledged trial. Hence, this point is answered accordingly.
14. **Point No.3:** By considering facts and circumstances of the case and based on my discussion on the above points, I hold that, plaintiff has made out prima facie case in respect of I.A No.1 & 3 and has convinced this court that, balance of convenience lies in his favour and moreover, has shown that, Judicial intervention is necessary to protect his alleged right

over suit properties, failing which, he will be put into great hardship, which cannot be compensated in terms of money. Hence, this point is answered accordingly.

15. **Point No.4:** In view of my discussion and reasons given while answering the above points, I proceed to pass the following:

: O R D E R :

I.A No.1 & 3 filed by plaintiff U/o 39 Rule 1 & 2 R/w sec.151 of CPC are hereby allowed.

The defendants are hereby restrained from causing obstruction to the construction of plaintiff in the properties bearing CTS No.4588, 4589 & 4590, all situated at Hosur village, Tq: Rabkavi-Banahatti till further orders.

Further, defendants are hereby restrained from digging the road and putting stones and mud in the property bearing CTS No.4586 denoted by letters 'CDIJ' situated at Hosur village, Tq: Rabkavi-Banahatti till further order.

There shall be no order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, corrected by me and then signed and pronounced by me in the open court on this, the 10th day of March, 2025.)

(Shushma T.C.)
Civil Judge & JMFC, Banahatti.