

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI.**

PRESENT :
SHRI. ARASHAD ANSARI,
B.Com, L.L.M.,
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 05th day of September – 2023

O.S. No.198/2021

1. Shri.Mahadev S/o Kenchappa Galave,
Age: 66 years, Occ: Agriculture,
R/o Adihudi village,
Tq: Jamkhandi, Dist: Bagalkot.

..... Plaintiff.

(By Shri.S.V.K., Advocate)

Vs.

1. Smt.Kasturi W/o Laxman Uppar,
Age: 65 years, Occ: Household work,
R/o Chimmalagi village,
Tq: Nidagundi, Dist: Vijayapur and Another.

..... Defendants.

(By Shri.A.P.K., Advocate)

I. A. No.I

1. Shri.Mahadev S/o Kenchappa Galave,

..... Applicant/Original Plaintiff.

Vs.

1. Smt.Kasturi W/o Laxman Uppar
and Another.

.....Opponents/Defendants.

ORDERS ON I.A. No.I FILED BY
PLAINTIFF/APPLICANT UNDER ORDER 39
RULE 1 AND 2 R/W SECTION 151 OF C.P.C.

This application is filed by plaintiff/applicant seeking order of temporary injunction against the defendants restraining them to from causing any obstructions to pass through demarcated 'ABCD' as in plaint hand sketch map till disposal of the suit.

2. In support of application, the plaintiff has sworn to an affidavit, wherein he stated that, he is the absolute owner and in possession of land bearing R.S.No.153/5 measuring 01 acre 10 guntas situated at Adihudi village in Jamkhandi taluka and defendant is the owner in possession of land bearing R.S.No.153/6 measuring 03 acres 24 guntas. The plaintiff has to reach his land through the cart way which is situated in Southern portion towards East-West of defendant's land which is demarcated as in the plaint hand sketch map. It is further averred by the plaintiff that the suit property of the plaintiff is purchased on 25-07-1996 from the

deceased father under the registered sale deed and since from that date he is in actual exclusive possession and enjoyment of the suit property and the previous owner in title were using the same way to reach his land as an easement right. Despite of knowing all these facts defendant recently try to obstruct using the said way as he is transporting agriculture impediment, fertilizers with the help of bullock carts, tractors. The defendant falsely alleging that plaintiff cannot pass through this suit way. The plaintiff also complained before Savalagi police station and police has visited the spot and recorded the statements, in-spite defendant not ready to permit the plaintiff to reach their land. On these grounds prayed to allow this application.

3. Defendants No.1 and 2 filed objections to this IA, wherein contended that, plaintiff is claiming cart way on the basis of sale deed dated: 25-07-1996 wherein it is clearly stated as plaintiff has got only pathway in defendants land to reach his land. Therefore plaintiff is

falsely claiming cart way on the basis of sale deed. It is further submitted that the plaintiff is claiming two different reliefs, one is claiming cart way on the basis of sale deed and another in respect of easement of way. Amongst these grounds prayed to reject the application.

4. Heard the arguments of both the learned counsels, perused the records placed before the court.

5. The points that arose for my consideration is as under :

- 1) Whether plaintiff has made out prima-facie case to grant the temporary injunction in his favour?
 - 2) Whether the balance of convenience lies in favour of plaintiff?
 - 3) Whether plaintiff proves that irreparable loss will be caused to them if TI is not granted?
 - 4) What Order?
6. My findings to the above points is as under:

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 :

7. **POINT No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. It is the case of plaintiff that, he is the absolute owner and in possession of land bearing R.S.No.153/5 measuring 01 acre 10 guntas situated at Adihudi village in Jamkhandi taluka and defendant is the owner in possession of land bearing R.S.No.153/6 measuring 03 acres 24 guntas. The plaintiff has to reach his land through the cart way which is situated in Southern portion towards East-West of defendant's land which is demarcated as in the plaint hand sketch map. It is further averred by the plaintiff that the suit property of the plaintiff is purchased on 25-07-1996 from the deceased father under the registered sale deed and since from that date he is in actual exclusive possession and enjoyment of the suit property and the previous owner in title were using the same way to reach his land as an

easement right. Despite of knowing all these facts defendant recently try to obstruct using the said way as he is transporting agriculture impediment, fertilizers with the help of bullock carts, tractors. Hence the defendant not ready to permit the plaintiff to reach his land.

9. On contrary the defendants contended that plaintiff is claiming cart way on the basis of sale deed dated: 25-07-1996 wherein it is clearly stated as plaintiff has got only pathway in defendants land to reach his land. Therefore plaintiff is falsely claiming cart way on the basis of sale deed. Moreover, on perusal of documents produced by the plaintiff, prima-facie there is no single piece of document to show that at this stage of the case that defendant is causing obstruction to the plaintiff's right of way or whether it is cart way or path way, in the suit land of defendant. To consider all these aspects it requires full fledged trial to arrive at conclusion that defendant is causing interference to the plaintiff's right of way and mini trial can not be held at this stage. Such

being the main relief and the interim relief claimed in the application, if at all temporary injunction as prayed by plaintiffs is granted at this stage of the case, it would amount to granting of final relief. It is settled position in **Dalpat Kumar vs. Prahlad Singh (1992) 1 SCC 719** wherein it is held that, "It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it". In the light of ratio laid down in

above decision and the discussion made supra it is clear that plaintiff is failed to make out prima-facie case and balance of convenience lies in his favour. On going through the decision relied above, I come to the conclusion and Therefore, I answer Point No.1 and 2 in the '**Negative**'.

10. **Point No.3:-** In view of reasons discussed above the plaintiff's fails to prove that, balance of convince and prima-facie case is lies in his favor. It can be held at this stage that by refusing grant of temporary injunction no irreparable loss would be caused to them. Hence, I answer Point No.3 in the '**Negative**'.

11. **Point No.4:-** For the reasons and finding given to Point No.1 to 3, I proceed to pass the following :

: O R D E R :

I. A. No.I filed by plaintiff under
Order 39 Rule 1 and 2 of C.P.C is
hereby rejected.

No order as to costs.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **05th day of September - 2023**)*

Sd/-
(Arashad Ansari),
Addl. Civil Judge & JMFC,
Jamkhandi.