

IN THE COURT OF PRL.CIVIL JUDGE & JMFC,  
AT : ANEKAL

PRESENT  
SRI.R.CHANDRAPPA HONNUR, M.A., LL.B.(Spl).,  
PRL.CIVIL JUDGE & JMFC,  
ANEKAL

DATED THIS THE 22<sup>ND</sup> DAY OF MARCH 2016

OS.NO.78/2016

PLAINTIFF : Sri. Choodappa

-Vs-

DEFENDANTS : Sri.S. Muthuraj & another

IA's No.I & II

APPLICANT/  
PLAINTIFF : Sri. Choodappa

-Vs-

RESPONDENTS/  
DEFENDANTS : Sri.S. Muthuraj & another

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**ORDERS ON IA's NO.I & II FILED U/O 39 RULE 1 & 2 R/W  
151 OF C.P.C. BY THE PLAINTIFF**

1. The plaintiff has filed two applications for an order of temporary injunctions, restraining the defendants, their agents workmen, henchmen, supporters or any persons acting on behalf of them from closing the water channel and encroaching the road as shown in the suit 'C' schedule.

2. The plaintiff has sworn to affidavits in support of the applications, he stated in the affidavits that he is the absolute owner in peaceful possession and enjoyment of the land bearing Sy.No.98, measuring 5acres 23guntas situated at Soppahalli village, Kasaba Hobli, Anekal Taluk, Bengaluru District which is described as suit schedule 'A' property and denoted by ABCD in the plaint sketch. The lands bearing Sy.No.22/2 and 22/3 each measuring 1 acre 20 guntas in all 3 acres situated at Lingapura village, Kasaba Hobli, Anekal Taluk, Bengaluru District which is described as suit schedule 'B' property and denoted by IJKLMN in the plaint rough sketch. The suit schedule 'C' properties are water channel and road. The suit schedule C road denoted by HADN in the plaint sketch and it runs from east to west direction and passes through Nayanahalli, Soppahalli and Doddahagade villages. The said road situated on northern side of the 'A' schedule property and southern side of the B schedule property. The plaintiff, defendants and publics have been using the said road to ingress and egress to their lands since time immemorial. The deponent further stated that there is a channel on the southern side of the suit B schedule property. The suit schedule A and B properties are joint and ancestral properties of the deponent and father of the defendants. The family properties were divided among the deponent and his brothers under the unregistered jubane vibaga patra dated 21-07-1986. In the said partition suit 'A' schedule property and other properties were allotted to the share of deponent. Suit 'B' schedule property and other properties were allotted to the share of father of the defendants. Some of the properties were allotted to the share of Sampangappa and

Jayanna. The deponent further stated that there is a clear recitals in the partition deed regarding existence of suit 'C' schedule road. The said Sampangappa and his children had alienated eastern portion of the suit B schedule property in favour of M.V.Lakshmi Prasad under a registered sale deed dated 09-06-2006. In the schedule of the said sale deed road is shown on the southern side of the alienated property. In the schedule of the sale deeds dated 22-12-2003, 04-05-2006 and 21-06-2006 also road is shown on the southern side of the alienated properties. The defendants, their father and sisters were got divided the properties under a registered partition deed dated 04-05-2012. In the said partition the land bearing Sy.No.22/2 was allotted to the share of the defendant no.1 and Sy.No.22/3 was allotted to the share of defendant no.2. The defendants, their sisters and father are very well aware about the road in existence on southern side of their land which leads to Nayanahalli, Soppahalli and Dodda Hagade villages. The defendants shown the property of Choodappa on the southern side of their land in the partition deed dated 04.05.2012 with malafide intention and to close the water channel and road. The property of the defendants is situated at Lingapura village and the plaintiff property is situated at Soppahalli village. The suit schedule channel and road are in existence in between the lands of the plaintiff and defendants. The defendants have mentioned wrong boundaries in the partition deed dated 04-05-2012 with an intention to swallow the road portion and channel. By taking undue advantage of the said illegal and unlawful partition deed the defendants have attempted to close the water channel and encroach the road. The Government Authorities have formed Tar

road, the defendants have restricted the Government authorities to form the Tar road till ending of their lands. The defendants have no manner of right, title and interest in and over the suit 'C' schedule property. On 20-02-2016 the defendants along with their supporters came near the suit schedule property and tried to close the water channel and encroach the road. He resisted the illegal and unlawful acts of the defendants. If the water channel and road are closed, the deponent and the villagers would face difficulty to reach their lands. The defendants are powerful persons, the deponent is aged and helpless person having no support in the locality and he is not in a position to resist the illegal and unlawful acts of the defendants. He approached the jurisdictional police for help but the police have advised him to approach the civil court as the matter is civil in nature. Therefore, he constrained to file the suit. He has made out a prima facie case, balance of convenience lies in his favour. If an order of temporary injunction is not granted he would be put to irreparable loss, injury and hardship. Hence, he prayed to allow the applications.

3. The defendants have contended in the objection that the applications filed by the plaintiff are not maintainable either in law or on facts. Hence, same are liable to be dismissed. The plaintiff has sought for easement by prescription in respect of the suit A to C schedule properties. The suit for bare injunction without seeking declaration is not maintainable. Therefore, the plaintiff is not entitled for interim relief as sought under IA's no.1 and 2. The plaintiff has not made out a prima facie case, balance of convenience not lies in his

favour. Therefore the defendants have prayed to dismiss the applications.

4. Heard the arguments and perused the materials on record.

5. The following points would arise for my consideration.

1. Whether the plaintiff has made out a prima facie case?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff would be put to irreparable loss and injury in the event of refusal of the temporary injunctions?

4. What order?

6. My findings to the 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:** The plaintiff has filed a suit against the defendants for the relief of permanent injunctions. Inter-alia the plaintiff has filed two applications for an order of the temporary injunctions against the defendants in respect of the suit 'C' schedule property. It is the case of the plaintiff that there is a road in between the lands of the plaintiff and defendants. A channel running towards southern side of the suit 'B' schedule property. The defendants have

attempted to close the channel and encroach the road as shown in the suit 'C' schedule.

8. The plaintiff has produced an unregistered jubane vibaga patra dated 21-07-1986 and sale deeds dated 09.06.2006, 22.12.2003, 04.05.2006 and 21.06.2006. I have gone through the said documents there is a clear recitals regarding existence of suit 'C' schedule road. The defendants, their father and sisters have got divided the properties under a registered partition deed dated 04-05-2012. In the said partition the defendants have intentionally shown the land of Choodappa on the southern side of their land instead of suit schedule 'C' road and attempted to close the channel and encroach the said road. The defendants have not produced any documents to show that the suit schedule 'C' road was formed in their land.

9. The learned counsel for the plaintiff has submitted that the plaintiff has produced sufficient documents to show that the suit schedule 'C' road is existence in between the lands of the plaintiff and defendants. The defendants have attempted to close the channel and encroach the road. If the defendants are succeeded in their illegal acts the plaintiff would be put to irreparable loss and injury. The plaintiff has made out a prima facie case, balance of convenience lies in his favour. If the temporary injunctions are not granted the defendants may close the channel and encroach the road. Therefore, he prayed to allow the applications.

10. The learned counsel for the defendants has submitted that the road in question was formed in the land of the defendants. The suit for bare injunction without seeking declaration of easementary right not maintainable. Therefore, the plaintiff is not entitled for interim relief's as sought under IA's no.I and II. In support of arguments the learned counsel for the defendants has relied upon the survey sketch and following decisions.

1. AIR 1982 KAR 314 D.Ramanatha Gupta VS S.Razaack
2. ILR 1992 KAR 3772 M/s Patel Enterprises VS M.P.Ahuja
3. AIR 1994 KAR 354 Mrs. Jayanthi.R.Padukone VS M/s ICDS Ltd., and others.

11. I have gone through the ratio of the said decisions, in the first decision the Hon'ble High Court of Karnataka has held that the right of easement by prescription cannot become absolute unless the right has been contested in a suit. Thus, a suit for mere injunction is not maintainable. In the second decision the Hon'ble High Court of Karnataka has held that prima facie case includes the nature of the suit and its maintainability. If, on the face of it, the suit is not maintainable, question of issuing any temporary injunction would not arise. In the third decision the Hon'ble High Court of Karnataka has pointed out the principles guiding the grant of interlocutory injunctions. In cases of interlocutory injunctions in aid of the rights of the party seeking it, the court will first consider whether the applicant has established a 'prima facie' case, the expression 'prima facie' in this context being understood in the sense that it is not a frivolous or vexatious claim but involves a serious matter to be investigated.

12. On perusal of the materials on record, the plaintiff has placed sufficient materials to show that suit schedule 'C' schedule property is in existence. The photos produced by the plaintiff also reveal that the Tar road has been formed by the competent authorities, photos further reveal that defendants dug trench on the road by closing the channel. The plaintiff has filed the suit in respect of the road which has been used by him and public at large. Therefore, the contention taken by the defendants that suit for bare injunction without seeking declaration of easementary right is not sustainable. The judgements relied upon by the counsel for defendants are not applicable to the facts and circumstances of the case on hand.

13. Based on the discussion made above, I am of the considered view that the plaintiff has made out a prima facie case, balance of convenience lies in his favour. If the temporary injunctions are not granted the defendants may close the channel and encroach the road as mentioned in suit 'C' schedule. If the temporary injunctions are granted no harm would be caused to the defendants. Accordingly, I answer points no.1 to 3 in the affirmative.

14. **Point No.4:** In view of my findings on points No.1 to 3, the plaintiff is entitled for temporary injunctions as sought under IA's No.1 & 2. Accordingly, I proceed to pass the following:

**ORDER**

IA's No.1 & 2 filed U/O 39 Rule 1 & 2 R/W 151 of C.P.C. by the plaintiff are allowed with costs.

The defendants, their agents, workmen, henchmen, supporters or any persons acting on their behalf are hereby restrained from closing the water channel as shown in the suit 'C' schedule in any manner till pending disposal of the suit.

The defendants, their agents, workmen, henchmen, supporters or any persons acting on their behalf are hereby restrained from encroaching the road as show in the suit 'C' schedule in any manner till pending disposal of the suit.

(Dictated to the stenographer directly on the computer, typed by her corrected and then pronounced by me in the open court as on this the 22<sup>nd</sup> day of March 2016)

**(R. CHANDRAPPA HONNUR)**  
**Prl. Civil Judge & JMFC,**  
**Anekal.**